Child Support Schedule Workgroup
September 2019

Recommendations to the Washington State Legislature for Washington's Child Support Schedule Pursuant to RCW 26.19.025

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Executive Summary

This document is the Report of the 2019 Child Support Schedule Workgroup, submitted as required under RCW 26.19.025(6).

In 2007, the Washington Legislature adopted Second Substitute House Bill 1009,[1] which amended RCW 26.19.025 to establish a process for performing the federally-required quadrennial[2] review of the state's child support guidelines[3] by creating a Workgroup tasked to review current laws, rules, and practices regarding child support. Prior to that, Washington law called for a review, but did not specify how that review should be carried out.[4] The current review process was based on recommendations by a Workgroup convened in 2005 by then-Governor Gregoire.[5]

Starting with the 2007 Child Support Schedule Workgroup and every four years thereafter, RCW 26.19.025 provides that the Department of Social and Health Services (DSHS) Division of Child Support (DCS) must convene a new Workgroup whose non-legislative members are to be appointed by the Governor.[6] DCS is required to provide staff support for the Workgroup.[7] The President of the Senate and the Speaker of the House of Representatives are each to appoint two members.[8]

The statute does not provide a list of issues to be considered by the ongoing Workgroups, but it is anticipated that each Workgroup will select its own issues based on a report which reviews and analyzes data collected from support orders entered since the last review, prior Workgroup reports, the current child support guidelines, and other relevant research and data regarding the cost of child rearing, as well as research and data on the application of, and deviations from, the child support guidelines.

The 2019 Child Support Schedule Workgroup

The first meeting of the 2019 Child Support Schedule Workgroup was held on January 25, 2019. The Workgroup continued to meet on a monthly basis through August, for a total of nine in-person meetings.[9] There were two optional phone meetings: one covered different Child Support Schedule scenarios and the other dealt with scenarios using the Self-Support Reserve. Each meeting of the Workgroup was open to the public, and the agenda for each meeting contained a time for receiving public comments.

The 2019 Workgroup formed three *ad hoc* Subcommittees to research and report on specific issues, making recommendations to help the entire Workgroup come to more

[1] 2SHB 1009, Chapter 313, Laws of 2007.
[2] Every four years.
[3] 45 CFR 302.56(e).
[4] Prior to 2007, RCW 26.19.025 in its entirety stated: "The legislature shall review the support schedule every four years to determine if the application of the support schedule results in appropriate support orders."
[5] Referred to as "the 2005 Workgroup."
[6] RCW 26.19.025(1)(c).
[7] RCW 26.19.025(3).
[8] RCW 26.19.025(1)(a) and (b).
[9] There were two in-person Workgroup meetings in August.

informed final decisions. The Subcommittees met by conference call; those calls were open to all Workgroup members and to the public.[10]

The Workgroup's website[11] contains the agendas for, and minutes of, all Workgroup meetings. The Workgroup Calendar[12] provides time, date and location information for Workgroup meetings and Subcommittee conference calls. When available, notes from the Subcommittee conference calls are posted on the Workgroup website. Each Subcommittee has its own section on the Materials page.[13]

The attached recommendations of the 2019 Child Support Schedule Workgroup are the result of an intense, collaborative process of committed volunteer Workgroup members. Members included both noncustodial parents and custodial parents, a law professor, an economist and a tribal representative, as well as representatives of the Washington State Bar Association, the Washington Association of Prosecuting Attorneys, legal services, the Office of Administrative Hearings, the courts, and the Legislature.

The Workgroup encouraged public participation in their process. Workgroup meetings and Subcommittee meetings were open to the public. Individuals who appeared at meetings were invited to provide their comments during each meeting. DCS created a web page[14] and a listserv,[15] and set up an e-mail address for anyone wishing to submit comments for consideration by the Workgroup.[16] The Workgroup held two special two-hour sessions dedicated to public comment: one in Seattle (August 8, 2019) and one in Spokane (August 10, 2019).

Prioritization of Issues to be Addressed

At the first meeting of the 2019 Child Support Schedule Workgroup on January 25, 2019, the Workgroup members received an overview of the purpose of the quadrennial review of the state's support schedule; discussed the process of child support establishment and calculation; discussed the 2018 Child Support Order Review Report,[17] which was prepared[18] for the Workgroup as an overview of the child support orders entered from August 2014 to July 2018; and learned about the public records requirements for the Workgroup and its members.

[10] All meetings of the Workgroup and its Subcommittees, whether in-person or by conference call, were open to the public.
[11] https://www.dshs.wa.gov/esa/division-child-support/2019-child-support-schedule-workgroup
[12] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/2019%20CSSW%20Calendar.pdf
[13] https://www.dshs.wa.gov/esa/division-child-support/2019-child-support-schedule-materials
[14] https://www.dshs.wa.gov/esa/division-child-support/2019-child-support-schedule-workgroup
[15] https://public.govdelivery.com/accounts/WAESA/subscriber/new
[16] SupportSchedule@dshs.wa.gov
[17] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/2018%20Child%20Support%20Order%20Review%20NEW.pdf and attached as Appendix IV.
[18] RCW 26.18.210 requires the Division of Child Support (DCS) to "prepare a report at least every four years using data compiled from child support court and administrative orders." This report is prepared at the request of DCS by E-MAPS, the Reports and Publications unit of the DSHS Economic Services Administration (ESA).

With that background, the Workgroup members brainstormed ideas about the focus of their work. Realizing that the time allowed for the Workgroup process[19] would not allow them to address all of the identified issues,[20] the Workgroup members agreed on three issues[21] they felt were most important based on the impact to families and ease of implementation: (1) how a parent's income is determined for purposes of calculating child support; (2) how to create a residential schedule credit based on the time that the children spend with the paying parent; and (3) how to mitigate the impact of child support obligations on reunification when children are involved in the child welfare system.

Three Subcommittees were established to focus on those topics, and each Subcommittee developed a Charter:

- Income Determination, Imputation, and the Self-Support Reserve[22]
- Substantially Shared Parenting and Residential Deviation Definition[23]
- Temporary Abatement/Dependency[24]

The initial roster[25] of Subcommittees and their members can be found on the Workgroup website. Membership in the Subcommittees was fluid, with Workgroup members welcome to attend any Subcommittee meeting. Each Subcommittee was tasked to make recommendations to the Workgroup, or to provide information on those issues on which the Subcommittee had been unable to reach consensus. Materials considered by each Subcommittee are included on the 2019 Child Support Schedule Materials webpage[26] under the heading "Subcommittees."

Final Recommendations of the 2019 Child Support Schedule Workgroup

As was the case with prior Workgroups, the 2019 Workgroup's main concern was that whatever child support schedule is ultimately adopted, it must:

- Be clear and easy to understand.
- Be easy to implement.
- Provide certainty and consistency while allowing flexibility to deal with unjust or inappropriate outcomes.

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[19] Convened in January every four years, the Workgroup must deliver its Report to the Legislature by October 1 of the same year. RCW 26.19.025(6).

[20] See Minutes of the January 25, 2019 meeting at https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/January%2025%202019%20Final%20Minutes%202.pdf

[21] See Minutes of the February 22, 2019 meeting at https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/February%2022%202019%20Final%20Minutes%202.pdf

[22] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/CSSWG%20Income%20Subcommittee%20Charter.pdf

[23] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/Substantially%20Shared%20Parenting%20and%20Residential%20Deviation%20Definition%20Subcommittee%20Charter.pdf

[24] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/CSSWG%20Subgroup%20Charter_Temporary%20Abatement.pdf

[25] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/Subcommittee%20Roster%202.pdf

[26] https://www.dshs.wa.gov/esa/division-child-support/2019-child-support-schedule-materials

- Cover the greatest possible number of families.
- Provide specific guidelines.
- Apply in both the superior courts and the administrative process.

The 2019 Workgroup agreed that the group would work to arrive at consensus recommendations. Initially, the Workgroup struggled to come up with a suitable working definition for consensus, and agreed that they would put off the definition until they had some issues to decide. For prior Workgroups, consensus meant that a member may not totally support a position, but "can live with it." The Workgroup members also agreed that it was an important part of the process to identify topics where they could not reach consensus but felt that there were issues to point out in the Report. It was agreed that the Report could identify minority and majority opinions, but that the Report would not specify which members held which specific views.

The Workgroup eventually decided on a consensus-building rating system where each member would indicate his or her opinion on a specific issue by assigning a score from 1 to 5.[27] Those issues scoring all 4's and 5's would count as consensus recommendations by the Workgroup, and issues scoring 2's or 3's were subject to deeper discussions to see if the scores could be raised. An issue that received a score of 1 was determined to be one where consensus could not be reached no matter how much discussion occurred:

- A score of 5 meant "I love it," indicating consensus and full support
- A score of 4 meant "I like it," indicating consensus and "I can live with it"
- A score of 3 meant "It's problematic," indicating could support after discussion
- A score of 2 meant "It's doubtful," indicating support unlikely after discussion
- Finally, a score of 1 meant "I won't agree to it," indicating that support was impossible

Although the Workgroup was unable to reach consensus on every point, the members thoroughly discussed all issues considered. Where consensus was not reached, the Workgroup attempted to narrow down the options and point out the advantages and disadvantages of each approach. The Workgroup also determined that there were certain "messages" they would like to send to the Legislature.[28]

In the end, the 2019 Workgroup agreed by consensus[29] to the following recommendations, which are described here in summary:

RECOMMENDATION ONE

When determining income or imputing income, the law should recognize that "full time employment" does not necessarily mean "40 hours per week."

[27] Each Workgroup member was provided with a set of cards numbered 1 through 5 for voting.
[28] See Recommendations Six, Seven and Eight.
[29] As indicated above, all members voting on a particular issue awarded a score of either 4 or 5.

RECOMMENDATION TWO

RCW 26.19.071(6) should be amended to include additional factors to be considered when imputing income.

RECOMMENDATION THREE

There should be a recognition that for some parents, full-time employment is only thirty-two (32) hours per week.

RECOMMENDATION FOUR

The imputation statute should take into account whether a parent has "no significant earnings history."

RECOMMENDATION FIVE

The Workgroup recommends that the law should contain a separate section dealing with when it is appropriate to impute income to a parent who is currently enrolled in and attending high school.

RECOMMENDATION SIX

The Workgroup recommends that the Legislature consider whether the current provisions regarding the Self-Support Reserve should be amended.

RECOMMENDATION SEVEN

The Workgroup finds that child support accruing during a dependency action may inhibit reunification of the family, and the Workgroup recommends that the Legislature should find a way to resolve this issue.

RECOMMENDATION EIGHT

The Workgroup recommends that the Legislature find a way to resolve the related issues of shared parenting and an adjustment to child support based on the residential schedule.

Conclusion

The Workgroup's recommendations contained within this Report are the culmination of months of effort by thoughtful individuals who took into consideration their own experience and expertise with the child support schedule while evaluating comments from the public and other interested parties, and reviewing the research and reports that were made available to them regarding the Washington State Child Support Schedule.

Where the Workgroup was able to reach a consensus or majority opinion, we respectfully urge the Legislature to consider adopting the proposals set forth in this report. Where the Workgroup was unable to reach a consensus, we hope that our discussion of the different options is helpful.

Background

Federal Requirements Regarding Child Support Schedules

As a condition for states receiving federal money to run their child support program, 42 USC §667(a) requires states to enact child support guidelines for setting child support awards. Federal law requires that the guidelines be reviewed at least every four years to ensure that their application results in appropriate child support award amounts.

As applied to reviews prior to the 2019 Child Support Schedule Workgroup, the requirements for the four-year review were defined in federal regulation.[30] As part of the review, the state was required to take into consideration:

> …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 guidelines are limited.

In 2016, the review requirements in 45 CFR §302.56(h) were amended by the *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* rule.[31] These changes were adopted in the 2019 legislative session by the Legislature in §1 of Engrossed Substitute House Bill 1916,[32] amending RCW 26.19.025 by adding a new subsection specifying which data must be reviewed:

> (8) During the quadrennial review, the data considered by the work group must include:
> (a) Economic data on the cost of raising children; labor market data by occupation and skill level for the state and local job markets including, but not limited to, unemployment rates, employment rates, hours worked, and earnings; the impact of the guidelines' policies and amounts on parents who have family incomes below two hundred percent of the federal poverty level; and factors that influence employment rates and compliance with child support orders among parents who are obligated to pay support; and
> (b) Case data, gathered through sampling or other methods, on the application of, and deviations from, the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.

[30] 45 CFR §302.56(h). See Appendix III for the text of the entire section.
[31] Known as the "Flexibility rule," which was published on December 20, 2016 in the *Federal Register*, Volume 81, Number 244, on page 93492; this rule was effective January 19, 2017.
[32] ESHB 1916, Chapter 275, Laws of 2019.

Although the 2019 Child Support Schedule Workgroup was convened before ESHB 1916 took effect,[33] the Workgroup did its best to comply with the new requirements.

Washington State's Child Support Schedule History[34]

1982: The Washington State Association of Superior Court Judges (ASCJ) approved the Uniform Child Support Guidelines, which recognized the shared duty of both parents to contribute to the support of their children in proportion to their respective incomes. Most counties adopted ASCJ guidelines, but others promulgated their own.

1984: The federal Child Support Enforcement Amendments of 1984 required states to establish child support guidelines, which were made available to judicial and administrative officials, but were not binding. The setting of child support through a statewide schedule was intended to standardize the amount of support orders among those with similar situations.

1986: The Governor's Task Force on Support Enforcement examined the ASCJ Guidelines and recommended that a statewide child support schedule be established, using gross income and a schedule be followed unless certain exceptional situations defined by the enabling statute were established.[35]

1987: Legislation was introduced to the House to create a statewide child support schedule. The Legislature rejected a rebuttable presumption support schedule proposed by the Governor's Task Force on Support Enforcement. On May 18, 1987, then-Governor Gardner signed SHB 418,[36] creating the Washington State Child Support Schedule Commission and setting guidelines by which the Commission was to propose a statewide child support schedule to take the place of county support schedules by Nov. 1, 1987. The Commission was specifically directed by the Legislature to propose a schedule after studying the following factors:

- Updated economic data
- Family spending and the costs of raising children
- Adjustments based upon the children's age level
- The basic needs of children
- Family size
- The parents' combined income
- Differing costs of living throughout the state
- Provision for health care coverage and child care payments

[33] The 2019 Workgroup was convened on January 25, 2019; ESHB 1916 was effective July 28, 2019.
[34] Provided by the Division of Child Support's Management and Audit Program Statistics Unit (MAPS), now a separate part of the DSHS Economic Services Administration.
[35] Final Report, Sept. 1986.
[36] Chapter 440, Laws of 1987.

1987: The Legislature created the Washington State Child Support Schedule Commission, comprised of an economist, representatives from parents' groups, attorneys, a judge and a court commissioner. Child support agency staff served as support staff to the Commission. The Commission was charged with reviewing and proposing changes to the support schedule when warranted.

1988: Recommendations from the Child Support Commission were adopted effective July 1, 1988 by the Legislature, establishing a state schedule for determining child support codified at Chapter 26.19 RCW.[37] The federal Family Support Act in 1988 made the guidelines presumptive rather than advisory. The Legislature adopted the rebuttable-presumption statewide child support schedule proposed by the Commission and gave the Commission authority to make revisions subject to the approval of the Legislature.[38]

- The January 26, 1988 support schedule contained standards for setting support, worksheets, instructions and the basic obligation table.
- The July 1, 1988 support schedule changed the "basic obligation table" to the "economic table."
- In November 1988, the Commission proposed changes, accepted by the 1989 Legislature and effective July 1, 1989. The major change was the inclusion of ordinary health care expenses in the economic table to be paid by the payee parent. A formula was provided to determine that amount.[39]

1989: The Child Support Commission issued recommendations on applying the schedule to blended families.[40] The 1989 support schedule included standards for setting support, instructions, the economic table and worksheets.

1990: The Legislature attempted to change the way overtime pay, second (or multiple) families and a few other items are treated in the schedule.[41] The Governor vetoed the attempted amendments on those major issues. That bill made no changes to the economic table itself, but did significantly impact its use.

- RCW 26.19.020 was amended to provide that any county superior court could adopt an economic table that varied no more than twenty-five percent from that adopted by the Commission for combined monthly net income of over $2,500.
- The bill required that the Child Support Order Summary Report Form be completed and filed with the county clerk in any proceeding where child support is established or modified.
- RCW 26.19.035 was amended to provide that child support worksheets are to be completed under penalty of perjury, and the court is not to accept incomplete worksheets or worksheets that vary from the worksheets developed by the Administrative Office of the Court.
- The moving force behind the proposed changes in 1990 was an organization called Parents Opposed to Punitive Support (POPS), which consisted primarily of

[37] Chapter 275, Laws of 1988.
[38] Chapter 26.19 RCW and schedule dated July 1, 1988.
[39] Report dated November 1988 and schedule dated July 1, 1989.
[40] *Report on the Use of Support Schedule for Blended Families*, December 1989.
[41] EHB 2888 (Chapter 2, Laws of 1990, 1st ex.s.).

noncustodial parents with multiple families. POPS announced that they would continue their efforts with the 1991 Legislature.

1991: The September 1, 1991 support schedule[42] eliminated the residential credit (standard 10) in determination of child support and substituted the residential schedule as a standard for deviation.

- The Legislature made other changes including amendments to RCW 26.19.020 to mandate a uniform statewide economic table based on the Clark County model.
- The table was presumptive up to a combined monthly net income (CMNI) of $5,000, and advisory for CMNI of up to $7,000.

2007: Substitute House Bill 1009,[43] based in part on the recommendations contained in the report of the 2005 Workgroup, established a process for the quadrennial review of the child support guidelines.

- This bill provided that the Child Support Order Summary Report be added to the first page of the Washington State Child Support Schedule Worksheet, developed by the Administrative Office of the Courts.
- The Order Summary Report form was required to include "all data the department of social and health services division of child support has determined necessary, in order to perform the required quadrennial review of the Washington state child support guidelines."

2007: The first Child Support Schedule Workgroup under revised RCW 26.19.025 was convened in September 2007 and filed its *Report to the Legislature* on December 30, 2008.[44]

2009: Based on the report of the 2007 Child Support Schedule Workgroup, the Legislature adopted ESHB 1794,[45] which made the first major changes to the Washington Child Support Schedule in almost 20 years.[46]

2011: The 2011 Child Support Schedule Workgroup, convened in January 2011, delivered its *Report to the Legislature* on September 30, 2011. Though several bills were proposed based on the recommendations of the 2011 Workgroup, no changes to Chapter 26.19 RCW were passed by the Legislature prior to the convening of the 2015 Workgroup.

2015: The 2015 Child Support Schedule Workgroup, convened in January 2015, delivered its *Report to the Legislature* on September 30, 2015. The Workgroup decided to limit its scope since bills based on the recommendations of the 2011 Workgroup were being considered by the Legislature at the time the 2015 Workgroup was convened. In addition to making seven consensus recommendations regarding a residential schedule

[42] Chapter 367, Laws of 1991.
[43] SHB 1009 (Chapter 313, Laws of 2007)
[44] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/finalreportofworkgroup.pdf
[45] ESHB 1794 (Chapter 84, Laws of 2009)
[46] Those changes are discussed *infra* at page 13*ff*.

deviation, the 2015 Workgroup's *Report to the Legislature* included endorsement of two recommendations[47] contained in the 2011 Workgroup's *Report*.

2018: Substitute Senate Bill 6334[48] made changes to the Washington statutes regarding medical support required under the federal Flexibility Rule.[49] More notably, SSB 6334 adopted the recommendations of the 2011 and 2015 Workgroups by adopting a new Economic Table[50] and by clarifying the amount of the self-support reserve.[51] The effective date of the changes was January 1, 2019.

2019: As described above, Engrossed Substitute House Bill 1916[52] adopted new requirements for the quadrennial review of the Child Support Schedule as provided under the federal Flexibility Rule. In addition, ESHB 1916 adopted changes to the standards for modification or adjustment of child support orders:

- As required under the federal Flexibility Rule, RCW 26.09.170 and 74.20A.059 were amended to provide that incarceration of the parent obligated to pay support is sufficient basis for referral for modification or adjustment at any time, without a showing of substantially changed circumstances; and
- Due to the 2018 adoption of the new Economic Table which did not differentiate between age groups,[53] those same statutes were amended to remove "change of age category" as a basis for modification or adjustment of support.

Basis for Washington State's Child Support Schedule

Washington's Child Support Schedule is based on the Income-Shares Model developed by Robert Williams[54] in 1987, which at that time was used in 33 states. It is based on the combination of incomes of both parents to estimate the proportion that would be spent on children in an intact family. After all factors are considered, the noncustodial parent is ordered to transfer child support to the parent with whom the child resides a majority of the time.

At the time of the development of the statewide Child Support Schedule, there was considerable attention given to the issue of whether the Schedule reflected the appropriate level of support for children. The focus of the discussion, however, turned to the issue of the hardship the Schedule imposed on the nonresidential parent rather than the well-being of the child.

