

# 2015 CHILD SUPPORT SCHEDULE WORKGROUP

## ADJUSTMENT VS. DEVIATION SUBCOMMITTEE REPORT

**MEMBERS:** NATHANIEL HILDEBRAND, COTI WESTBY, COMMISSIONER TAMI CHAVEZ, AMI ABUAN, KEVIN CALLAGHAN

### **Revised Code of Washington 26.19.075 (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.*

### **Key Group Issues**

**Should a residential credit be an adjustment, a deviation, or some kind of hybrid?**

**Should there be a formula?**

### **Findings**

**Majority of the subcommittee feels the credit should remain a deviation.**

**There is consensus that the deviation should be formulaic.**

Residential Credit Deviation: A Residential Credit Deviation would apply after the Standard Child Support amount was calculated. A Deviation is not presumptive, and is purely up to the judiciary's discretion whether a credit will be applied, on a case by case basis. The Deviation would not be part of the standard calculation. A Deviation would not be universally applied, and the amount of any credits granted would vary on a case by case basis. Variation is even possible between cases that have identical circumstances. We referred to a Deviation as a "Below the Line" credit, or "After the Standard Calculation." The Washington Statutes currently allow for a deviation for residential time:

"Residential schedule: The court may deviate from the standard calculation if the child(ren) spend(s) 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. RCW 26.19.075(1)(d).”

Residential Credit Adjustment: A Residential Credit Adjustment would be formulaic, and would be included in the basic Child Support Calculation. A Child Support Adjustment would be presumptive, and would be applied in all cases based on the residential schedules of dependent children. A Residential Credit Adjustment would be universally applied, would be repeatable, and would be consistent on a case by case basis as it is formulaic. We referred to the Adjustment as an “Above the Line” credit, or “Included in the Standard Calculation.”

**The Deviation vs. Adjustment Subcommittee was able to reach consensus that the 2015 Child Support Workgroup should strive to adopt a Residential Credit Adjustment.**

Some concerns raised during our discussions included provisions for those with low incomes or insufficient funds, as well as the discretion of the judiciary.

Low Incomes or Insufficient Funds: We discussed that a Residential Credit Adjustment should not be applied if the Adjustment results in insufficient funds in the recipient household. The Washington Statutes already have this protection in place, however, and that would not need to change. We agreed that the current statutory low income provisions are adequate. The language that currently exists in the statutes would be carried forward to the language describing a Residential Credit Adjustment as follows:

“The court may not [adjust] 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.”

Judiciary Discretion: Under the current system Washington uses to apply Residential Credit Deviations, the Judiciary has complete discretion in whether credits are applied, and the size of each credit granted. The Deviation vs. Adjustment Subcommittee propose that the Judiciary will still have their discretion, however it will be after the automatic Adjustment has been applied. Findings of fact would be required if reducing a Residential Credit Adjustment. This is an improvement to the current methodology, in that it allows the party responsible to pay child support due process. If a Residential Credit Adjustment was granted via the standard child support calculations, then reduced by an officer of the court, the party responsible to pay child support would have the opportunity to appeal the ruling.

The subcommittee agreed that under the new methodology, the judiciary still retains the discretion they currently have, yet the process is more equitable as the person obliged to make

a payment has the ability to appeal decisions that affect the application of Residential Credit Adjustments.

Coti Westby was tasked with presenting this subcommittee's recommendation to the entire workgroup at the April 3, 2015 meeting because Nat Hildebrand was not able to attend. The points of the subcommittee's recommendation were met with resistance from the larger group because making an "automatic adjustment above the line" would change the burden of proof from the paying parent to the receiving parent- the receiving parent would essentially have to defend themselves against the assumption that a child support transfer payment should automatically be reduced based on residential time in each household. The receiving parent would have to rebut the automatic adjustment by saying, "child support shouldn't be reduced for "x" reasons," whereas the current burden rests on the paying parent to make their case for why the child support transfer payment should be reduced. (Based on "x" reasons.)

This shift in the burden of proof is met with resistance and will likely not receive support in the legislature. After thoughtful discussion surrounding how to achieve the same effect of an automatic adjustment without the adjustment being automatic, the majority of the subcommittee agreed that proposing a guiding formula for residential credit adjustments would achieve like results and be met with little to no resistance by the legislative body. **In summary, the subcommittee specified that Washingtonians would be served best by proposing a guiding formula that can be used for residential credit deviations** in both the Superior Court and Office of Administrative Hearings/ DCS system and that will meet the least amount of resistance from special interest groups as well as the legislative body, who have taken issue with proposed residential credits in years past.