The fathers' rights advocates expressed concern that the Schedule was too high. A comparative report[55] indicated that the Support Schedules of Income Shares states tended

[47] Adoption of a new Economic Table based on more recent economic data, and clarification that the Self-Support Reserve was based on 125% of the Federal Poverty Level for a one-person family.
[48] ESSB 6334, Chapter 150, Laws of 2018.
[49] See Footnote 31, *supra.*
[50] ESSB 6334, Section 301.
[51] ESSB 6334, Section 401.
[52] ESHB 1916, Chapter 275, Laws of 2019.
[53] ESSB 6334, Section 301.
[54] Robert Williams, 1987, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report.*
[55] Laurie Bassi, Laudan Aron, Burt S. Barnow, and Abhay Pande, 1990, *Estimates of Expenditures on Children and Child Support Guidelines,* U.S. Department of Health and Human Services.

to cluster closer to the lower end of the range of estimates of expenditures on children than they did to the upper end of the range of estimates. Further, no state that had adopted the Income Shares Model required the noncustodial parent to pay more in child support than would have been spent to support the child in an intact family.

History of Child Support Schedule Reviews in Washington State[56]

The presumptive Child Support Schedule for the state was enacted in 1988 and codified as Chapter 26.19 RCW. The first comprehensive review of the Support Schedule was initiated in 1993. The chairs of the House Judiciary Committee and the Senate Law and Justice Committee asked the Washington State Institute for Public Policy (WSIPP) to conduct a study of the Washington State Child Support Schedule. The study[57] was issued in March 1995. The study found that Washington's support guidelines fell within the median level of the range for raising children at the time; based on that finding, the Legislature did not act to make any changes to the Support Schedule at that time.

During the 2003 legislative session, the Department of Social and Health Services' Division of Child Support (DCS) provided the Speaker of the House of Representatives and the Majority Leader of the Washington State Senate with a copy of a report by Kate Stirling, Ph.D, suggesting that a review of the Washington State Child Support Schedule was necessary.[58] In addition, DCS requested that the Legislature review the Support Schedule as required under RCW 26.19.025, 42 USC §667(a), and 45 CFR §302.56. Section 207(8) of the Supplemental Operating Budget for State Fiscal Year (SFY) 2002-2003 contained the following language:

> In reviewing the budget for the division of child support, the legislature has conducted a review of the Washington state child support schedule, chapter 26.19 RCW, and supporting documentation as required by federal law. The legislature concludes that the application of the support schedule continues to result in the correct amount of child support to be awarded. No further changes will be made to the support schedule or the economic table at this time.[59]

Then in February of 2005, DCS received a letter from the Regional Administrator of the Federal Office of Child Support Enforcement (OCSE) indicating that the state's child support guidelines had not been reviewed as required under federal law,[60] and warning that Washington state's child support plan under Title IV-D of the federal Social Security Act might be disapproved if such a review did not occur.[61]

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[56] Taken in large part from the Report of the 2007 Child Support Schedule Workgroup.
[57] *Child Support Patterns in Washington State: 1993-1994,* by Steve Aos and Kate Stirling.
[58] *A Review of the Washington State Child Support Schedule, March 2003, Completed under Contract for the Washington State Division of Child Support.*
[59] SSB 5403 (Chapter 10, Laws of 2003).
[60] 45 CFR 302.56.
[61] Failure to have an approved state child support plan could result in the loss of all federal funding for the child support program (roughly $85 million per year) and loss of up to 5% of the $400 million in the Temporary Assistance for Needy Families (TANF) funding.

As a result of this warning, then-Governor Gregoire directed DCS to put together a workgroup which would make recommendations to the Legislature no later than January 15, 2006.[62] The Governor directed that the 2005 Workgroup provide a report that contained recommendations for needed amendments to the child support guideline statutes, a process for improving record keeping of orders entered, and a better method of ensuring that the child support guidelines are reviewed and updated as federally required. As part of the review, DCS contracted with Policy Studies, Inc. (PSI), to do a review and analysis of the Support Schedule in compliance with 45 CFR 302.56(e) and (h). The 2005 Workgroup delivered its report to the Governor and the Legislature in January 2006.[63] Although the report contained several consensus recommendations for statutory changes, the Legislature made no changes to the Child Support Schedule in the 2006 session.

However, in the 2007 session, Second Substitute House Bill 1009[64] amended RCW 26.19.025 and established workgroups to "periodically review and update the child support schedule."

- The bill required the Division of Child Support to convene a Workgroup no later than August 1, 2007.[65]
- This Workgroup was tasked to "continue the work of the 2005 child support guidelines workgroup, and produce findings and recommendations to the Legislature, including recommendations for legislative action, by December 30, 2008."
- The 2007 Workgroup was given fourteen specific issues to consider,[66] and delivered its Report to the Legislature[67] on December 30, 2008.

In the 2009 legislative session, the Legislature passed Engrossed Substitute House Bill 1794,[68] which was based on the report of the 2007 Child Support Schedule Workgroup.[69] ESHB 1794 made the first major changes to the Washington Child Support Schedule in almost 20 years. That bill:

- Expanded the Economic Table up to a combined monthly net income (CMNI) of $12,000, which covered families with combined annual gross incomes of approximately $200,000.
- Provided that for CMNI of less than $1000, the obligation is "based upon the resources and living expenses of each household," and minimum support may not be less than $50 per child per month except when allowed under RCW 26.19.065(2).
- Provided that the Economic Table is presumptive for CMNI up to and including $12,000, and that when CMNI exceeds $12,000, the court may exceed the presumptive amount of support set for CMNI of $12,000 upon written findings of fact.

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[62] This workgroup is referred to as "the 2005 Workgroup."
[63] https://www.dshs.wa.gov/esa/division-child-support/reports
[64] 2SHB 1009 (Chapter 313, Laws of 2007).
[65] 2SHB 1009, Section 7.
[66] *Ibidem*.
[67] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/finalreportofworkgroup.pdf
[68] ESHB 1794, Chapter 84, Laws of 2009.
[69] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/finalreportofworkgroup.pdf

- Removed the presumption that the basic support amounts in the Economic Table included a certain amount for health care expenses.
    - Prior to this time, RCW 26.19.080 provided that 5% of the basic support obligation represented "ordinary health care expenses" of the children, and that "extraordinary health care expanses," defined as costs that exceed 5% of the basic support obligation, were to be shared proportionally by the parents.
    - ESHB 1794 provided a definition of health care costs, and provided that they are not included in the Economic Table but are to be shared by the parents in the same proportion as the basic child support obligation.
- Added language intended to clarify the application of the limitation in RCW 26.19.065(1) providing that neither parent's child support obligation owed for all his or her biological or legal children may exceed 45% of net income except for good cause shown.
- Increased the presumptive minimum support obligation to fifty dollars per month per child.
- Provided that the basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below the Self-Support Reserve of one hundred twenty-five percent of the federal poverty level,[70] except for the presumptive minimum obligation.
- Made changes to the provisions regarding which income sources are to be included in, or excluded from, a parent's gross monthly income.
- Established a hierarchy for the imputation of income in the absence of actual earnings.

As discussed elsewhere in this Report, the 2011 Child Support Schedule Workgroup made several consensus recommendations which had not been implemented by the Legislature before the 2015 Child Support Schedule Workgroup was convened; the 2015 Workgroup members decided that they would focus their work on the issue of the residential schedule credit since legislation based on the 2011 Workgroup's recommendations was pending.

In the 2018 legislative session, the Legislature adopted Engrossed Substitute House Bill 6334,[71] which adopted two recommendations made by the 2011 and 2015 Child Support Schedule Workgroups:

- Section 301 adopted a new Economic Table, effective January 1, 2019; and
- Clarified that the Self-Support Reserve was based on 125% of the Federal Poverty Level for a one-person family.

[70] Despite the recommendation in the 2007 Workgroup's report, ESHB 1794 did not specify that the Self-Support Reserve was based on 125% of the Federal Poverty Level of a one-person family, which resulted in some confusion in the superior courts. This was clarified in Section 401 of SSB 6334, Chapter 150, Laws of 2018.
[71] ESHB 6334, Chapter 150, Laws of 2018.

The Current Schedule Review under RCW 26.19.025

Starting in 2011 and every four years thereafter, the DSHS Division of Child Support (DCS) was directed to convene a Workgroup "to review the child support guidelines and the child support review report prepared under RCW 26.19.026 and determine if the application of the child support guidelines results in appropriate support orders."[72] The membership of these future Workgroups was to be the same as required for the 2007 Workgroup. As indicated above, the statute did not set out specific issues for Workgroups other than the 2007 Workgroup to consider. Starting with the 2011 Workgroup, RCW 26.19.025(6) directs each Workgroup to "report its findings and recommendations to the legislature, including recommendations for legislative action, if necessary." The Workgroup's report is due by October first that same year.

As indicated above, the 2019 Child Support Schedule Workgroup considered amendments to RCW 26.19.025 which became effective in late July 2019.[73] These changes encouraged the Workgroup to consider such things as labor market data by occupation and skill level for the state and local job markets including, but not limited to, unemployment rates, employment rates, hours worked, and earnings; the impact of the guidelines' policies and amounts on parents who have family incomes below two hundred percent of the federal poverty level; and factors that influence employment rates and compliance with child support orders among parents who are obligated to pay support.[74]

Other parts of the federal Flexibility Rule[75] encouraged consideration of factors including whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, assets; residence; employment and earnings history; job skills; educational attainment; literacy; health; and age; criminal record, dependency court obligations, and other employment barriers; and record of seeking work; as well as the local job market; the availability of employers willing to hire the parent; and prevailing earnings level in the local community. RCW 26.19.025 points out that the list of factors is not intended to be an exclusive list, ending with "any other relevant factors." This is the spirit in which the 2019 Workgroup approached its review.

Members of the 2019 Workgroup

The Speaker of the House of Representatives appointed Representative Christine Kilduff (D-28th District) and Representative Jeremie Dufault (R-15th District).[76] The President of the Senate appointed Senator Maureen Walsh (R-16th District) and Senator Claire Wilson (D-30th District).[77]

[72] RCW 26.19.025(1).
[73] §1 of ESHB 1916 (Chapter 275, Laws of 2019), which implemented changes to the review requirements in 45 CFR §302.56(h).
[74] RCW 26.19.025(8)(a).
[75] The *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* rule (known as the "Flexibility rule") was published in Volume 81, Number 244, on page 93492 of the Federal Register; this rule was effective January 19, 2017.
[76] RCW 26.19.025(1)(a).
[77] RCW 26.19.025(1)(b).

The Governor, in consultation with DCS, appointed the remaining members of the Workgroup:[78]

- Sharon Redmond, DCS Director. The Governor appointed Ms. Redmond as the Chair of the 2019 Workgroup.
- Terry Price, a professor of law specializing in family law, from the University of Washington School of Law.
- J. Ann Farnsworth, nominated by the Washington State Bar Association's Family Law Executive Committee (FLEC). After Ms. Farnsworth resigned, she was replaced in July by Christy Carpenter.
- Anneliese Vance-Sherman, an economist from the Washington State Employment Security Department.
- Tara Miller, of the Confederated Tribes of the Colville Reservation, the representative of the tribal community.
- Judge Richard Okrent of Snohomish County and Commissioner Tami Chavez of Spokane County, nominated by the Superior Court Judges' Association.
- Catherine (Crissy) Anderson, nominated by the Administrative Office of the Courts (AOC).
- Janelle Wilson, nominated by the Washington Association of Prosecuting Attorneys (WAPA).
- Kristofer Amblad, nominated by legal services.
- Jeff Manson, an administrative law judge (ALJ) nominated by the Office of Administrative Hearings (OAH).
- Three noncustodial parents:
    - James Chott
    - Keoki Kauanoe
    - Fawn Brigman, who withdrew from the Workgroup 1/31/19 and was not replaced
- Three custodial parents:
    - Sandra Johnston
    - Shelby LeBret-McCrea, who withdrew from the Workgroup 8/26/19 and was not replaced
    - Bethany Hickey, who withdrew from the Workgroup 1/22/19 and was replaced by Mia Harper

[78] RCW 26.19.025(1)(c).

Overview of the 2019 Workgroup Process

Workgroup Meetings

The first meeting of the 2019 Child Support Schedule Workgroup was held on January 25, 2019. The Workgroup continued to meet in-person on a monthly basis.[79] The final "working" meeting of the Workgroup was held on August 29, 2019.

Although there were Workgroup members from all over the state, the majority of the members were from Western Washington. The in-person meetings for the 2019 Workgroup were held in Western Washington, initially because of the legislative session and later based on the preferences of the Workgroup members.

The Workgroup's initial meeting was held at the Department of Labor & Industries Headquarters in Tumwater. The Seattle Field Office of the Division of Child Support (DCS) hosted the February, March and April meetings, as well as the first August meeting; the May meeting was held in the John L. O'Brien Building on the Capitol Campus in Olympia; the June and July meetings, as well as the second August meeting, were held in the Tacoma Field Office of DCS.

There were two meetings dedicated to public comment, described more fully below. There was one public meeting in Seattle at North Seattle College[80] and one public meeting in Spokane at Spokane Falls Community College.[81]

Three Subcommittees were created and they met by conference call at times between the in-person Workgroup meetings and during part of the April, June and July meetings.[82]

Materials available on the 2019 Workgroup's website[83] were accessible to Workgroup members and to the public. These materials included research material prepared by DCS staff, the 2018 Child Support Order Review prepared by Teri Lane of the Economic Services Administration of DSHS ("the Washington State 2018 Child Support Order Review"),[84] as well as links to the webpages of the 2007,[85] 2011[86] and 2015[87] Workgroups. These materials were supplemented with various additional materials created by DCS staff, Lane or various Workgroup members. These materials and others submitted by Workgroup Subcommittees or members of the public are also posted on the 2019 Workgroup's website.[88]

[79] There were two in-person Workgroup meetings in August (8/8 and 8/29).
[80] Thursday, August 8, 2019 from 5:00 pm – 7:00 pm.
[81] Saturday, August 10, 2019 from 10:00 am – noon.
[82] More information on the subcommittees can be found on page 20 and in Appendices VI, VII and VIII.
[83] https://www.dshs.wa.gov/esa/division-child-support/2019-child-support-schedule-materials
[84] See Appendix IV.
[85] https://www.dshs.wa.gov/esa/division-child-support/2007-child-support-schedule-workgroup
[86] https://www.dshs.wa.gov/esa/division-child-support/2011-child-support-schedule-workgroup
[87] https://www.dshs.wa.gov/esa/division-child-support/2015-child-support-schedule-workgroup
[88] https://www.dshs.wa.gov/esa/division-child-support/2019-child-support-schedule-materials

Public Participation

From the beginning of the Workgroup process in 2007, all Child Support Schedule Workgroups have been committed to having an open process, including opportunities for public input. The Division of Child Support (DCS) has provided several resources to make information on each Workgroup and their deliberations available to the public.

In particular for the 2019 Child Support Schedule Workgroup:

- DCS established a web page for the 2019 Workgroup[89] and posted agendas, meeting minutes, and other information including materials prepared by DCS staff or Workgroup members, and sometimes materials submitted by members of the public.

- DCS created a listserv as a broadcast list with open subscription.[90] This type of listserv is open to anyone, and is used only to send out notices, not as a discussion portal.

- DCS created an e-mail address[91] for anyone to use for providing comments to the Workgroup. Messages received in that email box that dealt with child support, the Child Support Schedule, or Workgroup issues were forwarded to the entire Workgroup, and those messages were distributed on the Support Schedule Workgroup's listserv.

- At each meeting, members of the public and interest groups were invited to attend. Time was set aside on the agenda during each meeting to allow members of the public to address the Workgroup members.[92]

- Subcommittee meetings were held by conference call and members of the public were encouraged (on the web page and by listserv) to call in and listen to the discussions.

- To provide additional opportunities for public input, two public meetings were held by the 2019 Workgroup. There was one forum in Seattle and one in Spokane, so that the Workgroup members could get input from members of the public in both Eastern and Western Washington.

    - At each "public forum," two hours were dedicated to receive feedback from members of the public. Each public forum continued for as long as there were people who wanted to address the Workgroup. A number of DCS staff members attended each public forum in case any attendees

[89] https://www.dshs.wa.gov/esa/division-child-support/2019-child-support-schedule-workgroup
[90] https://public.govdelivery.com/accounts/WAESA/subscriber/new
[91] SupportSchedule@dshs.wa.gov
[92] Normally, a public comment period of fifteen to thirty minutes was allocated on the agenda, but all members of the public who wished to address the Workgroup were given an opportunity. All agendas, as well as meeting minutes, are available on the 2019 Workgroup's website (see FN 88, *supra*).

wanted to talk to representatives from DCS about specific case problems. All of the people who attended the public meetings were given the opportunity to address the Workgroup, and all of them did so.

- The first public forum was held Thursday, August 8, 2019, at North Seattle College; this forum was scheduled to run from 5 pm until 7 pm. There were three members of the public at this public forum. Workgroup Chair Sharon Redmond and Workgroup Facilitator Mindy Houx introduced the members of the Workgroup and gave a brief presentation on the tentative Workgroup recommendations. After everyone who wanted to do so had an opportunity to address the Workgroup, the public forum was adjourned at approximately 6:10 pm.

- The second public forum was held Saturday, August 10, 2019, at Spokane Falls Community College in Spokane; this was scheduled to run from 10 am until noon. There were four members of the public at this meeting. Again, Workgroup Chair Sharon Redmond and Workgroup Facilitator Mindy Houx introduced the members of the Workgroup and gave a brief presentation on the tentative Workgroup recommendations. After everyone who wanted to do so had an opportunity to address the Workgroup, the public forum was adjourned at approximately 11:15 am.

The Charge of the 2019 Workgroup

The legislative mandate[93] for the Child Support Schedule Workgroups convened starting in 2011 does not require the Workgroup to address specific issues, but merely directs each Workgroup to "review the child support guidelines and the child support review report prepared under RCW 26.19.026 and determine if the application of the child support guidelines results in appropriate support orders." As described above,[94] the specific data to be considered by the 2019 and later Workgroups have been updated according to federal requirements.[95]

Prioritization of Issues

After identifying many potential areas for discussion,[96] the Workgroup members decided that they wanted to focus on three issues:

- Income Determination, Imputation, and the Self-Support Reserve
- Substantially Shared Parenting and Residential Deviation Definition
- Temporary Abatement and Dependency

[93] RCW 26.19.025
[94] See page 7.
[95] See discussion of ESHB 1916, *supra*.
[96] See, in particular, the minutes of the January meeting.

Subcommittees

The 2019 Workgroup members realized that they would need small groups to do the "homework" of studying and discussing issues and then make recommendations to the larger group. They created three Subcommittees, which usually met by conference calls facilitated by a DCS staff member; in addition, the in-person Workgroup meetings in April, May and June contained time on the agenda for Subcommittee meetings during Workgroup time. Not all Subcommittee meetings occurred when scheduled, and not all Subcommittee members were able to attend all of the meetings. All members of the Workgroup were welcome to attend any Subcommittee meeting. The Subcommittee conference calls were publicized on the Workgroup's web page and the listserv, and members of the public were able to call in and listen to the meetings.[97]

Membership on the Subcommittees varied throughout the duration of the Workgroup term. Initial membership on the three Subcommittees was as follows:

- Income Determination, Imputation, and the Self-Support Reserve
  This Subcommittee was facilitated by DCS staffer Matt Parascand. Original members were ALJ Jeff Manson, Anneliese Vance-Sherman, Crissy Anderson, Janelle Wilson, Kris Amblad and Terry Price.
- Substantially Shared Parenting and Residential Deviation Definition

  This Subcommittee was facilitated by DCS staffer Nicole Enlow. Original members were Ann Farnsworth, Commissioner Tami Chavez, James Chott, Sharon Redmond and Tara Miller.
- Temporary Abatement and Dependency

  This Subcommittee was facilitated by DCS staffer Mindy Houx. Original members were Judge Richard Okrent, Keoki Kauanoe, Sandra Johnston and Shelby LeBret-McCrea.

The Subcommittees were created at the March 2019 meeting. Starting in April, each Subcommittee was scheduled to give a monthly report to the Workgroup to keep all Workgroup members aware of what issues were being considered, and what kind of input the Subcommittee wanted from the Workgroup as a whole. Workgroup members were also given the opportunity to suggest additional issues each Subcommittee should consider.

Recommendations

The recommendations of the 2019 Child Support Schedule Workgroup are described in the following section. Although the Workgroup did not reach consensus on all of the issues, each of the issues was discussed and various points of view were considered regarding each one.

[97] As time permitted, the facilitator of each Subcommittee could solicit input from members of the public during the conference call. Unlike with prior workgroups, few members of the public participated in the 2019 Workgroup's subcommittee conference calls.

The Workgroup makes several consensus recommendations concerning the income determination process, including when imputation is appropriate and how income should be imputed.

The Workgroup also considered issues regarding the impact of child support obligations during dependency proceedings; the use of the self-support reserve; and the impact of a child's residential schedule or a shared parenting schedule on child support orders. Although unable to reach consensus on details, the Workgroup makes a consensus recommendation that the Legislature is the forum best suited to resolve these issues.

Finally, the Workgroup wishes to bring to the attention of the Legislature federal developments concerning the Consumer Price Index which may impact state programs and child support calculations.

Consensus Recommendations of the 2019 Child Support Schedule Workgroup

Consensus Recommendations Related to Income Determination and Imputation

Recommendations One through Five all deal with the determination of income, including imputation. These five consensus recommendations were based on the recommendations by the Income, Imputation and Self-Support Reserve Subcommittee, as further clarified by discussion by the full Workgroup.

In December 2016, the *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* rule (known as the "Flexibility rule") was published in the Federal Register; this rule was effective January 19, 2017.

- Of particular interest to the 2019 Child Support Schedule Workgroup were the amendments to 45 CFR §302.56(h) dealing with the required quadrennial (every four years) review of a state's child support guidelines.
- The Workgroup also considered amendments to 45 CFR §302.56(a) through (h)[98] dealing with factors to consider when setting child support orders.[99]

The 2019 Workgroup agreed that, even though the amendment of RCW 26.19.025 by §1 of Engrossed Substitute House Bill 1916 was not effective until July 28, 2019, they should be guided by the principles stated in the Flexibility Rule regarding the considerations that should be taken into account when establishing a child support amount.

Based on the recommendations by the Income, Imputation and Self-Support Reserve Subcommittee, the Workgroup agreed that the income imputation statute should provide more flexibility to the courts and administrative forum to judge an obligor parent's actual potential for earnings rather than create additional barriers to payment.

As part of this increased flexibility, the Workgroup recommends that there should be an effort to identify those populations in Washington State who would have a difficult time meeting the current statutory requirements given the real-world constraints of their earning potential. The Workgroup believes that the legislature should address certain gaps in the current method of income imputation so that child support orders are closer to a parent's actual or predictable earning potential, to avoid creating support orders that will likely only lead to increased arrears. The Workgroup is concerned that the fact that Washington State has a substantially higher minimum wage than the federal standard means that issues of disparity between earning potential and child support calculations may arise more often in our state than in others.

[98] Unlike the amendment to 45 CFR 302.56(h), which required earlier implementation, the federally-required implementation date for these amendments is "one year after completion of the first quadrennial review of the state's guidelines that commences more than 1 year after December 20, 2016." The implementation date is thus one year after October 1, 2019, or October 1, 2020.

[99] The complete text of 45 CFR 302.56 is set forth in Appendix III.

Finally, the Workgroup determined that the current "hierarchy" in RCW 26.19.071(6) for imputation of income needs clarification and more options for the court or ALJ to consider. Recommended changes include a revision of the imputation priority list, and that the statute should not, absent good cause, differentiate between current TANF recipients and those who recently terminated TANF when considering earning ability.

CONSENSUS RECOMMENDATION ONE

When determining income or imputing income, the law should recognize that "full time employment" does not necessarily mean "40 hours per week."

The Workgroup recommends that sections in Chapter 26.19 RCW be amended to clarify that full-time employment does not always mean employment of forty hours per week. Currently, although RCW 26.19.071(6) uses the term "full-time earnings," it does not specify that full-time employment is always interpreted as forty hours per week. There is no definition of the term in the current definitions section in RCW 26.19.011.

The Workgroup recognizes that some parents are employed by a business that does not traditionally provide a 40-hour week, and some parents are considered by their employers to be employed full-time without working a 40-hour week. Based on the Income, Imputation and Self-Support Reserve Subcommittee report, the Workgroup recommends that a definition be added in RCW 26.19.011 to address in statute the actual nature of full-time employment, namely that some professions or industries hire "full-time" workers but not for 40 hours per week. In other professions or industries, a 40-hour week is neither traditional nor typical.

This recommendation is in keeping with the holding in *Schumacher v. Watson*,[100] where the appellate court held that "full-time does not necessarily mean 40 hours a week," noting that a party can work full-time as is customary in his or her occupation without working 40 hours per week.

The Workgroup had several conversations about when it is or is not appropriate to impute full-time income at 40 hours per week. They also considered information available regarding industry standards and "typical" work schedules. They developed a recommendation that the imputation statute should recognize that certain categories of parents are unlikely to obtain a 40-hour a week minimum wage job, and yet their current child support orders reflect this unobtainable goal.

In reaching this recommendation, the Workgroup discussed current state and federal trends toward making child support orders "right-sized," or more closely based on the individual circumstances of each family. Workgroup members took into account that:

- Not all employees are given 40-hours-per-week schedules by their employers, due to the employer's financial considerations or the standards in the industry.
- Some parents are limited in availability for work due to the requirements of their TANF-related Individual Responsibility Plan (IRP) or due to requirements of the Juvenile Court when their children are involved in the child welfare system.

Finally, the Workgroup feels that a parent's individual circumstances should be taken into account when determining whether that parent should be imputed income based on a 40 hour week, but imputation should be based on the customary number of maximum,

[100] 100 Wn.App. 208, 215, 997 P.2d 399 (Div. 1 2000).

non-overtime, hours worked in the individual's historical occupation or industry, and the labor market.

CONSENSUS RECOMMENDATION TWO

RCW 26.19.071(6) should be amended to include additional factors to be considered when imputing income.

The Workgroup recommends that RCW 26.19.071(6) should be amended to read as follows:[101]

> The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's assets; residence; employment and earnings history; job skills; educational attainment; literacy; health; age; criminal record, dependency court obligations, and other employment barriers; and record of seeking work; as well as the local job market; the availability of employers willing to hire the parent; prevailing earnings level in the local community; or any other relevant factors.

The Workgroup recommends that the statute should provide that the imputation factors should be considered "in no certain order of importance" or be referred to as "considerations including but not limited to …" This proposal allows for greater flexibility in child support calculation, as permitted by federal regulations. The suggested changes allow the court or administrative law judge (ALJ) to consider more factors than are currently recognized in the imputation statute. The Workgroup recommends that the existing factors to be considered remain in the statute, especially "other relevant factors," which will vary based on a parent's individual circumstances.

The current statute provides that the court or ALJ must impute income to a parent when the parent is "voluntarily underemployed or voluntarily unemployed."[102] The Workgroup recommends that additional considerations[103] be taken into account when determining whether a parent is voluntarily underemployed or voluntarily unemployed, namely the parent's:

- Assets
- Residence
- Employment and earnings history
- Job skills
- Literacy
- Criminal record and other employment barriers
- Record of seeking work

In addition, the Workgroup recommends that the court or ALJ also consider the local job market, the availability of employers willing to hire the parent, as well as the prevailing earnings level in the local community.

[101] The proposed revision, using underline and strikeout to show changes, is found in Appendix IX.
[102] RCW 26.19.071(6).
[103] The current statute refers to work history, health and age, or "any other relevant factors."

CONSENSUS RECOMMENDATION THREE

There should be a recognition that for some parents, full-time employment may be only thirty-two (32) hours per week.

The Workgroup recommends that RCW 26.19.071(6) should be amended to create a rebuttable presumption that full-time employment equals 32 hours per week for parents with barriers to employment.

The recommended changes to RCW 26.19.071(6)[104] also recognize that some parents are unlikely to obtain a 40-hour a week minimum wage job, and yet their current child support orders reflect this unobtainable goal. Although the recommendation does not intend that 32 hours per week become the new definition of "full-time," it was important to Workgroup members that the imputation process should require the court or administrative forum to consider that there is a wide range of hours per week that can qualify as full-time employment, or at least that not everyone can achieve forty hours per week. As discussed above in Recommendation One, the Workgroup feels that a parent's individual circumstances should be taken into account when determining whether that parent should be imputed income based on a 40 hour week. Additionally, imputation should be based on the customary number of maximum, non-overtime, hours worked in the individual's historical occupation or industry, and the labor market.

The Workgroup discussions recognized that there may be several reasons why a parent may not work 40 hours per week:

- The parent may have barriers to employment
- Many employers choose not to provide the opportunity to work 40 hours per week, even when employees are willing to work those hours
- Variable work schedules make it difficult, if not impossible, for a part-time worker to combine two part-time jobs to reach 40 hours per week.

The Income, Imputation and Self-Support Reserve Subcommittee suggested that the statute explicitly lower the "full-time" earnings calculation amount to 32 hours for parents with certain barriers to employment (on or recently off TANF, recently incarcerated, recently off disability).

This recommended change also closes an incongruous gap in the current statute, where recipients on TANF are imputed income at a different level than those who were recently on TANF,[105] even though both usually have the same or similar earning capacity.

As discussed further below in Recommendation Five, the Workgroup recommends that this presumption of a 32-hour week amounting to full-time employment should not apply to a parent currently enrolled in high school.

[104] See Appendix IX, *infra*.
[105] Often referred to as "newly-off TANF."

CONSENSUS RECOMMENDATION FOUR

The imputation statute should take into account whether a parent has "no significant earnings history."

The Workgroup recommends that an additional factor to be considered when imputing income to a parent is when that parent has no significant earnings history. The Workgroup recognizes that there may be many reasons for this.

Examples of cases where a parent may have "no significant earnings history" could be a parent who may previously have had gainful employment but who has been out of the workforce for a significant period of time, or a parent who has, for some reason, been unable to obtain employment despite efforts to do so. The Workgroup notes that the statute should provide that these are examples and not the only factors to be considered when determining that a parent has no significant earnings history.

The Workgroup recognizes that there are parents who choose not to work in order to avoid child support obligations, but the current statute addresses these parents. The Workgroup believes that the current statute does not adequately address the situations where a parent is willing to work but has been, or is, unable to find employment.

CONSENSUS RECOMMENDATION FIVE

The Workgroup recommends that the law should contain a separate section dealing with when it is appropriate to impute income to a parent who is currently enrolled and attending high school.

The Workgroup had extensive discussions concerning when and how to impute income to a parent who has not yet graduated from high school. The Workgroup agreed that there are some high school students who are employed while attending school, but that there are probably few high school students who successfully work full time. Recognizing that imputation at full time may not be appropriate for a high school student, the Workgroup recommends that the statute should be amended to allow the court or ALJ to impute earnings of twenty hours per week at minimum wage in certain circumstances.

While unable to reach consensus on how to deal with a parent of any age who never completed high school, the Workgroup felt that it was important to make special provisions concerning a parent who is currently enrolled in high school. The Workgroup agreed that these considerations should not only apply to the noncustodial parent, but also to a custodial parent who is currently enrolled in high school.

The Workgroup discussed, but was ultimately unable to agree on, whether a parent who is still a high school student should be excused from paying support in order to encourage teenage parents to complete high school. One argument against that approach is that doing so would probably result in putting the burden of supporting the child totally on the family of the custodial parent. Other discussions concerned whether the separate imputation rules would apply to a non-minor parent who is pursuing a high school diploma or GED. While unable to agree on those details, the Workgroup did agree that the court or ALJ should be able to consider the "totality of the circumstances" when dealing with parents who are in high school.

The Workgroup recommends that the Legislature create a new subsection in RCW 26.19.071[106] providing that:

> When a parent is currently enrolled in high school full-time, the court shall consider the totality of the circumstances of both parents when determining whether each parent is voluntarily unemployed or voluntarily underemployed. If a parent is determined to be voluntarily unemployed or voluntarily underemployed, the court shall impute income at earnings of twenty hours per week at minimum wage in the jurisdiction where that parent resides as a rebuttable presumption.

[106] The proposed text is shown in Appendix IX.

Consensus Recommendations for Legislative Action

Recommendations Six, Seven and Eight deal with issues that the 2019 Workgroup felt are too wide-reaching to be solved by recommendations of the Child Support Schedule Workgroup.

Although Workgroup members discussed several aspects of these three topics, it was felt that any recommendations they might have would merely be “chipping away” at a larger problem.

CONSENSUS RECOMMENDATION SIX

The Workgroup recommends that the Legislature consider whether the current provisions regarding the Self-Support Reserve should be amended.

Current law provides for a Self-Support Reserve, providing that the basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below the self-support reserve of one hundred twenty-five percent of the federal poverty level for a one-person family, except for the presumptive minimum payment of fifty dollars per child per month or when it would be unjust to apply the self-support reserve limitation after considering the best interests of the child and the circumstances of each parent.[107]

Recognizing that most states' child support guidelines include some kind of Self-Support Reserve for the obligor parent,[108] the Workgroup discussed whether the current statutory scheme should continue. There were varying opinions expressed about whether and how to change the Self-Support Reserve, but the Workgroup was unable to agree on a recommendation other than that the Legislature should review the current law and determine whether the current way of determining the Self-Support Reserve and the use of the Self-Support Reserve are appropriate.

The Workgroup requested that staff prepare calculations looking at how child support obligations are affected by changes in (1) the Self-Support Reserve (SSR); and (2) the minimum wage. Workgroup staff created a chart looking at the Basic Support Obligation for a one-child family using numerous income scenarios, in light of known increases in the state's minimum wage.[109] For purposes of these calculations, it is assumed that the current Federal Poverty Level (FPL) will stay the same.[110]

Review of the chart's calculations indicated that increasing the SSR to 150% of the FPL would not make any significant changes in the calculation of support for a one-child family. At the Workgroup's final meeting on August 29, 2019, members discussed the possible impact of an increased SSR on a two-child family. They requested that staff create similar calculations for a two-child family; those calculations were distributed to the Workgroup and are included in this Report.[111]

The Workgroup was unable to reach consensus on whether the SSR should be increased to 150% of the FPL, or go even higher to 175% of the FPL.

- Appendix X contains a chart showing how support for a one-child family is impacted by the Self-Support Reserve (SSR), calculating income based on anticipated increases in the state minimum wage:

[107] RCW 26.19.065.
[108] National Conference of State Legislatures (NCSL) website at http://www.ncsl.org/research/human-services/guideline-models-by-state.aspx
[109] See Appendix X.
[110] Although in prior years the FPL did not increase, the Workgroup is not aware of any decrease in the FPL in at least ten years.
[111] See Appendix XI.

- With the current SSR of 125% of the FPL
- With an SSR of 150% of FPL
- With an SSR of 175% of FPL

- Appendix XI contains a chart showing how support for a two-child family is impacted by the SSR, calculating income based on anticipated increases in the state minimum wage:
  - With the current SSR of 125% of the FPL
  - With an SSR of 150% of FPL
  - With an SSR of 175% of FPL

- The Workgroup felt that attention should be paid to how the SSR impacts a parent who has multiple families, but was unable to reach consensus on how that impact should be considered and/or changed.

The information in Appendices X and XI are based on the following concepts:

- The current self-support reserve (SSR) is calculated at 125% of the federal poverty level (FPL) for one person.
- The SSR is the basic subsistence limitation chart for determining the amount necessary to provide for basic needs. The amounts are adjusted annually.
- Basic support obligation (BSO) is the monthly child support obligation determined from the Economic Table based on the parties' combined monthly net income (CMNI) and the number of children for whom support is owed.

Historical Self-Support Reserve Information

2019	$1,301
2018	$1,265
2017	$1,256
2016	$1,238
2015	$1,226
2014	$1,216
2013	$1,197
2012	$1,164
2011	$1,134
2010	$1,128
2009	$1,128

CONSENSUS RECOMMENDATION SEVEN

The Workgroup finds that child support accruing during a dependency action may inhibit reunification of the family, and the Workgroup recommends that the Legislature should find a way to resolve this issue.

The Workgroup had significant discussions about the impact of child support obligations on a family involved in a dependency action. However, the Workgroup was unable to agree on a recommendation on how to create a solution to this problem, and furthermore was concerned that any recommendations might be beyond the scope of the Workgroup's charter.

The Workgroup points out that this is not a new issue in our state; further, other states have found ways to deal with the issue, but the Workgroup is unable to propose a solution or to suggest another state as a model for Washington.

The Workgroup recommends that there should be some kind of notice given to parents regarding child support obligations early in any dependency process, because child support debt accrued during the process may delay a parent's ability to have the children returned to their household. The Workgroup felt that the Legislature should develop a procedure that would apply in both the judicial and administrative forum, allowing for a stay in the collection of or eliminate, child support accrued during an ongoing dependency action for the children involved in that dependency.

Discussions of this topic included several proposals, none of which resulted in consensus. There was a general feeling that there were too many details, and too many issues, for the Workgroup to reach consensus regarding child support and dependency proceedings:

- Perhaps the dependency court should be required to establish a child support order at the shelter care hearing so that the parents of the child are aware that child support is an issue.
    - The Workgroup notes that this proposal has political ramifications as it would deal with legislative control of the court's jurisdiction.
    - In addition, there would be fiscal concerns due to the increased need for resources.
    - Concerns were expressed that none of the participants (courts, defense counsel, state's attorney or parents) in the dependency process are likely to have expertise regarding child support matters.
    - The Workgroup was unable to agree on how to handle support orders that were entered prior to the dependency.
    - The Workgroup wondered whether a child support order set by the dependency court would be dismissed at the same time that a dependency action is dismissed.

- Perhaps the dependency court should be required to engage in a colloquy, or two-way discussion with the parents of the child, instead of merely advising the

parents that child support may be an issue (which may or may not happen currently, depending on the county).

- The Workgroup was unable to agree on what topics should be covered by the colloquy, but those topics might include the legal requirement for imposition of a child support obligation; when it is appropriate to limit a parent's support obligation or relieve the parent of a support obligation; and when it might be appropriate to waive any child support accumulated during a dependency.

- In addition to the proposed colloquy, there were suggestions for further notice, including written notice in the dependency pleadings; separate written notice by mail; or even a separate notice by email or text, depending on the circumstances of the parents.

- Finally, the Workgroup discussed the establishment of support obligations for parents with children involved in dependency cases, and whether current provisions in statute are sufficient. For example, current law provides that income should not be imputed for a parent who is participating in court-ordered reunification efforts which interfere with that parent's ability to work.

CONSENSUS RECOMMENDATION EIGHT

The Workgroup recommends that the Legislature find a way to resolve the related issues of shared parenting and an adjustment to child support based on the residential schedule.

The Workgroup recognizes that current law provides for a deviation based on the residential schedule of the children,[112] and that there have been several failed efforts to adopt a legislative solution to the issue of whether and how to adjust child support obligations based on the children's residential schedule.

Each of the Child Support Schedule Workgroups convened under RCW 26.19.025 have received consistent public comment about these two inter-related topics. Recommendations made by prior Workgroups have not been implemented by the Legislature. The 2019 Workgroup feels that the issue of a residential schedule credit[113] is "too big" to be solved by a Workgroup. This topic requires significant study and research, meaning that the Legislature is the forum best suited to resolve this issue.

The topic of the residential credit is closely tied with the issue of shared parenting, and debates on both have a long history in our state. The 2019 Workgroup agrees that this is a significant problem that needs to be addressed, but was unable to reach consensus on how to deal with it. The Workgroup points out that the Report of the 2015 Child Support Schedule Workgroup,[114] which contains six recommendations dealing with the issue of the residential credit, would be an excellent resource.

Issues identified by the Workgroup that should be addressed by the Legislature include:

- Current law already provides for a deviation based on the residential schedule of the child or children.
    - Should RCW 26.19.075(1)(d) be changed?
    - If so, how?[115]
    - Would this result in a limitation of the discretion of the court?
    - Can this deviation be used in the administrative forum?[116]

- What unit of measurement should be used to determine whether a case qualifies for a residential schedule adjustment/deviation:
    - Overnights
    - Hours
    - Some other unit

[112] RCW 26.19.075(1)(d).
[113] The Workgroup does not have a recommendation as to whether this is done by means of an adjustment, a deviation, or some other method.
[114] https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/15CSWORKGROUPREPORT.pdf
[115] One point on which the Workgroup agreed was that the current prohibition against allowing this deviation when the children receive TANF should be maintained; however, there was considerable discussion as to whether the "insufficient funds" consideration should apply to both households.
[116] Opinions differed as to whether administrative law judges have the ability to allow this deviation.

- Should there be a threshold to be met before granting the adjustment/deviation?
    - If so, what should it be?
    - No, because:
        - This could lead to more litigation
        - This already creates litigation
        - Any threshold would create a "cliff effect," as described below.

- How to calculate the amount of the adjustment/deviation?
    - Should there be a specified formula?
    - Should there be another method?

- Should there be a presumption that a certain residential schedule is in the best interests of the child?

- If an adjustment/deviation is granted, what happens when the residential schedule on which the adjustment/deviation is based is not followed by the parents?
    - Does it matter which parent does not comply with the schedule?
    - Would there be a "fault" determination?
    - Would this be the basis for a contempt action?

"Cliff effects" occur whenever a minimum amount or a threshold is used in public policies. If a threshold were to be utilized in a residential schedule credit, one single overnight (or the unit of measurement chosen) could impact whether an adjustment/deviation based on the residential schedule is granted.

As an example, if the threshold for the adjustment/deviation is 90 overnights[117] (the parent obligated to pay support has roughly 25 percent of residential time under the parenting plan):

- A parenting plan where the parent paying support has the child(ren) for 89 overnights would not have any residential schedule adjustment/deviation and the support amount would not be reduced. This option provides no financial relief for the parent paying support.
- A parenting plan where the parent paying support has the child(ren) for 90 overnights would allow for an adjustment/deviation, which would reduce the support amount owed by that parent, which results in a reduction in the amount of support being received by the parent with whom the child resides a majority of the time.
- This example does not deal with a situation where the parents share residential time on a 50-50 basis.[118]

[117] An earlier version of the Washington State Child Support Schedule provided for a deviation once the threshold of 90 overnights was reached. This deviation was repealed in 1991; see footnote 42, *supra*.
[118] It should be noted that the 2015 Child Support Schedule Workgroup's proposed residential credit deviation had a range of 0 – 50% shared residential time.

APPENDICES

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Appendix I

2019 Workgroup Roster

Chair: Sharon Redmond, Director of the DSHS Division of Child Support

Legislative Members:
Senator Maureen Walsh (R-16th District)
Senator Claire Wilson (D-30th District)
Representative Jeremie Dufault (R-15th District)
Representative Christine Kilduff (D-28th District)

Governor Appointments:
Kristofer Amblad
Catherine (Crissy) Anderson
Fawn Brigman (withdrew 1/31/19)
The Honorable Tami Chavez
James Chott
J. Ann Farnsworth (replaced by Christy Carpenter)
Bethany Hickey (replaced by Mia Harper)
Sandra Johnston
Keoki Kauanoe
Shelby LeBret-McCrea (withdrew 8/26/19)
ALJ Jeff Manson
Tara Miller
The Honorable Richard Okrent
Professor Terry Price
Sharon Redmond
Anneliese Vance-Sherman
Janelle Wilson

Appendix II

RCW 26.19.025

RCW 26.19.025

Quadrennial review of child support guidelines and child support review report—Work group membership—Report to legislature.

****** CHANGES IN 2019 ARE INCLUDED HEREIN (SEE §1 of 1916-S.SL) ******

(1) Beginning in 2011 and every four years thereafter, the division of child support shall convene a work group to review the child support guidelines and the child support review report ((~~prepared under RCW * 26.19.026 and 26.18.210~~)) described in subsection (7) of this section, consider the data required under subsection (8) of this section, and determine if the application of the child support guidelines results in appropriate support orders. Membership of the work group shall be determined as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(c) The governor, in consultation with the division of child support, shall appoint the following members:

(i) The director of the division of child support;

(ii) A professor of law specializing in family law;

(iii) A representative from the Washington state bar association's family law executive committee;

(iv) An economist;

(v) A representative of the tribal community;

(vi) Two representatives from the superior court judges' association, including a superior court judge and a court commissioner who is familiar with child support issues;

(vii) A representative from the administrative office of the courts;

(viii) A prosecutor appointed by the Washington association of prosecuting attorneys;

(ix) A representative from legal services;

(x) Three noncustodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, noncustodial parents;

(xi) Three custodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, custodial parents; and

(xii) An administrative law judge appointed by the office of administrative hearings.

(2) Appointments to the work group shall be made by December 1, 2010, and every four years thereafter. The governor shall appoint the chair from among the work group membership.

(3) The division of child support shall provide staff support to the work group, and shall carefully consider all input received from interested organizations and individuals during the review process.

(4) The work group may form an executive committee, create subcommittees, designate alternative representatives, and define other procedures, as needed, for operation of the work group.

(5) Legislative members of the work group shall be reimbursed for travel expenses under RCW 44.04.120. Nonlegislative members, except those representing an employee or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(6) By October 1, 2011, and every four years thereafter, the work group shall report its findings and recommendations to the legislature, including recommendations for legislative action, if necessary.

(7) The division of child support must prepare a child support review report for the use of each quadrennial work group. This report, along with the data described in subsection (8) of this section, must be used in the review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the division of child support, as directed by relevant state and federal law.

(8) During the quadrennial review, the data considered by the work group must include:

> (a) Economic data on the cost of raising children; labor market data by occupation and skill level for the state and local job markets including, but not limited to, unemployment rates, employment rates, hours worked, and earnings; the impact of the guidelines' policies and amounts on parents who have family incomes below two hundred percent of the federal poverty level; and factors that influence employment rates and compliance with child support orders among parents who are obligated to pay support; and
>
> (b) Case data, gathered through sampling or other methods, on the application of, and deviations from, the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment.

Appendix III

42 CFR 302.56

Title 45: Public Welfare
PART 302—STATE PLAN REQUIREMENTS

§302.56 Guidelines for setting child support orders.

(a) Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with §302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.

(b) The State must have procedures for making the guidelines available to all persons in the State.

(c) The child support guidelines established under paragraph (a) of this section must at a minimum:

(1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:

(i) Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);

(ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State; and

(iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

(2) Address how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support;

(3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; and

(4) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.

(d) The State must include a copy of the child support guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts. The State shall publish on the internet and make accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.

(f) The State must provide that there will be a rebuttable presumption, in any judicial or administrative proceeding for the establishment and modification of a child support order, that the amount of the order which would result from the application of the child support guidelines established under paragraph (a) of this section is the correct amount of child support to be ordered.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the establishment or modification of a child support order that the application of the child support guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case will be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the child support guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's child support guidelines required under paragraph (e) of this section, a State must:

(1) Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;

(2) Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a

comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g); and

(3) Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV-D of the Act.

[81 FR 93562, Dec. 20, 2016]

Appendix IV

Washington State
2018 Child Support Order Review
January 2019

Washington State

2018 Child Support Order Review January 2019

Prepared for the

2019 Child Support Schedule Workgroup

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Report Summary

Federal law requires states to enact statewide child support guidelines for setting child support awards. 45 CFR 302.56 requires the state to review the child support guidelines every four years. The quadrennial review is intended to ensure that application of the guidelines results in appropriate child support award amounts and that deviations are limited.

In 1988, the Washington State Legislature established a schedule for determining child support amounts that was codified at Chapter 26.19 RCW (Chapter 275, Laws of 1988). Child support may be awarded through the court system or through administrative proceedings[1] by the Department of Social and Health Services (DSHS), Division of Child Support (DCS). The Washington State Child Support Schedule (WSCSS) is based on the "income-shares" model. The child support obligation is based on the parents' combined monthly net income (CMNI), and is then divided between the parents according to their proportionate share of total net income as defined by the WSCSS.[2] The WSCSS instructions also allow adjustments for various factual scenarios. The sum of the basic child support obligation with the adjustment calculations establishes the presumptive amount of the child support order. Unless a deviation is granted, this presumptive amount is the child support order amount.

In accordance with recommendations of the Joint Legislative Audit & Review Committee (JLARC)[3] and the quadrennial review requirements of federal and state law (RCW 26.19.025), DCS completed a review of child support orders by sampling administrative and court orders entered during the four year period from August 2014 to July 2018. This order review is intended to estimate the deviation rate of the child support orders and to identify the major reasons for the deviation.

The major findings of the 2018 DCS Order Review are:

- Out of the overall 1,038 randomly selected orders, there are 446, or 43%, administrative orders and 592, or 57%, court orders. The majority of the orders are IV-D orders[4] (83.4%) and the father is the noncustodial parent (NCP) on the order (78.6%).
- The median NCP monthly net income is $1,789.50 and the median order amount is $285, representing 15.9% of the noncustodial parent's income.
- As the number of children on the orders increases, the ratio of median order amount to income increases gradually, but it does not exceed one fifth of the noncustodial parent's

[1] Under RCW 74.20A.055, 74.20A.056 or 74.20A.059.
[2] See Appendix I – Order Review Definitions
[3] JLARC, January 5, 2010, – *Review of Child Support Guidelines - Report 10-1*, at Page 19
[4] IV-D orders are support orders enforced by the Division of Child Support (DCS) due to the payment of public assistance monies or application for services from either party. Also see Appendix I – Order Review Definitions

income – 13.9% for one child, 18.8% for two children, and 19.5% for three children, 20.8% for four children.

- The sample shows that 92.1% of the parties to these orders have combined monthly net incomes that fall in the income range of the revised WSCSS Economic Table.[5] However, there are only 356 cases, or 34.3%, of the overall sample where actual NCP and custodial parent (CP) income were used to determine the combined monthly net income. The other orders were based on the imputed[6] or median net income of one or both parents.

- Out of the total 1,038 orders, 246 orders were found that deviated from the WSCSS for reasons that were part of the statutorily-recognized deviation standards, which results in a 23.7% deviation rate. Deviations in non-IV-D[7] orders were more common (34.9%) than deviations in IV-D orders (21.5%). Court orders have a higher deviation rate (25.5%) than administrative orders (21.3%).

- The majority (98%) of deviations were downward, reducing the child support obligation from the presumptive amount, with the average downward amount being $262.90 per month.

- The majority of deviations found in Washington orders were because of the existence of children from other relationships or shared residential schedules. These two reasons account for 92.3% of the deviations. The remainder of the deviations are for other reasons such as other sources of income and tax planning, nonrecurring income, etc.

- For the overall sample, 551 out of the 1,038 orders, or 53.1%, apply adjustments to determine the presumptive order amounts. Administrative orders (58.7%) are more likely to apply adjustments than court orders (48.8%).

- Low income limitations were found to be the major reasons for order adjustments (65.7%). For those adjustments due to low income limitations, most of the orders in the sample were adjusted either due to the Self-Support Reserve (62.7%) or presumptive minimum obligation (36.2%).

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[5] RCW 26.19.020.
[6] The definition of imputed income, and the methods of calculating imputed income, have changed over the years.
[7] Ibid.

1 Introduction

Federal law (45 CFR 302.56) requires states to enact statewide child support guidelines for setting child support awards, in order to standardize the amount of support orders among those with similar situations. All court and administrative proceedings must use their state's child support guidelines in setting child support orders unless there is a written, specific finding to deviate from the presumptive amount. In addition, federal law requires review of the guidelines at least every four years to ensure that application of the guidelines results in appropriate child support award amounts and that deviations are kept at a minimum.

Starting in 1990, RCW 26.18.210[8] required parties to complete the Child Support Order Summary Report Form and file it with the county clerk in any proceeding where child support was established or modified. The 2005 Child Support Schedule Workgroup found that parties and courts did not always comply with this requirement, and found that those who did comply often completed the form incorrectly.[9] As a result of the 2005 Workgroup's recommendation, the Legislature adopted 2SHB 1009 (Chapter 313, Laws of 2007), which in §4 amended RCW 26.18.210 to make changes to the form and to require DCS to collect information from these Summary Report Forms and prepare a report at least every four years. The completion of the Child Support Order Summary Report Form is no longer required.

Section 6 of 2SHB 1009 created RCW 26.19.026, which directed the Joint Legislative Audit & Review Committee (JLARC) to review and analyze:

- The data collected from the Order Summary Report;
- The recommendations of the 2007 Child Support Schedule Workgroup;
- The current child support guidelines;
- Relevant research and data on the cost of raising children; and
- Research and data on the application of, and deviations from, the child support guidelines.

After the review, RCW 26.19.026 directed JLARC to prepare a report on the application of the current child support guidelines and the recommendations of theWorkgroup. JLARC staff did so, and submitted a final report in January 2010.[10] The JLARC review determined that the Summary Report forms were "inadequate for reaching valid conclusions about deviations from state guidelines or for conducting the federally required review of deviations." The report recommended that the "workgroups convened under RCW 26.19.025 should use data obtained directly from court and administrative orders to conduct the federally required quadrennial review."

[8] RCW 26.09.173 and RCW 26.10.195 contain the same requirement.

[9] Report of the 2005 Workgroup, page 15.

[10] JLARC, January 5, 2010, *Review of Child Support Guidelines – Report 10-1*.

Starting in 2011 and every four years thereafter, the Department of Social and Health Services (DSHS) Division of Child Support (DCS) was directed to convene a workgroup "to review the child support guidelines and the child support review report prepared under RCW 26.19.026 and determine if the application of the child support guidelines results in appropriate support orders."[11]

1.1 Washington State Child Support Schedule

In compliance with federal requirements, the Washington State Legislature established a state schedule for determining child support amounts that was codified as Chapter 26.19 RCW.[12] Child support may be awarded through the court or through administrative proceedings by DCS.

The Washington State Child Support Schedule (WSCSS) is based on the "income-shares" model. This model, with some variation, is currently employed in 38 states. It is based on the concept that children should receive the same proportion of income that they would have received if their family was intact. The child support obligation is based on the parents' combined monthly net income and is then divided between the parents according to their proportionate share of income. The Schedule's instructions also allow for adjustments in various factual scenarios. The sum of the Basic Support Obligation with adjustments establishes the presumptive amount of the child support order. Generally, this presumptive amount is the child support order amount (also known as the transfer payment) unless the presumptive amount is rebutted or a deviation is granted.[13] The procedure for setting child support order amounts in Washington was summarized into five main steps in the JLARC report:

(1) The process starts with determining the combined monthly net income[14] of the parents.

(2) The economic table contained in RCW 26.19.020 is used to determine a Basic Support Obligation for each child based on the parent's combined monthly net income and other factors such as the number of children.

(3) Each parent's share of the Basic Support Obligation is determined by the parent's proportionate share of the combined income.

(4) The law provides for some adjustments to this amount for shared expenses for the children (health care and special costs),[15] low income limitations,[16] and child support credits.[17]

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[11] RCW 26.19.025(1)

[12] (Chapter 275, Laws of 1988)

[13] *E.g.*, the court in *N.R. v Soliz* (W.D. Wash. February 7, 1994) ruled that the presumptive minimum obligation is a rebuttable presumption, and that it was subject to downward deviation under proper circumstances, consistent with 45 CFR 302.56(g) in federal law. The *N.R. v Soliz* ruling applied only to administrative support orders, but the Legislature codified this by amending RCW 26.19.065 in the 1998 session (§1 of SB 6581, Chapter 163, Laws of 1998).

[14] "Net Income" and "Gross Income" are defined in RCW 26.19.071.

[15] RCW 26.19.080.

[16] RCW 26.19.065

[17] WSCSS-Instructions 6/2010, Part V re Line 16 (Page 8)

(5) The court or administrative officer may deviate from the presumptive amount only for reasons set forth in state statute and must provide a written basis for the deviation.

1.2 Changes in Washington's Child Support Schedule

Several changes were made to the WSCSS based on legislation adopted after the recommendations of the 2005 Child Support Schedule Workgroup.[18] In 2009, the Legislature passed ESHB 1794 (Chapter 84, Laws of 2009), which made changes to the Child Support Schedule and adopted many of the recommendations of the 2007 Child Support Schedule Workgroup.[19]

Until October 1, 2009[20] the Washington State Child Support Schedule provided that a parent's support obligation should not reduce his or her net monthly income below the one person need standard found in WAC 388-478-0015, except for the presumptive minimum obligation of $25 per month per child. The Child Support Schedule Economic Table began at a combined monthly net income (CMNI) of $600 and continued to a CMNI of $7,000. The support obligation from the Economic Table was presumptive for CMNIs between $600 and $5,000 but only advisory for CMNIs above $5,000.

Effective October 1, 2009, two bills adopted by the Washington Legislature based on recommendations of the 2007 Child Support Schedule Workgroup made significant changes to the WSCSS. ESHB 1794 made changes to the sections containing the Economic Table[21], limitations[22], income determination[23], deviations[24], and the allocation of health care [25]costs. SHB 1845 (Chapter 476, Laws of 2009) made changes regarding the requirements for medical support obligations in child support orders.

RCW 26.19.065 now provides that the support obligation shall not reduce a parent's net income below the Self-Support Reserve of one hundred twenty-five percent (125%) of the Federal Poverty Level. Also, ESHB 1794 increased the presumptive minimum obligation to $50 per month per child. The Support Schedule Economic Table now starts at a combined monthly net income (CMNI) of $1,000 and continues to a CMNI of $12,000. The Schedule is presumptive for all incomes between these amounts.

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[18] You can find the Report of the 2005 Workgroup at https://www.dshs.wa.gov/esa/division-child-support/reports
[19] ESHB 1794 (Chapter 84, Laws of 2009)
[20] The effective date of ESHB 1794.
[21] RCW 26.19.020
[22] RCW 26.19.065
[23] RCW 26.19.071
[24] RCW 26.19.075
[25] RCW 26.19.080

Additional changes were made in the calculation of health care expenses. Under previous law,[26] both parents were responsible for a proportional share of health care expenses exceeding 5% of the Basic Support Obligation (BSO). Under ESHB 1794, health care costs are no longer included in the economic table and all health care costs are divided between the parents based on their proportional share of the BSO.

1.3 Purpose of DCS Order Review

In 2005, the federal government expressed concern regarding the completeness of Washington's reviews of its guidelines. In response, the Washington Legislature established in statute a process for its reviews to be conducted by workgroups (2SHB 1009, Chapter 313, Laws of 2007). The first review under the statute was conducted in 2007, the second review was conducted in 2011, and the most recent review occurred in 2015. Section 6 of 2SHB 1009 was codified as RCW 26.19.026, and directed JLARC to: (1) review the efforts of the 2007 Child Support Schedule Workgroup; (2) summarize research on the cost of raising children; and (3) analyze the current child support data collected by DCS in order to review child support orders that deviate from the state's guideline. The JLARC report was to be submitted by July 1, 2010, and it was submitted to the Legislature in January 2010.[27]

Two recommendations were made in JLARC's final report: (1) the Workgroups convened under RCW 26.19.05 should use data obtained directly from court and administrative orders to conduct the federally required quadrennial review; and (2) the Legislature should eliminate all statutory references to the Child Support Order Summary Report.

In accordance with the recommendations of JLARC and in support of the 2011 Child Support Schedule Workgroup, the DCS completed a review of child support orders by sampling administrative and court orders entered during the period of August 2006 to July 2010. The Final Report of the 2011 Child Support Schedule Workgroup was delivered to the Legislature on September 30, 2011.

To meet the federally required quadrennial review, the DCS conducted the 2014 order review by sampling administrative and court orders entered during the period of August 2010 to July 2014. The 2018 order review was conducted by sampling administrative and court orders entered from August 2014 to July 2018. This 2018 order review is intended to satisfy the review requirements of 45 CFR 302.56.

[26] Former RCW 26.19.080

[27] JLARC, January 5, 2010, *Review of Child Support Guidelines – Report 10-1*.

2 Overview of the Order Sample

2.1 Sampling

The sampling frame for this study includes a total of 131,784 Washington court and administrative orders entered during the four year period from August 1, 2014 through July 31, 2018. This universe consisted of imaged order documents for child support cases in the active DCS caseload, imaged orders maintained by the Washington State Support Registry (WSSR) for payment processing only, and imaged non-WSSR orders for Federal Case Registry. DCS changed their case set up process around June 2017 and stopped loading the imaged non-WSSR orders into their computer systems, therefore, the sample doesn't include all Washington orders entered during the four year period. A simple random sample of 1,059 orders was selected from the sampling frame. The sample size was determined to give an estimated average income of NCPs at 95% confidence interval with marginal error within 3%. It is also good enough to have the estimated order deviation rate at 95% confidence interval with marginal error within 3%.

The 1,059 sample orders were randomly assigned to volunteer Support Enforcement Officers (SEOs). An on-line tracking tool was developed to allow these SEOs to input their responses to the questionnaire (see Appendix II for the detailed questionnaire). The SEOs completed 1,038 valid reviews by the end of the review period.

2.2 WSCSS Guideline Usage

The WSCSS Worksheet Pamphlet effective October 1, 2009[28] contains Definitions and Standards, Instructions, the Economic Table and a blank Worksheet; *having that pamphlet available will assist greatly in understanding this section.*

Part I of the Worksheet[29] is used to calculate the monthly gross and net income of each parent according to RCW 26.19.071. After calculating the combined monthly net income of the parents, one finds the Basic Support Obligation (line 5) for each child in the Economic Table. The Basic Support Obligation is divided between the parents based on their proportional share of the income (line 6).

Line 7 of the Worksheet shows each parent's Basic Support Obligation without consideration of any low income limitations. Line 8 allows the application of low income limitations when appropriate, and then Line 9 shows each parent's Basic Support Obligation. In some cases, the Basic Support Obligation will equal the Standard Calculation on line 17, but if there are health care, day care, and/or special child rearing expenses for the children, the Standard Calculation

[28] Available online on the 2015 Workgroup's webpage at https://www.dshs.wa.gov/esa/division-child- support/2015-child-support-schedule-materials

[29] The Worksheet is developed by the Administrative Office of the Courts under RCW 26.19.050.

may be different. The Standard Calculation is the amount that is obtained by applying the guideline standards.

In certain cases, the presumptive transfer payment which is reflected by the Standard Calculation has been changed because of a deviation, which must be granted by the judge and must be supported by findings of fact. In those cases, the Transfer Payment ordered will be higher or lower than the Standard Calculation.

In some cases, the limitations contained in RCW 26.19.065 may result in a Standard Calculation which is different from the Basic Support Obligation found on Line 7. This is not considered a deviation, because the limitation is part of the process of arriving at the Standard Calculation.

2.3 Exploratory Data Analysis

Out of the overall 1,038 orders, there are 446, or 43%, administrative orders and 592, or 57%, court orders (Table 1). The majority of the orders are IV-D orders (83.4%) and the father is the NCP on the order (78.6%).

For the overall sample, the median NCP monthly net income is $1,789.50 and the order amount is $285, representing 15.9% of the noncustodial parent's income.

The income levels and the monthly order amount are different depending upon whether the order is an administrative order or a court order, a IV-D order or a non-IV-D order, a father as an NCP or a mother as an NCP (Table 1). NCPs with IV-D orders earn twice less than NCPs with non-IV-D orders, but have relatively higher child support obligations according to percentage of order amount in NCPs' income(16.3% vs. 11.3%). Fathers as NCPs have relatively higher child support obligations compared to mothers as NCPs (16.0% vs. 10.8%).

Table 1. NCP Median Net Income and Child Support Order Amount

	Number of Cases	Percent of Cases	Median NCP Monthly Net Income	Median CP Monthly Net Income	Median Monthly Order Amount	Percent of Order Amount in NCPs' Income
Overall Sample	**1,038**	**100.0%**	**$1,789.50**	**$1,592.50**	**$285**	**15.9%**
Admin Order	446	43.0%	$1,538.20	$1,386	$194.70	12.7%
Court Order	592	57.0%	$2,434.90	$1,930.50	$352.50	14.5%
IV-D Order	866	83.4%	$1,643.70	$1,457.00	$267.50	16.3%
Non-IV-D Order	172	16.6%	$3,899.50	$2,709.90	$440.70	11.3%
Father as NCP	816	78.6%	$2,086.50	$1,593.20	$332.80	16.0%
Mother as NCP	222	21.4%	$1,386	$0	$150	10.8%

About 64.9% of the sample orders have only one child on the order and about one fourth of the orders (24.5%) have two children (Figure 1). The Economic Table incorporates the concept that additional children entail additional costs, while at the same time recognizing that two children are not always twice as costly as one. Figure 2 shows that the monthly child support obligation increases as the number of children increases from one to three and then drops as it reaches four. For the overall sample, the median award amount for one child is $235; for two children, the amount is $428.10; for three children, the amount is $433.50, and for four children, the amount is $323.10. As the number of children on the orders increases, the ratio of median order amount to income increases gradually, but it does not exceed one fifth of the noncustodial parent's income – 13.9% for one child, 18.8% for two children, and 19.5% for three children, 20.8% for four children.

Figure 1. Number of Children on the Order

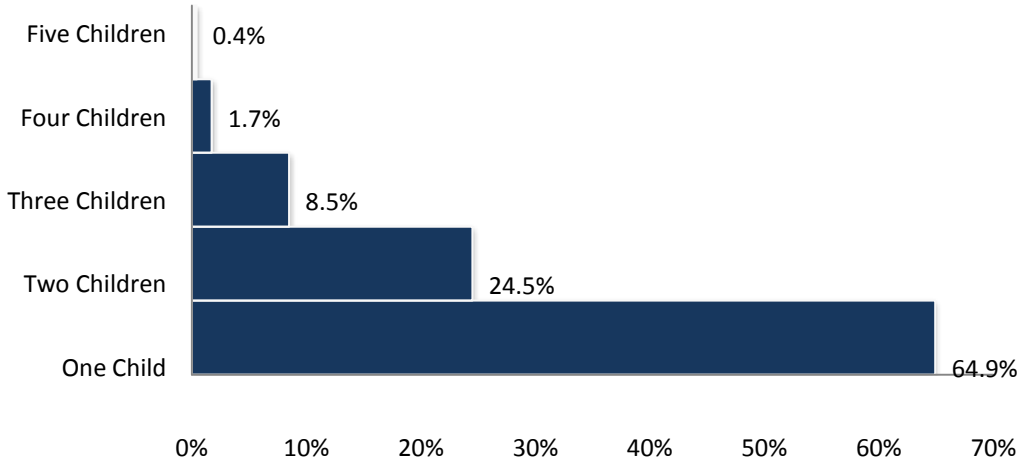

Figure 2. Monthly Order Amount vs. NCP Net Income by the Number of Children

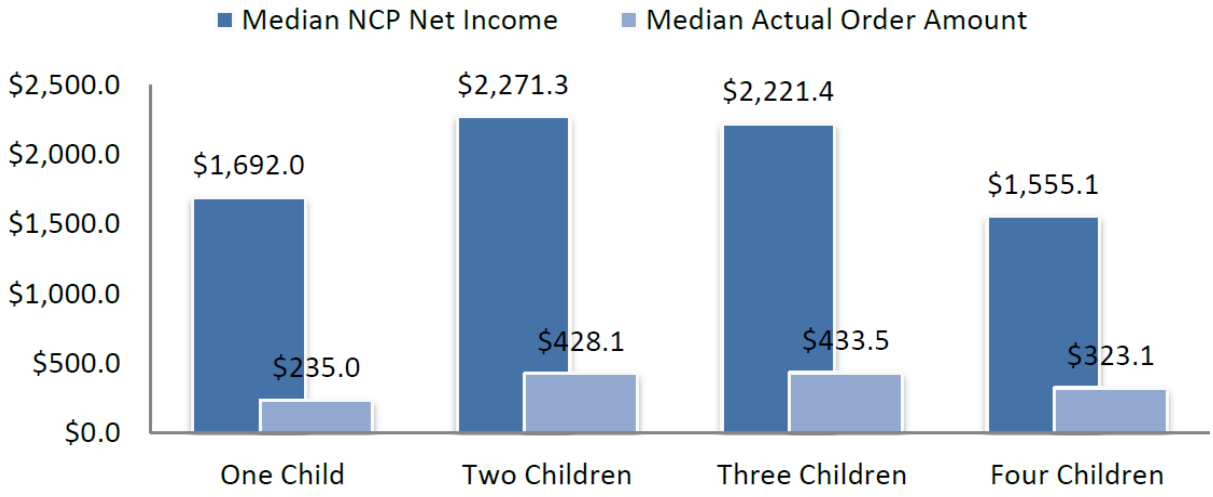

Figure 3 shows the distribution of combined monthly net income (CMNI) of the overall sample. For the overall sample, 63.1% of orders have CMNI between $1,000 and $5,000 and over 32.5% of orders have CMNI more than $5,000. Before October 2009, the WSCSS Economic Table began at a CMNI of $600 and continued to a CMNI of $7,000 per month. The support obligation was presumptive for CMNI between $600 and $5,000 and was advisory above that level. The pre-October 2009 Economic Table did not provide a presumptive support amount for cases with CMNI over $5,000.[30]

The new Child Support Schedule under ESHB 1794,[31] which took effect on October 1, 2009, updated the Economic Table. It provides presumptive support amounts for CMNI from $1,000 to $12,000. The sample shows that 92.1% of orders have CMNI falling within the income range of the new Economic Table. About 7.9% of the orders have CMNI of less than $1,000 or greater than $12,000. However, only 356 cases, or 34.3%, of the overall sample, derive the CMNI using actual income for both the NCP and CP. The other cases in the sample use imputed or median net income for one or both parents.[32]

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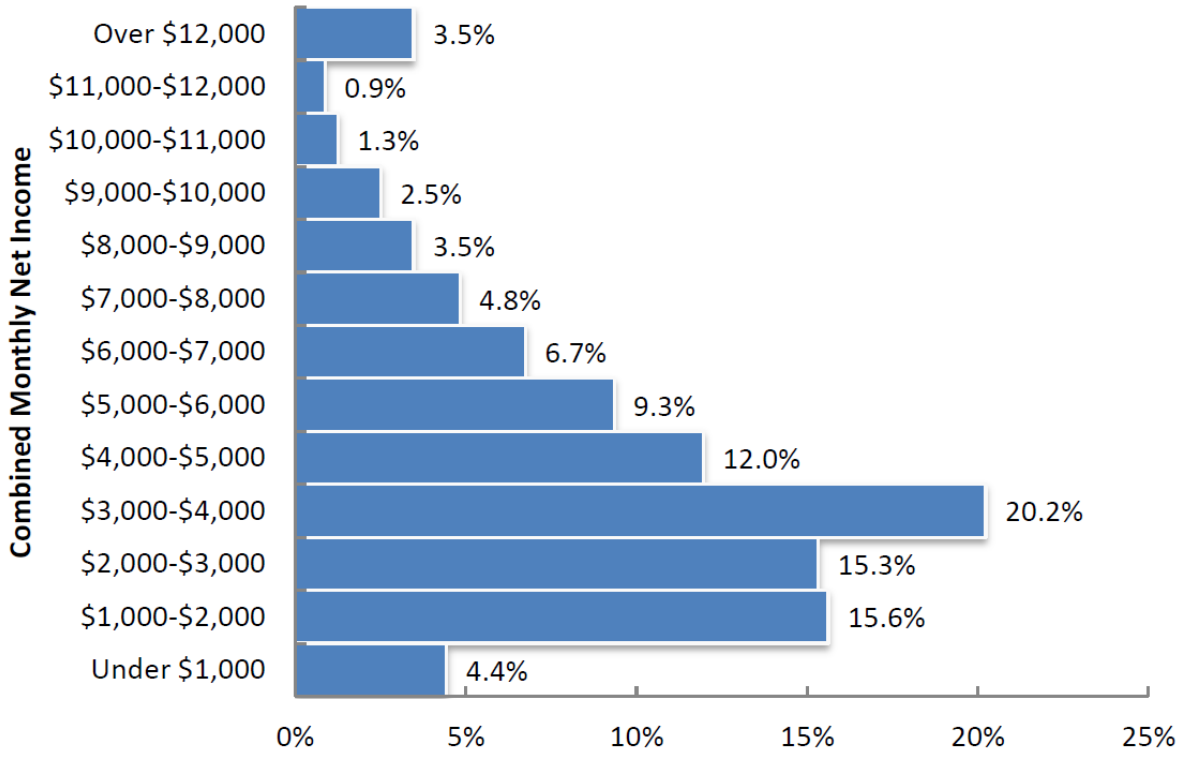
[30] The prior version of RCW 26.19.065 provided the following guidance for income above five thousand and seven thousand dollars: "In general setting support under this paragraph does not constitute a deviation. The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net income that exceeds five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support for combined monthly net income of seven thousand dollars upon written findings."

[31] (Chapter 84, Laws of 2009).

[32] Section 3 of ESHB 1794 amended RCW 26.19.071(4) and set out for the first time a hierarchy of imputation methods to be used when records of a parent's actual earnings were not available. Prior to October 1, 2009, the WSCSS did not contain specific guidance for imputing income. The term "imputation" covered a wide variety of methods for determining a parent's monthly income, some of which would not fit the current definition or method.

Figure 3. Distribution of Combined Monthly Net Income



3 Order Deviation

3.1 Deviation Criteria in the Washington State Child Support Schedule

Since 1989, federal law has required statewide guidelines for child support. Each state has the authority to determine its own specific guidelines. All court and administrative orders that establish or modify child support must be based upon the guidelines, and a deviation is allowed only for a reason set forth in state statute and must be based on a written justification. As part of the federally mandated quadrennial review, each state must review child support award data to determine the frequency of deviations from the state's guidelines and to ensure that deviations from the guidelines are limited.

The WSCSS provides a non-exclusive list of standards for deviation from the Standard Calculation in RCW 26.19.075, including: (1) sources of income and tax planning; (2) nonrecurring income; (3) debt and high expenses; (4) residential schedule; and (5) children from other relationships. Appendix III sets out RCW 26.19.075 in full.

3.2 Deviation Rate

For purposes of the DCS 2018 Order Review, "deviation" is defined as a child support amount that differs from the Standard Calculation in an amount greater than $10 (to allow for rounding) with one or more reasons for deviation that meet the standards set forth in RCW 26.19.075.

Out of the total 1,038 orders reviewed, 246 orders deviated from the Standard Calculation resulting in a 23.7% deviation rate. Figure 4 shows that deviations in non-IV-D orders were more common (34.9%) than deviations in IV-D orders (21.5%). Court orders have a higher deviation rate (25.5%) than administrative orders (21.3%).

Figure 4. Deviation Rates

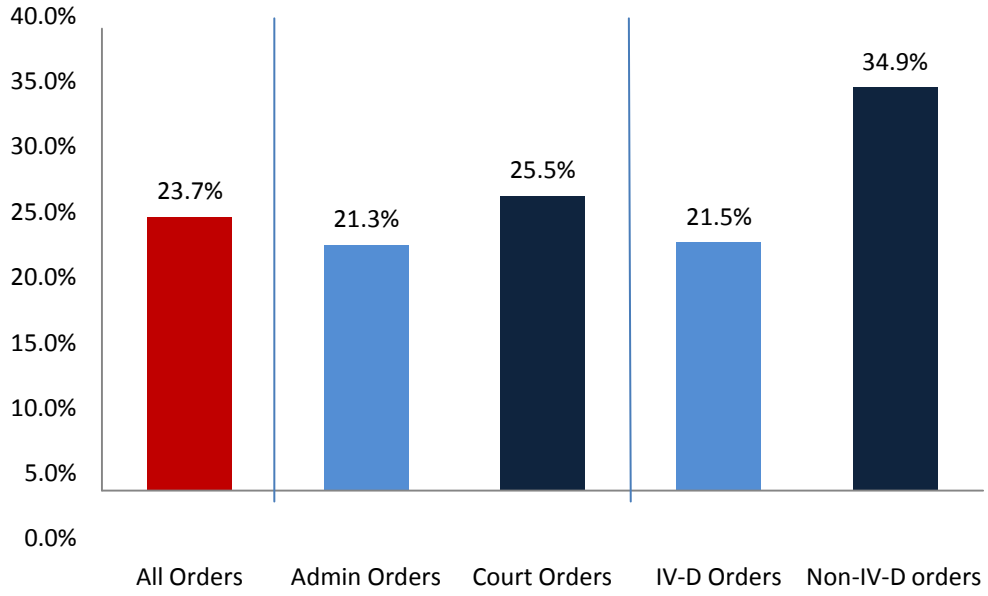
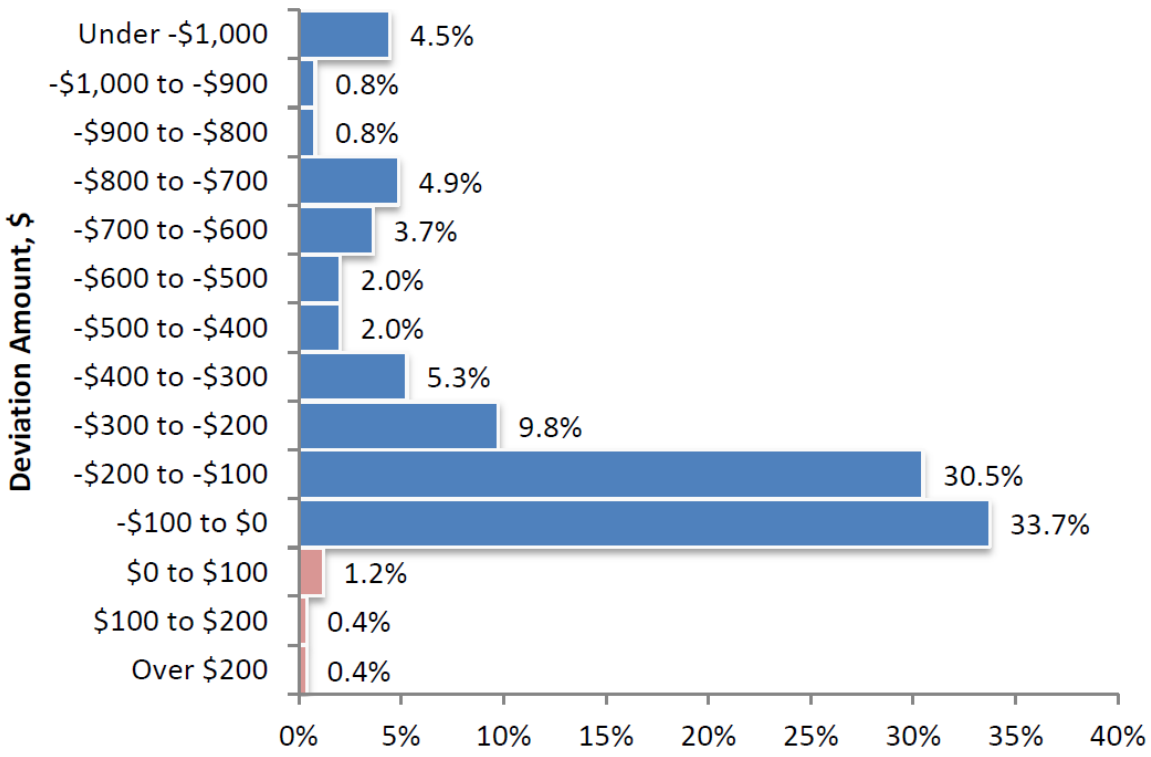


Figure 5 displays the detailed distribution of deviation amounts in the 246 orders deviated from the Standard Calculation. The majority (98%) of the deviations were downward, reducing the child support obligation from the presumptive amount. Downward deviations average $ 262.90 per month. About two-thirds of the deviations (64.2%) reduce the order amount from the presumptive amount in the range of $0 to $200. There are 41 orders, or 16.7%, deviating downward from the Standard Calculation by more than $500.

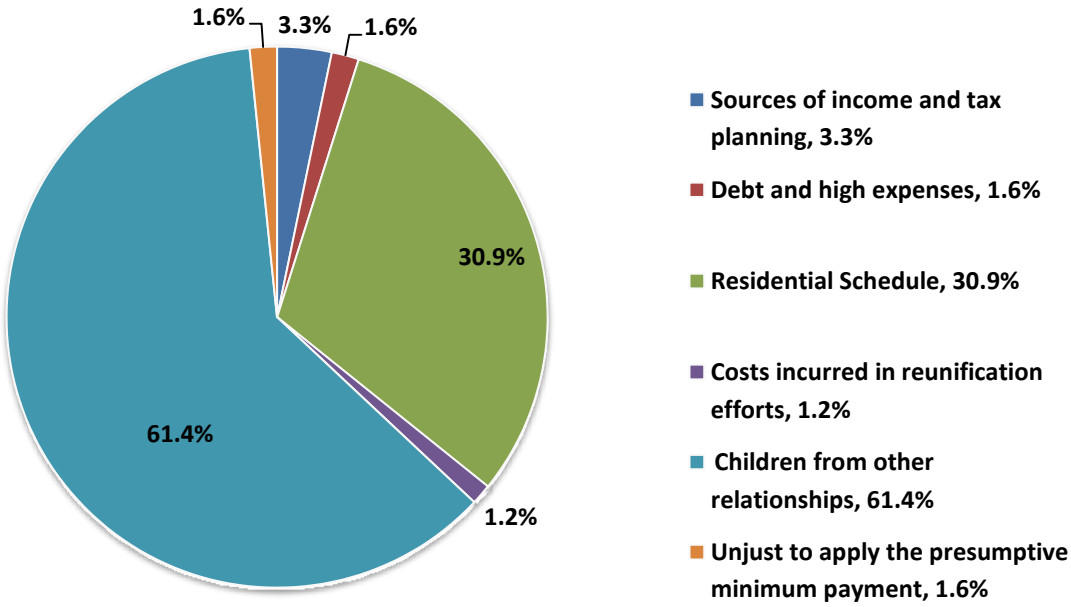
Figure 5. Distribution of Deviation Amount



3.3 Deviation Reasons

Figure 6 describes deviation reasons for the overall sample. Over half of the deviations (61.4%) are due to children from other relationships. The order amount may deviate from the Standard Calculation when either or both of the parents have children from other relationships to whom the parent owes a duty of support. About one-third of the deviations (30.9%) are due to the residential schedule. If the child spends a significant amount of time with the noncustodial parent, the court may consider a deviation from the Standard Calculation.[33] Therefore, two major reasons of deviation in Washington orders are children from other relationships and residential schedules, which account for 92.3% of the deviations. The rest of the deviations are for a variety of reasons such as sources of income and tax planning, extraordinary debt and high expenses, etc.

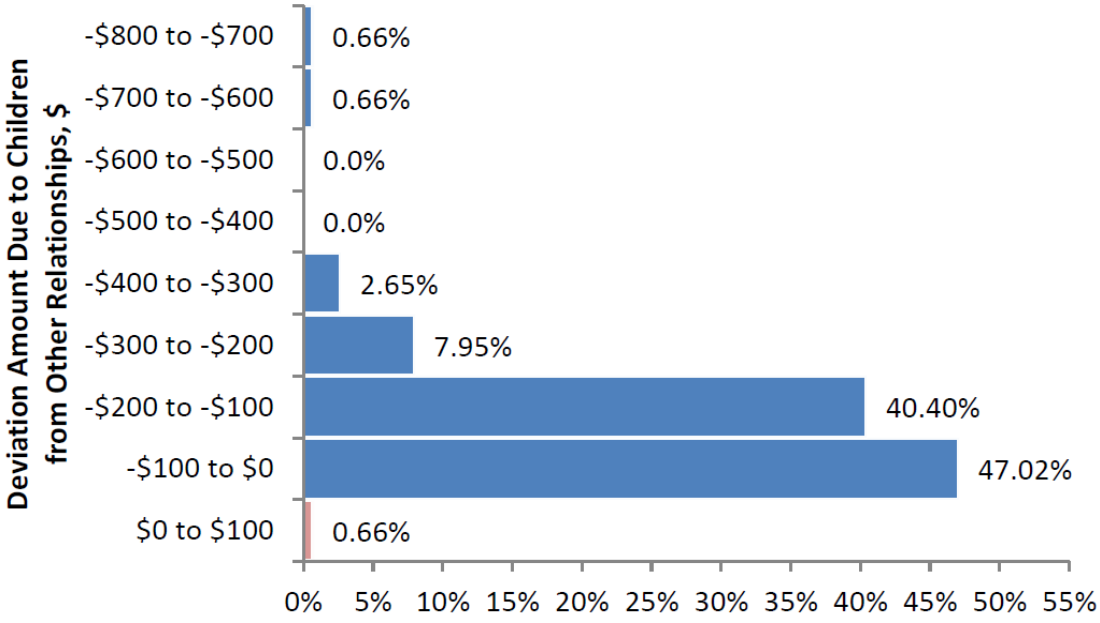
Figure 6. Deviation Reasons



[33] A deviation for the child's residential schedule is not allowed if it will result in insufficient funds in the custodial household or if the child is receiving Temporary Assistance for Needy Families (TANF). RCW 26.19.075.

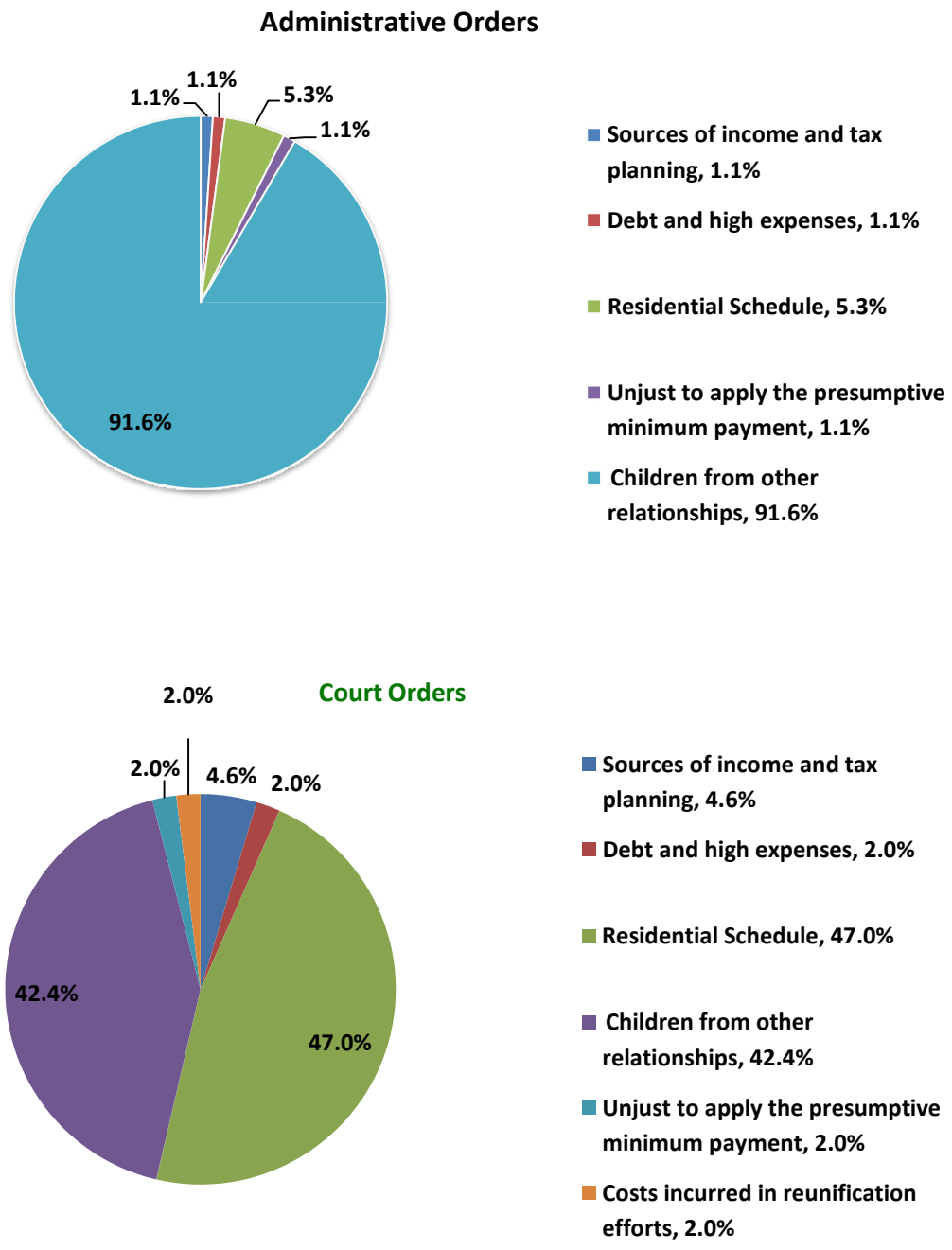
Figure 5A displays the detailed distribution of deviation amounts in the 151 orders due to children from other relationships. Over four-fifths of the deviations (87.4%) reduce the order amount from the presumptive amount in the range of $0 to $200. While most downward deviation amounts are in the range of $0 to $400 (98%), there are two orders (1.3%) with downward deviation amount in the range of $600 to $800. No orders deviate downward from the Standard Calculation by more than $800 for children from other relationships. There is only one order (about 0.7%) deviating upward from the Standard Calculation by no more than $100.

Figure 5A. Distribution of Deviation Amount due to Children from Other Relationships



Deviation reasons vary between administrative orders and court orders (Figure 7). The existence of children from other relationships is the dominant reason (91.6%) for deviations in administrative orders. About 5.3% of the administrative orders deviate due to the criterion of residential schedule. For court orders, children from other relationships (42.4%) and residential schedule (47.0%) are the two major deviation reasons.

Figure 7. Deviation Reasons by Order Type



4 Adjustments and Limitations

4.1 Adjustments and Limitations Under the WSCSS

The WSCSS Worksheet is used to calculate each parent's child support obligation by proceeding through a series of steps, represented by the different parts of the Worksheet.

Part I of the Worksheet is used to calculate the combined monthly net income (CMNI) of the parents (Line 4). Using the CMNI and the number of children for whom support is being set, the Economic Table provides the monthly Basic Support Obligation in a per child amount and in a total monthly amount (line 5). Line 6 is used to calculate each parent's proportional share of the CMNI.

Part II of the Worksheet is then used to find each parent's "Basic Child Support Obligation without consideration of low income limitations" (Line 7 of the Worksheet). Lines 8a, 8b and 8c are used to apply any relevant adjustments to establish the "Basic Child Support Obligation after calculating applicable limitations" (Line 9 of the Worksheet). The amount on Line 9 is the presumptive support amount for each parent.

Part III of the Worksheet is used when there are Health Care, Day Care, and Special Child Rearing Expenses. This Part allocates each parent's proportional share of the expenses, and the result on Line 14 is each parent's obligation for Health Care, Day Care, and Special Expenses.

Part IV of the Worksheet determines the Gross Child Support Obligation on Line 15, which is the sum of line 9 (Basic Support Obligation) and line 14 (Obligation for Health Care, Day Care, and Special Expenses).

Part V of the Worksheet is used to calculate any credits that may be due for amounts actually being paid at the time of the calculation. Line 16d provides the Total Support Credits.

Part VI of the Worksheet provides the Standard Calculation, also known as the Presumptive Transfer Payment. Unless a deviation is granted, this presumptive support amount is the child support order amount.

As illustrated by the above description, "deviations" are distinguished from "adjustments" in that adjustments are made because of a limitation, and the application of an adjustment happens during the calculation of the Basic Support Obligation. A deviation is granted only after the calculation of the Standard Calculation, resulting in a Transfer Payment (also called the order amount) that is different from the Standard Calculation.

4.2 Low Income Limitations

The WSCSS contains several low income limitations, which operate to adjust the Basic Support Obligation so that the parent is allowed to retain a certain amount of his or her monthly net income, subject to the presumptive minimum obligation (currently $50 per month per child; $25 per month per child prior to October 1, 2009). The application of these limitations is subject to a determination that it would be unjust to apply the limitation, based on a consideration of the best interests of the child. Prior to the October 1, 2009 changes,[34] the determination of "unjust to apply" was not a part of the law.

When the combined monthly net income (CMNI) of both parties is less than $1,000, each parent's presumptive support obligation is $50 per child per month.[35] Prior to October 1, 2009, the WSCSS provided that when the parents' CMNI was less than $600, each parent's presumptive support obligation was $25 per child per month.

Other low income limitations are based on the Self-Support Reserve.[36] Before October 1, 2009, this was called the Need Standard, based on the TANF cash assistance need standard for one person.[37] RCW 26.19.065(2) now provides that when a parent's monthly net income is below the Self-Support Reserve of 125% of the federal poverty level, his or her presumptive support obligation is no less than $50 per month per child. Prior to October 1, 2009, the WSCSS provided that when a parent's monthly net income was less than $600, his or her presumptive support obligation was $25 per child per month.

In addition, RCW 26.19.065 provides that the Basic Support Obligation, excluding health care, day care, and special child rearing expenses, shall not reduce the NCP's net income below the Self-Support Reserve, except for the presumptive minimum obligation of $50 per child per month. Prior to October 1, 2009, the law provided that the NCP's support obligation should not reduce his or her income below the one person need standard, except for the presumptive minimum obligation of $25 per child per month.

The final low income limitation usually applies to noncustodial parents with many children, or at least with many families. RCW 26.19.065(1) provides that neither parent's child support obligation owed for all his or her biological or legal children may exceed 45 percent of his or her net income except for good cause (good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families). ESHB 1794 amended this section to provide that each child "is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court."

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[34] The changes under ESHB 1794 took effect on October 1, 2009.
[35] RCW 26.19.020.
[36] RCW 26.19.065.
[37] See discussion *supra* in Section 1.2.

4.3 Other Adjustments

Other reasons that the Standard Calculation may differ from the Basic Support Obligation are:

- Health Care, Daycare, Or Special Expenses
- Child Support Credits
- Income above the Economic Table amounts

RCW 26.19.080 provides that health care costs, day care and special child rearing expenses, such as tuition and transportation costs for visiting purpose, are not included in the Economic Table. These expenses are to be shared by the parents in the same proportion as the Basic Support Obligation. Prior to October 1, 2009, the WSCSS provided that the amounts in the Economic Table were considered to include an amount for "ordinary medical expenses," but that "extraordinary medical expenses," defined as medical expenses that exceed five percent of the basic support obligation, were to be shared by the parents. ESHB 1794 did away with the distinction between ordinary and extraordinary medical expenses.

Child support credits are provided in cases where parents make direct payments to third parties for the cost of goods and services which are included in the Standard Calculation support obligation. When the WSCSS Worksheet contains these direct payments in Part III, the parent who pays for the shared expenses will receive credit by means of a lower transfer payment.

Finally, for parents with a combined monthly net income that exceeds $12,000, the WSCSS provides that the court may exceed the maximum presumptive amount of support upon written findings of fact. See Section 2.3 and Footnote 31, *supra*, for a discussion of the way higher incomes were treated before October 2009.

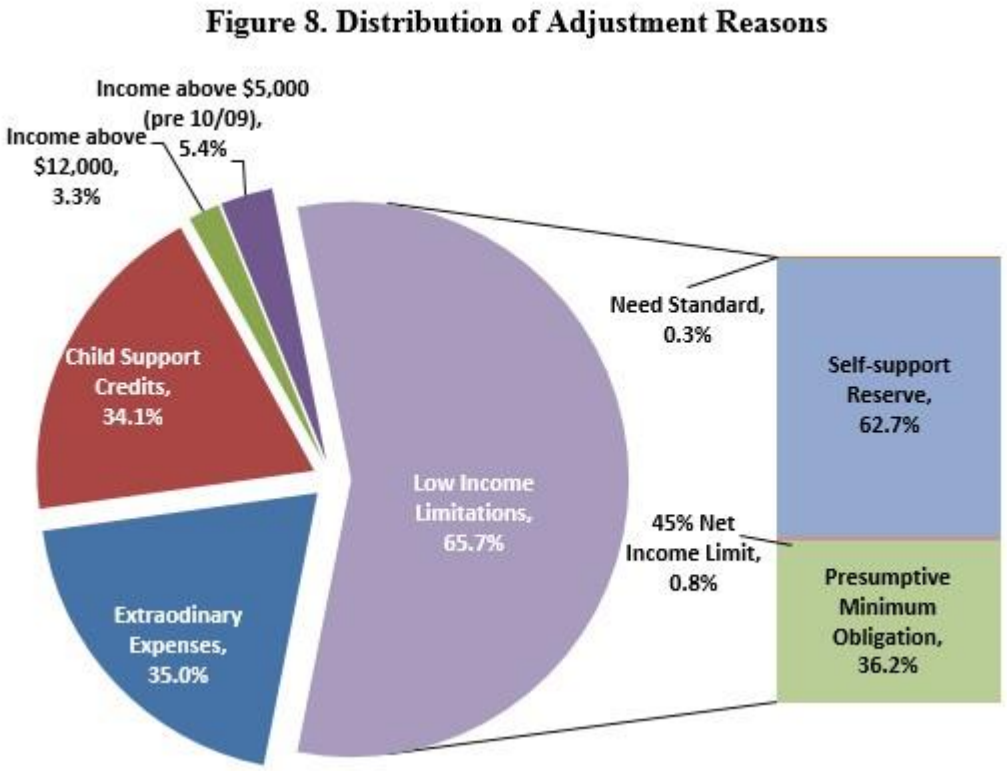
4.4 How Adjustments and Low Income Limitations are Applied in Washington State

For the overall sample, 551 orders out of the 1,038 orders, or 53.1%, apply adjustments to determine the presumptive order amounts. Administrative orders (58.7%) are more likely to apply adjustments than court orders (48.8%).

When reasons for adjustments were reviewed, it was found that 65.9% of adjustments were due to a single reason and 34.1% of adjustments were due to two to four reasons. Figure 8 shows that the primary reason for adjustments are low income limitations. 362 orders (65.7%) are adjusted for this reason. Extraordinary expenses and the application of child support credits in part III and part V of the WSCSS Worksheet are also commonly used, accounting for 35.0% and 34.1% of adjustments, respectively. Only 18 orders, or 3.3%, are adjusted due to a combined monthly net income above $12,000. Another 30 orders (5.4%) are adjusted due to a combined monthly net income greater than $5,000 pre-October 2009.[38]

[38] The percentage does not add up to 100% because some orders are adjusted for more than one reason.

Figure 8. Distribution of Adjustment Reasons



The application of the Self-Support Reserve (post October 2009) (62.7%) and presumptive minimum obligation (36.2%) are the major reasons for the low income limitation adjustments (bar chart in Figure 8). Effective October 1, 2009, Washington State adopted the Self-Support Reserve as the basic subsistence level to determine adjustments due to low income limitations. Only one order (0.3%) was adjusted due to the use of the TANF need standard (pre-October 2009). On average, 6.7 orders per month were adjusted due to the application of the Self-Support Reserve for the period of October 2009 through July 2010, about 4.7 orders per month were adjusted due to the same reason during the last quadrennial review period, and the rate stays about the same from August 2014 to July 2018. There are 131 out of 362 orders with low income limitation adjustments (32.8%) that set support at the presumptive minimum order amount ($50 per month per child) for reasons other than the Self-Support Reserve, Need Standard Limitation, 45% net income limitation, or combined monthly net income less than $1,000.

APPENDIX I - Order Review Definitions

Adjustment: A child support amount that differs from the Standard Calculation, not because of a Deviation, but because of the application of one or more Limitation Standards under the WSCSS applicable as of the date of the order. Adjustments differ from deviations as they are applied during the determination of the Standard Calculation / Presumptive Transfer Payment. They are in effect an expected application of the established guidelines.

Average: Arithmetic mean, unless otherwise noted.

Basic Support Obligation (BSO): The monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for who support is owed. RCW 26.19.011(1). For purposes of this review, Basic Support Obligation also means the guideline support obligation without consideration of income limitations, extraordinary expenses, or child support credits.

CMNI: combined monthly net income, Line 4 on the WSCSS Worksheet.

Deviation: A child support amount that differs from the Standard Calculation. RCW 26.19.011(4). For purposes of this review, a support order contains a Deviation when the Final Transfer Payment differs from the Standard Calculation / Presumptive Transfer Payment in an amount greater than $10 (to allow for rounding) and the reasons for deviation meet standards set forth in the WSCSS guidelines and RCW 26.19.075.

Final Transfer Payment: the amount ordered by the court/ALJ to be paid by the noncustodial parent. Most often called "Transfer Payment."

IV-D Orders: Support orders that are enforced by the Division of Child Support (DCS) due to the payment of public assistance monies or application for services from either party. This abbreviation came into use because DCS operates its child support program under Title IV-D of the Social Security Act.

Median: The median is the middle value of a set of data containing an odd number of values, or the average of the two middle values of a set of data with an even number of values. In other words, half of data set has values below the median and half of the data set has values above the median. The median is a useful number in cases where the distribution has very large extreme values (e.g., income) which would otherwise skew the data.

Non-IV-D Orders: Support orders that direct the noncustodial parent (NCP) to make child support payments either through the Washington State Support Registry (WSSR) or directly to the custodial parent (CP), and DCS has no existing case for the parties or no application for services from either party.

Presumptive Minimum Obligation: When a parent's monthly net income is below one hundred twenty-five percent of the federal poverty guideline, a support order of not less than fifty dollars per child per month shall be entered unless the obligor parent establishes that it would be unjust to do so in that particular case.

Standard Calculation: the presumptive amount of child support owed as determined from the Child Support Schedule before the court considers any reasons for deviation. RCW 26.19.011(8). This is sometimes also called the Presumptive Transfer Payment.

Support Transfer Payment: the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the Standard Calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support Transfer payment" does not mean the additional amount or credit. RCW 26.19.011(9). This may also be called the Final Transfer Payment, or just the Transfer Payment.

WSCSS: The Washington State Child Support Schedule, codified as Chapter 26.19 RCW.

APPENDIX II - Order Review Questionnaire

A. General Descriptive Information (Washington Orders)

1) IV-D Number _____
   a) Type of case (Current TANF, Subro-only TANF, Non TANF /Former Assistance, Non TANF / Never Assistance, FC-TANF, FC-SO, Medicaid, PSO, Non-IVD *alternate payer*)
2) Date of Order _____
3) Order or Cause Number _____
4) Type of Order
   a. Court b. Administrative
   - Drop-down list of all SEMS Order Types, both court orders & admin orders
5) Location (FIP Code) of Order _____
6) Which Parent is NCP? Father/Mother
7) Worksheets completed by: a.) DCS b.) OAH c.) Prosecutor d.) Private Attorney e.) Pro Se

B. Income of Parties

1) Monthly Net Income of Noncustodial Parent $_____
   a. Actual Y/N
   b. Imputed Y/N
   c. Median Net Y/N
2) Monthly Net Income of Custodial Parent $_____
   a. Actual Y/N
   b. Imputed Y/N
   c. Median Net Y/N

C. Child Support

1) Standard Calculation/Presumptive Transfer Payment Amount $_____
2) Parent Ordered to Pay…Mother or Father
3) Support Amount Ordered $_____
4) Number of Children _____
   a. **(If only one child, proceed to (5) now)**
   b. (If more than one child, Undifferentiated Support? Y/N)
      i. (If Y – show Ages of Children *at time of order*)
      ii. (If N – show Ages of Children and Amount Ordered Per Child)

5) Ages of Children *(at time of order)*/Amount per Child

c. Child 1 age____ Amount Ordered $_____
d. Child 2 age____ Amount Ordered $_____
e. Child 3 age____ Amount Ordered $_____
f. Child 4 age____ Amount Ordered $_____
g. Child 5 age____ Amount Ordered $_____

D. <u>Deviation from Standard Calculation</u>

1) <u>Was there a deviation?;</u> <u>Y/N</u>
2) <u>Reasons for Deviation from Standard Calculation</u>

a) Income of a new spouse or new domestic partner of the parent requesting a deviation for other reasons Y/N
b) Income of other adults in the household of the parent requesting a deviation for other reasons Y/N
c) Child support actually paid or received for other child(ren) from other relationships Y/N
d) Gifts Y/N
e) Prizes Y/N
f) Possession of wealth Y/N
g) Extraordinary income of child(ren) Y/N
h) Tax planning resulting in greater benefit to the child(ren) Y/N
i.) Income from overtime or second jobs that was excluded from income of the parent requesting a deviation for other reasons Y/N
j) A nonrecurring source of income Y/N
k) Extraordinary debt not voluntarily incurred Y/N
l) A significant disparity in the living costs of the parents due to conditions beyond their control Y/N
m) Special needs of disabled child(ren) Y/N
n) Special medical, educational or psychological needs of the child(ren) Y/N
o) The child(ren) spend(s) a significant amount of time with the parent who is obligated to make a support transfer payment. The deviation does not result in insufficient funds in the receiving parent's household to meet the basic needs of the child(ren). The child(ren) do(es) not receive public assistance. Y/N
p) Costs anticipated or incurred in compliance with reunification efforts or voluntary placement agreement Y/N

q) Child(ren) from Other Relationships Y/N

* Method Used to Calculate Children Factors

i.) Whole Family Formula Y/N

ii.) Blended Family Formula Y/N

iii.) Other Y/N Describe: _____

r) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts or under a voluntary placement agreement with an agency supervising the child(ren) Y/N

s) The obligor established that it is unjust to apply the presumptive minimum payment (*$50 pmpc post-10/09)* Y/N

i.) The court/tribunal found that NCP had rebutted the presumption that s/he should pay the presumptive minimum obligation and entered a zero support order.

ii.) The court/tribunal found that NCP had rebutted the presumption that s/he should pay the presumptive minimum obligation and ordered that NCP should pay an amount which is less than the presumptive minimum but more than zero.

t) The obligee established that it is unjust to apply the Self-Support Reserve *(post-10/09)* Y/N

u) Agreement of the parties Y/N *(not by itself adequate reason for deviation - but may be found in some orders)*

v) Other reason(s) for deviation Y/N *(describe)*

_____

w) No reason stated Y/N

Comment for (q(iii), c., or v. above: _____

E. (1) Adjustments of Support Obligation Y/N

2) Income Limitations

a) Combined income less than $600 *(pre-10/09)* Y/N

b) Combined income less than $1000 *(post-10/09)* Y/N

c) NCP Need Standard limitation applied *(pre-10/09)* Y/N

d) NCP Self-Support Reserve applied *(125% of federal poverty guideline-- post-10/09)* Y/N

e) 45% net income limitation for NCP applied Y/N

f) Presumptive minimum obligation Ordered Y/N
($25 pmpc pre--10/09 / $50 pmpc post--10/09)

3) Extraordinary Health Care, Daycare, or Special Expenses Y/N

*Health Care Y/N	NCP ____	CP
*Daycare Y/N	NCP ____	CP
*Special Expenses Y/N	NCP ____	CP

4) Child Support Credits Y/N

*Monthly Health Care Expenses Credit Y/N	NCP ____	CP ____
*Day Care and Special Expenses Credit Y/N	NCP ____	CP ____
*Other Ordinary Expenses Credit Y/N	NCP ____	CP ____

5) Combined monthly net income greater than $5,000 but less than $7,000 *(pre-10/09)* Y/N
6) Combined monthly net income greater than $7000 *(pre-10/09)* Y/N
7) Combined monthly net income greater than $12,000 *(post-10/09)* Y/N

F. Health Care Provisions

1) NCP to provide health insurance Y/N
2) CP to provide health insurance Y/N
3) Both parties to provide Y/N
4) CP's Contribution to NCP Premium Included in Worksheet, and in Standard Calculation/Transfer Payment *(post-10/09*) Y/N
5) Not Addressed Y/N

General Comments: _____

_____

APPENDIX III - Relevant Statutes

RCW 26.19.065

Standards for establishing lower and upper limits on child support amounts.

(1) **Limit at forty-five percent of a parent's net income.** Neither parent's child support obligation owed for all his or her biological or legal children may exceed forty-five percent of net income except for good cause shown.

(a) Each child is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court.

(b) Before determining whether to apply the forty-five percent limitation, the court must consider whether it would be unjust to apply the limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and any involuntary limits on either parent's earning capacity including incarceration, disabilities, or incapacity.

(c) Good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

(2) **Presumptive minimum support obligation.** (a) When a parent's monthly net income is below one hundred twenty-five percent of the federal poverty guideline, a support order of not less than fifty dollars per child per month shall be entered unless the obligor parent establishes that it would be unjust to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interests of the child and the circumstances of each parent. Such circumstances can include leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity.

(b) The basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child rearing expenses, shall not reduce his or her net income below the Self-Support Reserve of one hundred twenty-five percent of the federal poverty level, except for the presumptive minimum payment of fifty dollars per child per month or when it would be unjust to apply the Self-Support Reserve limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity. This section shall not be construed to require monthly substantiation of income.

(3) **Income above twelve thousand dollars.** The economic table is presumptive for combined monthly net incomes up to and including twelve thousand dollars. When combined monthly net income exceeds twelve thousand dollars, the court may exceed the presumptive amount of support set for combined monthly net incomes of twelve thousand dollars upon written findings of fact.

RCW 26.19.071

Standards for determination of income

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

(a) Salaries;

(b) Wages;

(c) Commissions;

(d) Deferred compensation;

(e) Overtime, except as excluded for income in subsection (4)(h) of this section;

(f) Contract-related benefits;

(g) Income from second jobs, except as excluded for income in subsection (4)(h) of this section;

(h) Dividends;

(i) Interest;

(j) Trust income;

(k) Severance pay;

(l) Annuities;

(m) Capital gains;

(n) Pension retirement benefits;

(o) Workers' compensation;

(p) Unemployment benefits;

(q) Maintenance actually received;

(r) Bonuses;

(s) Social security benefits;

(t) Disability insurance benefits; and

(u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

(a) Income of a new spouse or new domestic partner or income of other adults in the household;

(b) Child support received from other relationships;

(c) Gifts and prizes;

(d) Temporary assistance for needy families;

(e) Supplemental security income;

(f) Disability lifeline benefits;

(g) Food stamps; and

(h) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, disability lifeline benefits, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

(a) Federal and state income taxes;

(b) Federal insurance contributions act deductions;

(c) Mandatory pension plan payments;

(d) Mandatory union or professional dues;

(e) State industrial insurance premiums;

(f) Court-ordered maintenance to the extent actually paid;

(g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, disability lifeline benefits, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

RCW 26.19.075

Standards for deviation from the standard calculation.

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:

(i) Income of a new spouse or new domestic partner if the parent who is married to the new spouse or in a partnership with a new domestic partner is asking for a deviation based on any other reason. Income of a new spouse or new domestic partner is not, by itself, a sufficient reason for deviation;

(ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;

(iii) Child support actually received from other relationships;

(iv) Gifts;

(v) Prizes;

(vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;

(vii) Extraordinary income of a child;

(viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning; or

(ix) Income that has been excluded under RCW 26.19.071(4)(h) if the person earning that income asks for a deviation for any other reason.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

(i) Extraordinary debt not voluntarily incurred;

(ii) A significant disparity in the living costs of the parents due to conditions beyond their control;

(iii) Special needs of disabled children;

(iv) Special medical, educational, or psychological needs of the children; or

(v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

(e) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The Child Support Schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section. The

presumptive amount of support shall be determined according to the Child Support Schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

Appendix V

2019 CHILD SUPPORT SCHEDULE WORKGROUP MEMBER AGREEMENTS[119]

- Communication
  - One person speaks at a time.
  - Use signals to identify desire to speak. Examples: raised hand (in person and for virtual participation in WebEx) or name tent standing on end.

- Respect
  - Disagree respectfully by not making things personal. Example: express disagreement with the idea, not the person.
  - Use a respectful tone of voice.

- Keep an open mind.

- Acknowledge workgroup members' expertise by listening to them and using them as a resource.

- Ensure meetings are safe and secure. Examples: security presence; when possible, anticipate safety needs and proactively address them.

- Strive to make things easy for customers (unrepresented people).

- Strive to have an equitable experience for workgroup members participating virtually. Examples: Check-in with virtual participants regularly; create alternate ways for participation during in-person exercises.

- Prioritize workgroup goals over workgroup members' personal goals or desires.

- Identify needs (things you cannot budge on) versus wants.

[119] This document may be found on the 2019 Child Support Schedule Workgroup's webpage at https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/Workgroup%20Member%20Agreements.pdf

A NOTE ABOUT
APPENDICES VI, VII AND VIII

These Appendices contain the Final Reports of the three Subcommittees formed by the 2019 Child Support Schedule Workgroup. They contain the recommendations of the individual Subcommittees, and were presented to the Workgroup members as a basis for discussions leading to the Workgroup's recommendations.

Please note that not all of the Subcommittees' recommendations were adopted by the Workgroup, and if they became Workgroup Recommendations, they were not necessarily adopted in the exact format contained in the Subcommittees' Reports.

Appendix VI

REPORT OF THE
INCOME, IMPUTATION, AND
SELF-SUPPORT RESERVE SUBCOMMITTEE

Income, Imputation and the Self Support Reserve Subcommittee

This document contains recommendations made by a subcommittee of the 2019 Washington State Child Support Schedule Workgroup. It does not reflect any agreement or recommendation by the Workgroup as a whole, but has been prepared for purposes of discussion and may be used in the drafting of the Workgroup's Report to the Legislature, depending on whether the Workgroup adopts any or all of the recommendations of the subcommittee.

Overview

The Income Determination, Imputation, and Self-Support Reserve subcommittee has been focused on three specific issues:

a. Incorporating the Federal Flexibility Rule (OCSE Final Rule: Flexibility, Efficiency and Modernization in Child Support Enforcement Programs) into the Washington Revised Code;
b. Addressing certain gaps in the income imputation in order that Child Support Orders are more in-line with actual or predictable earning potentials, rather than create orders that will likely only lead to increased arrears; and
c. Determination of the definition of "full-time" with regard to imputation for voluntarily unemployed and underemployed persons.

Key Issues

The key issues in this area are that the income imputation statute should provide more flexibility to the courts to judge an obligor parent's actual potential for earnings rather than create additional barriers to payment. The subcommittee has been focused on greater flexibility for the courts and administrative process in determination of the basic child support obligation, and identifying those populations in Washington State who would have a difficult time meeting the statutory requirements given the real world constraints of their earning potential. Particularly in Washington State, with a substantially higher state minimum wage than the Federal minimum wage, issues of disparity between earning potential and child support obligation arise frequently. The subcommittee sought to bring an equitable framework to this area of the law.

Findings and Recommendation

The subcommittee recommendations in the three areas of its work are as follows:

A. Incorporating the Federal Flexibility Rule in to the statute:

The Imputation of income statute, RCW 26.19.071(6) should be amended to include greater flexibility in child support calculation, as permitted by the Federal government. The suggested changes highlight that the Federal government will permit Washington State to consider more factors than are

currently recognized in the imputation statute. The suggested changes to the statute are as follows:

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's ~~work history.~~assets, residence, employment and earnings history, job skills, educational attainment, literacy, health, ~~and~~ age, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, or any other relevant factors. A court shall not …

B. Addressing certain gaps in the income imputation in order that Child Support Orders are more in-line with actual or predictable earning potentials

The recommended changes to RCW 26.19.071(6) also recognize that certain categories are people are unlikely to obtain a 40-hour a week minimum wage job, and yet their current child support orders reflect this inobtainable goal. Therefore the subcommittee suggested that the statute explicitly lower the calculation amount to 32 hours. The recommendations also close an incongruous gap in the statute, where recipients on TANF were treated better than those who were newly off TANF, even though the newly-off TANF recipients were not in any better earning position.

The priority order in RCW 26.19.071(6) would be amended as follows:

agreement with an agency supervising the child. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Earnings of thirty-two hours per week at minimum wage in the jurisdiction where the parent resides if the parent is on or recently coming off Temporary Assistance for Needy Families or recently coming off Aged, Blind, or Disabled assistance benefits, Pregnant Women Assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student or recent high school graduate. The use of thirty-two hours as full-time earning is a rebuttable presumption;

(~~d~~e) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, or has never been employed and has no earnings history~~a recent history of minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student~~;

(~~e~~f) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

C. Determination of the definition of "full-time" with regard to imputation for voluntarily unemployed and underemployed persons

The subcommittee recommends that a definition be inserted into RCW 26.19.011 to address in statute the actual nature of full-time employment, namely that some professions or industries hire "full-time" workers but not for 40 hours per week. This is in keeping with the holding in *In re Marriage of Schumacher*, 100 Wn.App. 208 (2000), where the appellate court held that "full-time does not necessarily mean 40 hours a week" noting that a party can work full- time as is customary in her occupation without meaning 40 hours per week. Therefore, the subcommittee recommends the following insertion to the child support definitional statutes, as follows:

RCW 26.19.011

Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Basic child support obligation" means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed.

(2) "Child support schedule" means the standards, economic table, worksheets, and instructions, as defined in this chapter.

(3) "Court" means a superior court judge, court commissioner, and presiding and reviewing officers who administratively determine or enforce child support orders.

(4) "Deviation" means a child support amount that differs from the standard calculation.

(5) "Economic table" means the child support table for the basic support obligation provided in RCW 26.19.020.

(6) "Full-time" means the customary number of maximum, non-overtime, hours worked in an individual's historical occupation, industry, and labor market. Full-time does not necessarily mean 40 hours per week.

….

Lastly, of note, the subcommittee was concerned about another possible development in this area that

Citation

has not come to fruition, but about which the Legislature should be aware. The Trump Admin has floated the idea to change the formula from Consumer Price Index to Chained CPI formula. It will reduce the number of people eligible for public benefits, and the Self-Service Reserve will not increase with inflation like it historically has been. This will alter how the federal poverty level is determined, and could have wide-reaching effects for a number of programs, including child support calculation. We bring this to the Legislature's attention to monitor developments.

RCW 26.19.071

RCW 26.19.011

In re Marriage of Schumacher, 100 Wn.App. 208 (2000

Appendix VII

REPORT OF THE SUBSTANTIALLY SHARED PARENTING AND RESIDENTIAL DEVIATION DEFINITION SUBCOMMITTEE

Shared Parenting and Residential Credit Subcommittee

This document contains recommendations made by a subcommittee of the 2019 Washington State Child Support Schedule Workgroup. It does not reflect any agreement or recommendation by the Workgroup as a whole, but has been prepared for purposes of discussion and may be used in the drafting of the Workgroup's Report to the Legislature, depending on whether the Workgroup adopts any or all of the recommendations of the subcommittee.

Overview

Address Residential credit in significantly shared parenting schedules to provide balance in both households actively engaged in parenting children.

Maintain TANF.

Key Issues

1. Determine threshold for determining whether a parenting schedule should be considered substantially shared.
2. Determine how parenting time should be quantified/calculated.
3. Eliminate the need for findings of fact specific to increased/decreased expenses in significantly shared parenting schedules, instead concentrating on the totality of circumstances in each household to determine whether a deviation is appropriate, and if so, in what amount.
4. Allow for process to be utilized in administrative as well as superior court matters.
5. Maintaining the preclusion of a deviation for TANF recipients.
6. Allowing for a modification procedure for substantial failure to follow the shared plan once a deviation is entered.

Findings and Recommendation

1. We counted time (hours) in many common parenting plans to determine significantly shared. It was something of a shock to see that in a plan that was only one (1) overnight a week off from a pure 50/50 was only 35% of parenting time. Setting the threshold at this level limits the number of plans that would qualify for this finding, as it then becomes a bit easier to obtain a proper deviation. Plans 35%-50% would qualify.

2. While calculating time in the research to determine threshold, it became clear that hours were necessary for determining the total parenting time fairly and accurately. This is consistent with the caselaw that led to the revision of the relocation statute when determining what quantifies as a "substantially shared" plan. (Note: we chose to use the term "significantly shared" to differentiate this threshold from the threshold in "substantially shared" plans as

determined in the relocation statute)

3. Case law that has interpreted the current statute requires findings about increased/decreased expenses to determine whether a deviation should apply. Common sense tells us that if parents are parenting their children in a significantly shared schedule, they have significantly similar expenditures to meet the children's basic needs. It would then be necessary to look at each household to make sure the receipt/payment of support does not put either person into a more/less favorable position vis a vis the other parent who is also parenting in a significantly shared capacity.

4. The deviation would not be an automatic consideration. Specific findings are required as to whether a formal parenting order, or testimony of the parties supports a finding of a significantly shared plan. Then the deviation would need to be requested, and findings made as to whether to deviate, and in what amount after a look at the totality of the circumstances in each party's household.

5. No change to language regarding TANF recipients. We did consider many issues regarding TANF, such as those who are receiving it inappropriately. There is also circumstance when one household may have a TANF grant, and so does the other, but for another child not in common to the two parties. However, the number of times of a proper grant would surely outnumber those who falsely obtained the grant, and legislating for those few cases did not seem appropriate at this time

   We also tried to define the term "insufficient funds" by tying it to the federal poverty standard. This proved to be too burdensome with the multitude of combinations regarding family size, the amount of time this family size applied, and the further complication of blended families. We determined that leaving it undefined, as it is currently, allows for the same discretion as currently for a determination, again based on the totality of circumstances. The intent is to not let either parent try to parent with insufficient funds

6. We'll pull the language for the last workgroup to allow for a modification for parents who seek a shared plan to obtain a deviation and then fail to provide the parenting time for which the deviation was obtained.

Citations

Appendix VIII

REPORT OF THE TEMPORARY ABATEMENT/DEPENDENCY SUBCOMMITTEE

Temporary Abatement Subcommittee

This document contains recommendations made by a subcommittee of the 2019 Washington State Child Support Schedule Workgroup. It does not reflect any agreement or recommendation by the Workgroup as a whole, but has been prepared for purposes of discussion and may be used in the drafting of the Workgroup's Report to the Legislature, depending on whether the Workgroup adopts any or all of the recommendations of the subcommittee.

Subcommittee Members: Representative Christine Kilduff, Judge Richard Okrent, Judge Jeffrey Manson, Attorney Sandra Johnston and Keoki Kauanoe

Subcommittee Facilitator: Mindy Houx

Overview

This law is intended to assist the State of Washington in supporting a Family First federal mandate to put children and families first and to assist the reunification of children with their parents at their successful conclusion of a Dependency Action. A Dependency Action is commenced pursuant to RCW 13.34, when the State has intervened to protect neglected or abused children from the parents and/or custodians.

RCW 13.34 was enacted to either assist parents in correcting deficiencies so that they can be reunited with their children or to terminate the parent-child relationship. Many of the children in Dependency actions are placed either in State-managed foster care or with relatives who may receive foster care payments from the State. Many of these parents have significant roadblocks to reunification including, but not limited to, drug abuse, physical and mental abuse, crime, homelessness, mental health and poverty. The reunification process can take up to two years or longer.

When a child is removed from its parent and placed in the care of the State, a parent who previously received State support for housing, food, etc., loses that benefit and incurs a support obligation. During that time a child support obligation to offset the cost of foster care can accrue without these parents knowing. This debt then adds to the parents' onerous burden of successfully ending a Dependency proceeding, as it is likely to prevent those living in poverty from being able to obtain housing; the final step in the reunification process. As a result of the debt accrued and owed to the State, children of those families often remain in foster care far longer than necessary. It is the intent of this new law to remove that obstacle and allow the parents participating in the Dependency process to focus on the completion of services, without accruing debt that prevents them from obtaining housing and other benefits that address poverty in our State.

Key Issues

Workgroup Concerns

- Use of the word Colloquy
  - Subcommittee wants to keep it because this word, as a specific term of art, is intended to alert the judicial officer that they need to do something (address child support and poverty/the inability to pay) AND make it part of their record. It is not intended to speak to anyone other than the Judicial Officer who will need to engage in it.

- Multiple child households (children not of the dependency)
  - This is not an issue because the child support waiver is limited to the beginning of the dependency action and only to the current dependency action.
  - Even though all children are covered by RCW 13.34, only the children in foster care will trigger a child support action.

- Arrears – waiving out-of-state and/or CP (a CP property right)
  - Language was altered to address State of Washington arrears only.
  - Language was added that allows for arrearages that only go back to the initiation of the filing of the Petition and/or the entry of a subsequent child support order.
  - There was further discussion regarding the fact that shortly after the initial Shelter Care hearing the Department calculates a child support obligation. This can be addressed by forcing the State to give notice to itself (other departments) and the parties in its Dependency Petition and again by the Court in its initial Shelter Care order (the first order typically entered in a dependency matter, the entry of which is required within 72 hours of the dependency filing and/or removal of children). That notice would be that any child support ordered in this action may be waived back to the date of the entry of the Petition or Child Support Order.

- Does it run afoul of Federal Law?
  - It does not! In PIQ-99-03, the US Department of Health and Human Services issued a policy letter encouraging state governments to address "*other circumstances that warrant consideration of compromising arrearages in accordance with State law*" and touted Washington and Vermont as examples of states who put the needs of children and families above the collection of child support arrearages.
  - In that document, it also noted that the primary focus should be on "the best interests of the child."
  - Finally, it clearly delineated that any Federal interest *was contingent upon the State's collection of the debt* because "**the Federal interest does vest until support is available for distribution**" in other words, until the State collects the arrearage, there is no Federal interest in it.

Subcommittee concerns

- DCS has authority to write off debt but does not do so in all cases that require removal of this debt in order for the children to be returned to the indebted parent. If Children can't get out of the foster care system because of their custodian's child support debt, this circumstance should be a prima facia case for eliminating said debt.
- Impact of this law on federal funding for foster care. *There is none as there is no federal interest in uncollected monies.*
- Review how other states have addressed this issue and its impact. *Minnesota Skophammer dissertation. Vermont does a version of this too for parents who remarry or stay together in two person households, so that they will have enough money upon which to support their household, finding this is better for children.*
- How out of state child support orders and enforcement is affected. *Language was removed as there is no lawful way to affect an out-of-state order.*
- Notice requirements to parents must be duplicated at all Dependency Hearings. *Required notice language in the Petition and in the Shelter Care Order.*
- Potential for conflict in law between Court intervention and State/DCYF regulatory and enforcement power.
- Further study of Washington's own statistics regarding the impact on the foster care system.
- Conflict between the Family First mandate of current welfare law versus collection mandate of DCS and federal Guidelines.
- How this law effects parents who get their children back, but then lose them again – the need for judicial discretion on a case by case basis.
- How to help the State develop a process by which DCS and DCYF can communicate regarding the income of indigent parties and develop an accurate and appropriate support level.

Findings and Law

This problem was addressed by the Washington State Supreme court in *Washington State Coalition for the Homeless vs DSHS*; 133 Wn.2d 894 (Wash. 1997):

> "The Department has not complied with this statute insofar as homeless children are concerned. We also hold that implicit in the dependency statute, RCW 13.34, is a grant of authority to the trial court to order the Department to provide some form of housing assistance in any case in which homelessness is a primary factor in the decision to place or to keep a child in foster care. The form of assistance may vary, depending on the needs of the family, the resources of the Department, and the availability of public and private aid in the community. This assistance could take many forms. **For example, it could include helping a family to find affordable housing by offering transportation, consultation, referrals or assistance in filling out forms; or waiving foster care payments in order to make housing funds available to the family; or providing those funds, when available through the Department; or obtaining housing or assistance from federal, state, local or private agencies.** We reject the plaintiffs' arguments that federal statutes provide a private right of action against the State and, because we

resolve the case on state statutory grounds, we decline to decide the constitutional issues raised by the plaintiffs." (emphasis added).

Establishing a parent's obligation for current support as it relates to these parents has been addressed in RCW 26.19, which allows efforts by parents who are engaging in services designed to reunite with their children as a basis for child support deviation. RCW 13.34 also allows for the court to determine child support in Dependency cases; however, parents are often not informed of this option *until after child support debt has accrued*. In addition, many of these orders of support are obtained as default orders because the parent's own problems make them unable to meaningfully participate in the child support process. There is a need to provide relief for parents, who are on the verge of having their children retuned to them but cannot reunite with them because of child support debt and the resulting housing problems that produces.

Legal References

RCW 13.34.160 - Order of support for dependent child.

1) In an action brought under this chapter, the court may inquire into the ability of the parent or parents of the child to pay child support and may enter an order of child support as set forth in chapter **26.19** RCW. The court may enforce the same by execution, or in any way in which a court of equity may enforce its decrees. All child support orders entered pursuant to this chapter shall be in compliance with the provisions of RCW **26.23.050**.
2) For purposes of this section, if a dependent child's parent is an unmarried minor parent or pregnant minor applicant, then the parent or parents of the minor shall also be deemed a parent or parents of the dependent child. However, liability for child support under this subsection only exists if the parent or parents of the unmarried minor parent or pregnant minor applicant are provided the opportunity for a hearing on their ability to provide support. Any child support order requiring such a parent or parents to provide support for the minor parent's child may be effective only until the minor parent reaches eighteen years of age.
3) In the absence of a court order setting support, the department may establish an administrative order for support upon receipt of a referral or application for support enforcement services.

RCW 13.34.161 - Order of support for dependent child—Noncompliance—Enforcement of judgment.

In any case in which the court has ordered a parent or parents, guardian, or other person having custody of a child to pay support under RCW 13.34.160 and the order has not been complied with, the court may, upon such person or persons being duly summoned or voluntarily appearing, proceed to inquire into the amount due upon the order and enter judgment for that amount against the defaulting party or parties, and the judgment shall be docketed as are other judgments for the payment of money.

In such judgments, the county in which the order is entered shall be the judgment creditor, or the state may be the judgment creditor where the child is in the custody of a state agency. Judgments may be enforced by the prosecuting attorney of the county, or the attorney general where the state is the judgment creditor and any moneys recovered shall be paid into the registry of the juvenile court and shall be disbursed to such person, persons, agency, or governmental department as the court finds is entitled to it.

Such judgments shall remain valid and enforceable for a period of ten years after the date of entry.

RCW 26.19.075 - 1.C(v): Standards for deviation from the standard calculation

"The court may deviate from the standard calculation after consideration of the following expenses…" "Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child."

RCW 26.19.071 - 6: Standards for determination of income

"Imputation of income: ...Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child."

RCW 74.20A.220: Charging off child support debts as uncollectible -compromise- waiver of any bar to collection

Any support debt due the department from a responsible parent may be written off and cease to be accounted as an asset if the secretary finds there are no cost-effective means of collecting the debt.

The department may accept offers of compromise of disputed claims or may grant partial or total charge-off of support arrears owed to the department up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred. The department shall adopt rules as to the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears. The rights of the payee under an order for support shall not be prejudiced if the department accepts an offer of compromise, or grants a partial or total charge-off under this section.

The responsible parent owing a support debt may execute a written extension or waiver of any statute which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms.

RCW 13.32A.175: Out-of-home placement -contribution to child's support- enforcement of order

"In any proceeding in which the court approves an out-of-home placement, the court shall inquire into the ability of parents to contribute to the child's support. If the court finds that the parents are able to contribute to the support of the child, the court shall order them to make such support payments as the court deems equitable. The court may enforce such an order by execution or in any way in which a court of equity may enforce its orders. However, payments shall not be required of a parent who has both opposed the placement and continuously sought reconciliation with, and the return of, the child.

All orders entered in a proceeding approving out-of-home placement shall be in compliance with the provisions of RCW 26.23.050."

WAC 388-14A-6415: Scope of authority of conference board chair defined

"(2) Grant relief by setting payment plans, writing off debt owed to the department, waiving fees, or refunding collected money"; "(3) Adjust support debts based on evidence gathered during the conference board process"; …"(5) Take any action consistent with Washington law and DCS policy to resolve disputes, grant relief or address issues of equity."

Minnesota study

This problem was addressed by the Ramsey County Child Support Services Division in Minnesota. In a recent PhD dissertation by Trish Skophammer, the current Director of CSSD, she analyzed data that supports the premise that child support debt in child welfare cases effects family homelessness and increased foster care costs. The majority of those parents in the study could not be returned to their children because of support debt owed to the state.

Actual DCS costs do not justify collection of the debts to offset foster care. In other words, it costs the State of Washington more money to chase the collection of child support from families in poverty than it does to waive that child support debt. The Division of Child Support found that for revenue recovery of foster care payments, "***Washington collected approximately $0.39 for each dollar spent***." See Washington State Cost Effective Summary Report.

The above costs do not include the addition expense of attorney time for the defense and prosecution attorneys, court staff, and legal processing, all of which add significantly to the costs of collection. Many of these parents work minimum or low wage jobs and are unable ever to repay these debts.

The Washington State Office of Pubic Defense whose attorneys represent Dependency clients support a child support law that should abate this debt, as does the Northwest Justice Project. This debt also especially impacts minority parents. See letter from *Jacob D'Annunzio, Managing Attorney, Washington State Office of Public Defense*. Removal of children from households eliminates state benefits to that household. The additional debt burden of child support can be an additional barrier for being eligible for housing. The current statutory law helps in some instances, but does not address arrears. "*If parents had current support waived and arears abated it would free parents to use their resources solely on reunifying with their children. In most cases the arears are owed to the state and would not negatively impact parents, relative placements, or foster parents."* Additionally, because the State is receiving approximately $0.39 cents from parties for every dollar spent on collection efforts, it will be a cost savings measure for the State to remedy this problem.

Recommendation

The Child Support Schedule Workgroup Temporary Abatement Subcommittee has proposed the following language to elevate this problem.

Recommended Changes to RCW 13.34.160

1. (1) In an action brought under this chapter, the court shall inquire into the ability of the parent or parents of the child to pay child support and shall enter an order of child support as set forth in chapter **26.19** RCW. The court shall enforce the same by execution, or in any way in which a court of equity may enforce its decrees. All child support orders entered pursuant to this chapter shall be in compliance with the provisions of RCW **26.23.050**.

2. (2) For purposes of this section, if a dependent child's parent is an unmarried minor parent or pregnant minor applicant, then the parent or parents of the minor shall also be deemed a parent or parents of the dependent child. However, liability for child support under this subsection only exists if the parent or parents of the unmarried minor parent or pregnant minor applicant are provided the opportunity for a hearing on their ability to provide support. Any child support order requiring such a parent or parents to provide support for the minor parent's child may be effective only until the minor parent reaches eighteen years of age.

3. (3) In the absence of a court order setting support, the department may establish an administrative order for support upon receipt of a referral or application for support enforcement services; however, the relevant agencies must concur with DCYF to determine whether there is a current dependency action, what the parent/custodian's ability is to provide support during that action is, and whether such support order could act as an impediment to intended reunification of the children with a parent/custodian.

Recommended Changes to RCW 74.20A.220

Any support debt due the department from a responsible parent/custodian may be written off and cease to be accounted as an asset if the secretary finds there are no cost-effective means of collecting the debt.

The department may accept offers of compromise of disputed claims or may grant partial or total charge-off of support arrears owed to the department up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred. The department shall adopt rules as to the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears. The rights of the payee under an order for support shall not be prejudiced if the department accepts an offer of compromise or grants a partial or total charge-off under this section.

The responsible parent owing a support debt may execute a written extension or waiver of any statute which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms.

Recommended New - RCW 13.34.163, entitled "Foster Care/Child Support Debt Forgiveness Act"

1) In RCW 13.34 Dependency cases, where children are removed temporarily from parents/custodians, it is the intent of the legislature to prevent child support debt owed to the State of Washington from being a barrier to returning children to their parents or custodian. Delayed return of children to parents/custodians, because of child support arrears owed to the State, and the ensuing collection efforts by the State that cause said delay, is not in the best interest of these children;

2) Juvenile and Family Law Courts shall conduct a colloquy with parents/custodians, who are currently subject to a dependency petition action, to determine the extent of said parents' or custodians' indigency and ability to pay support;

3) Should the Superior Court find that there was sufficient compliance with the reunification process to warrant a return of the child, this information may be used to

   a. stay, deviate, decrease, or eliminate current support owed to the State of Washington, but only such debt as incurred in the currently pending dependency, by those parents/custodians who are on track to successfully complete the dependency process; or

   b. eliminate any child support arrearage owed to the State of Washington that was incurred in the currently pending dependency action, by those parents/custodians who are on track to successfully complete the dependency process

4) The State shall include notice to the parties, in the Dependency Petition, and the Court shall include similar notice in the Shelter Care Order that any and all child support assigned to any party may be waived, upon this proper notice, and that waiver may reach back to the date that said petition was filed or a new support order was entered, with the final adjudication to be at the sole discretion of the Court. The Notice of Rights included in the Shelter Care Order of all Dependency actions shall include notice that "Any and all child support ordered under the dependency petition herein may be stayed, deviated, reduced, or eliminated as to current or arrearage support obligations."

Citations

Statutory Law

1. RCW 13.32A.175
2. RCW 13.34.160
3. RCW 13.34.161

4. RCW 26.19.071
5. RCW 26.19.075
6. RCW 26.23.050
7. RCW 74.20A.220

Administrative Law

8. WAC 388.14A.6415

Washington Case Law

9. *Washington State Coalition for the Homeless vs DSHS*; 133 Wn.2d 894 (Wash. 1997)

Federal Guidelines

10. Final Rule: Prohibition of Retroactive Modification of Child Support Arrearages, AT-89-06 (April 19, 1989)
11. Policy Supporting Two Parent Families/Compromise of Arrearages, PIQ-99-03

Appendix IX

PROPOSED STATUTORY LANGUAGE IN CHAPTER 26.19 RCW

PROPOSED AMENDATORY LANGUAGE

RCW 26.19.011
Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Basic child support obligation" means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed.

(2) "Child support schedule" means the standards, economic table, worksheets, and instructions, as defined in this chapter.

(3) "Court" means a superior court judge, court commissioner, and presiding and reviewing officers who administratively determine or enforce child support orders.

(4) "Deviation" means a child support amount that differs from the standard calculation.

(5) "Economic table" means the child support table for the basic support obligation provided in RCW 26.19.020.

(6) "Full-time" means the customary number of maximum, non-overtime, hours worked in an individual's historical occupation, industry, and labor market. Full-time does not necessarily mean 40 hours per week.

(7) "Instructions" means the instructions developed by the administrative office of the courts pursuant to RCW 26.19.050 for use in completing the worksheets.

(((~~(7)~~))) (8) "Standards" means the standards for determination of child support as provided in this chapter.

(((~~(8)~~))) (9) "Standard calculation" means the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation.

(((~~(9)~~))) (10) "Support transfer payment" means the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the standard calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support transfer payment" does not mean the additional amount or credit.

(((~~(10)~~))) (11) "Worksheets" means the forms developed by the administrative office of the courts pursuant to RCW 26.19.050 for use in determining the amount of child support.

RCW 26.19.071
Standards for determination of income.

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:
(a) Salaries;
(b) Wages;
(c) Commissions;
(d) Deferred compensation;
(e) Overtime, except as excluded for income in subsection (4)(i) of this section;
(f) Contract-related benefits;
(g) Income from second jobs, except as excluded for income in subsection (4)(i) of this section;
(h) Dividends;
(i) Interest;
(j) Trust income;
(k) Severance pay;
(l) Annuities;
(m) Capital gains;
(n) Pension retirement benefits;
(o) Workers' compensation;
(p) Unemployment benefits;
(q) Maintenance actually received;
(r) Bonuses;
(s) Social security benefits;
(t) Disability insurance benefits; and
(u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:
(a) Income of a new spouse or new domestic partner or income of other adults in the household;
(b) Child support received from other relationships;

(c) Gifts and prizes;
(d) Temporary assistance for needy families;
(e) Supplemental security income;
(f) Aged, blind, or disabled assistance benefits;
(g) Pregnant women assistance benefits;
(h) Food stamps; and
(i) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.
Receipt of income and resources from temporary assistance for needy families, supplemental security income, aged, blind, or disabled assistance benefits, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:
(a) Federal and state income taxes;
(b) Federal insurance contributions act deductions;
(c) Mandatory pension plan payments;
(d) Mandatory union or professional dues;
(e) State industrial insurance premiums;
(f) Court-ordered maintenance to the extent actually paid;
(g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and
(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.
Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's ((~~work history,~~)) assets, residence, employment and earnings history, job skills, educational attainment, literacy ((~~education~~)), health, ((~~and~~)) age, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a

voluntary placement agreement with an agency supervising the child. When a parent is currently enrolled in high school full-time, the court shall consider the totality of the circumstances of both parents when determining whether each parent is voluntarily unemployed or voluntarily underemployed. If a parent is determined to be voluntarily unemployed or voluntarily underemployed, the court shall impute income at earnings of twenty hours per week at minimum wage in the jurisdiction where that parent resides as a rebuttable presumption. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Earnings of thirty-two hours per week at minimum wage in the jurisdiction where the parent resides if the parent is on or recently coming off Temporary Assistance for Needy Families or recently coming off Aged, Blind or Disabled assistance benefits, Pregnant Women Assistance benefits, Essential Needs and Housing support benefits, supplemental security income, or disability, has recently been released from incarcerations, or is a recent high school graduate. The use of thirty-two hours as full-time earnings is a rebuttable presumption;

(e) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, or has never been employed and has no earnings history ((~~is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student~~));

(f) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

Appendix X

Chart #1:
SSR Calculations for One-Child Family

The calculations below represent equal income of both parents for one child.

Hourly rate	Weekly hours	SSR	BSO
$12.00 Current WA minimum wage through 12/31/2019	40	125%	$381
	40	150%	$207
	40	175%	$50
	32	125%	$133
	32	150%	$50
	32	175%	$50
Monthly net income at 40 hours per week = $1,768, for 32 hours per week = $1,434			

Hourly rate	Weekly hours	SSR	BSO
$15.00 Current Seattle minimum wage	40	125%	$439
	40	150%	$439
	40	175%	$364
	32	125%	$381
	32	150%	$207
	32	175%	$50
Monthly net income at 40 hours per week = $2,185, for 32 hours per week = $1,768			

Hourly rate	Weekly hours	SSR	BSO
$13.50 WA minimum wage starting 1/1/2020	40	125%	$ 415
	40	150%	$ 415
	40	175%	$ 155
	32	125%	$ 300
	32	150%	$ 50
	32	175%	$ 50
Monthly net income at 40 hours per week = $1,976, for 32 hours per week = $1,601			

Hourly rate	Weekly hours	SSR	BSO
$14.18 WA minimum wage starting 1/1/2021 (based on 5% projected annual increase)	40	125%	$ 429
	40	150%	$ 429
	40	175%	$ 250
	32	125%	$ 359
	32	150%	$ 115
	32	175%	$ 50
Monthly net income at 40 hours per week = $2,071, for 32 hours per week = $1,676			

Hourly rate	Weekly hours	SSR	BSO
$14.89 WA minimum wage starting 1/1/2022 (based on 5% projected annual increase)	40	125%	$439
	40	150%	$439
	40	175%	$349
	32	125%	$381
	32	150%	$194
	32	175%	$ 50
Monthly net income at 40 hours per week = $2,170, for 32 hours per week = $1,755			

Appendix XI

Chart #2:
SSR Calculations for Two-Child Family

The calculations below represent equal income of both parents for two children.

Hourly rate	Weekly hours	SSR	BSO
$12.00 Current WA minimum wage through 12/31/2019	40	125%	$ 467
	40	150%	$ 207
	40	175%	$ 100
	32	125%	$ 133
	32	150%	$ 100
	32	175%	$ 100
Monthly net income at 40 hours per week = $1,768, for 32 hours per week = $1,434			

Hourly rate	Weekly hours	SSR	BSO
$15.00 Current Seattle minimum wage	40	125%	$ 668
	40	150%	$ 624
	40	175%	$ 364
	32	125%	$ 467
	32	150%	$ 207
	32	175%	$ 100
Monthly net income at 40 hours per week = $2,185, for 32 hours per week = $1,768			

Hourly rate	Weekly hours	SSR	BSO
$13.50 WA minimum wage starting 1/1/2020	40	125%	$ 634
	40	150%	$ 415
	40	175%	$ 155
	32	125%	$ 300
	32	150%	$ 100
	32	175%	$ 100
Monthly net income at 40 hours per week = $1,976, for 32 hours per week = $1,601			

Hourly rate	Weekly hours	SSR	BSO
$14.18 WA minimum wage starting 1/1/2021 (based on 5% projected annual increase)	40	125%	$ 653
	40	150%	$ 510
	40	175%	$ 250
	32	125%	$ 375
	32	150%	$ 115
	32	175%	$ 100
Monthly net income at 40 hours per week = $2,071, for 32 hours per week = $1,676			

Hourly rate	Weekly hours	SSR	BSO
$14.89 WA minimum wage starting 1/1/2022 (based on 5% projected annual increase)	40	125%	$ 668
	40	150%	$ 609
	40	175%	$ 349
	32	125%	$ 454
	32	150%	$ 194
	32	175%	$ 100
Monthly net income at 40 hours per week = $2,170, for 32 hours per week = $1,755			

Appendix XII

An Issue Which the Workgroup Wants to Bring to the Attention of the Legislature

During the Workgroup's discussions, the Workgroup felt it needed to bring to the attention of the Legislature the potential changes to the way the Consumer Price Index (CPI) is calculated as it considers whether or how to make changes to the Washington State Child Support Schedule. We bring this to the Legislature's attention so that you may monitor developments on the federal level.

In recognition of recent federal trends and proposed federal rules, the Workgroup believes that there may be wide-reaching effects on the federal level that will impact legislative decisions on the state level:

- There is a recommendation to change the way the Consumer Price Index (CPI) is calculated, including a move to a Chained CPI.
    - This will alter how the federal poverty level is determined, and could have wide-reaching effects for a number of programs, including child support calculation
    - There would probably be no increase in the state's Self-Support Reserve (SSR), which is tied to inflation (the CPI).

- This change could result in a reduced number of people eligible for public benefits, including:
    - Eligibility rules
    - Work requirements
    - Immigration requirements