

LEGAL SERVICES' REPORT TO THE WASHINGTON STATE LEGISLATURE IN OPPOSITION TO ADOPTION OF DR. ROBERT PLOTNICK'S FORMULA

I. SUMMARY

Legal Services strongly opposes adoption of Dr. Robert Plotnick's formula for residential credit deviations because this formula will consistently reduce the resources available in the children's primary residence to untenable levels, especially in primary residential households whose income is at or below 200% of the Federal Poverty Level according to the Federal Poverty Guidelines. Unlike the residential credit formula recommended by the 2011 Workgroup, Dr. Plotnick's formula will consistently require "reverse transfer payments" from the parent with whom children reside a majority of the time to the other parent, even in situations where the primary residential household would be considered low-income. The language in RCW 26.19.075(d) will not consistently protect these households from the inequities in Dr. Plotnick's formula, nor will the provision recommended by the majority in Recommendation Three regarding limitations on the application of Dr. Plotnick's formula. That provision would create significant inequities for low-income parents who do not have the children a majority of the time.

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II. REPORT RECOMMENDATIONS OPPOSED BY LEGAL SERVICES

Legal Services is strongly opposed to the following provisions recommended by a majority of the 2015 Workgroup in its report to the Legislature:

Recommendation Three:

- The residential schedule deviation should not be applied if the Self-Support Reserve is being applied to either party.

Recommendation Four:

- The formula to be used is the one developed by Workgroup member Dr. Robert Plotnick.

III. BACKGROUND

Legal Services provides legal assistance to people in the state of Washington whose household gross income is at or below 200% of the Federal Poverty Level. This financial eligibility threshold is set by the federal Legal Services Corporation and the State of Washington's Office of Civil Legal Aid. By setting this threshold, both the federal and state governments recognize that households living under these economic circumstances face significant daily hardships in trying to make ends meet and this level of poverty significantly impacts these households' access to justice in the civil justice system. Households at this level of poverty represent a large segment of our population and there are not enough resources to assist everyone in need.

When Legal Services is asked to analyze and comment on policy proposals that will have an economic impact on the communities we serve, we will always be seeking uniform protections

for people in poverty so that their ability to support themselves and their children is not reduced to an untenable level. In the context of child support and family law, we are not just concerned about custodial parent households in poverty. We are equally concerned about noncustodial parent households in poverty and most importantly, we are concerned about children in poverty.

In child support law, there has already been excellent work done to protect noncustodial parent households in poverty through the Legislature's adoption of the Self-Support Reserve. The Self-Support Reserve is a far more effective tool to protect noncustodial parents in poverty than the residential credit deviation. Legal Services has been a strong proponent for the the Self-Support Reserve and other low-income protections found in RCW 26.19.065, like the 45% net income cap on a noncustodial parent's income available for a support obligation. In this Workgroup, Legal Services strongly supports Recommendation Seven, which will provide additional relief for noncustodial parents in poverty who have limited income and multiple child support obligations.

Throughout this process, Legal Services has been concerned about Dr. Plotnick's formula and how it would adversely affect the resources available in households where children reside a majority of the time. Legal Services also has concerns about language adopted by the majority of the Workgroup regarding limitations on the application of this formula.

IV. SCENARIOS USING DR. PLOTNICK'S FORMULA

Attached to this report you will find a spreadsheet with nine scenarios. Each scenario assumes the parents have two children and that each parent will claim one child for taxes every year for purposes of keeping the gross-income deductions in the Worksheet consistent. Under these assumptions, Legal Services determined that the Self-Support Reserve would not affect the Basic Support Obligation of a parent who has a net income of at least \$1,674.00 per month (\$21,750 Annual Gross or \$10.46/hr @ 40 hours per week). Using \$1,674 as a base net income, we ran nine scenarios where at least one parent brought home \$1,674. The spreadsheet shows where the parents fall on the 2015 Federal Poverty Guidelines scale according to their household size before the transfer payment; after the transfer payment; and after application of Dr. Plotnick's formula when the noncustodial parent (NCP) has 54 overnights (14%), 73 overnights (20%), 124 overnights (34%), and 168 overnights (46%). Because the children reside a majority of the time with the custodial parent (CP) in every scenario, the custodial parent's household size is three-persons and the noncustodial parent's household size is one person according to the Federal Poverty Guidelines. None of the parents in these scenarios would be affected or protected by the Self-Support Reserve.

V. WHY LEGAL SERVICES OPPOSES THESE RECOMMENDATIONS

Opposition to Recommendation Four – Dr. Plotnick's Formula

Custodial parents and the children who reside with them a majority of the time are not similarly protected by the Self-Support Reserve, Workgroup Recommendation Seven, or the other low-income protections found in RCW 26.19.065. Since the Self-Support Reserve and the other low-

income protections found in RCW 26.19.065 significantly protect low-income noncustodial parent households, custodial parents in poverty and the children that reside with them a majority of the time are more adversely impacted by the residential credit deviation formula. In light of this absence of protections, Legal Services believes the State of Washington needs an equivalent to the Self-Support Reserve to protect the economic viability of a child's primary residence.

When a formula consistently reduces transfer payments to levels that will keep a custodial parent's household income at or below 200% of the Federal Poverty Level, Legal Services will strongly oppose adoption of that formula. Similarly, Legal Services will strongly oppose any deviation that would consistently require low-income custodial parents to pay noncustodial parents a "reverse transfer payment." Legal Services opposes Dr. Plotnick's formula for these reasons and we recommend the Legislature reject adoption of this formula.

The attached scenarios show that Dr. Plotnick's formula will drive low-income custodial parent households below the poverty line (200% of the Federal Poverty Level) in many cases, especially in situations where the noncustodial parent has superior resources (see Scenarios Two, Four, Six and Eight). Scenario Six in particular shows our concern with the formula. Under that scenario, the noncustodial parent nets \$10,312 per month and the custodial parent nets \$1,674 per month. The standard transfer payment without any deviation (\$2,004) lifts the custodial parent above poverty line without significantly impacting the noncustodial parent's household income. But as Dr. Plotnick's formula is applied, it drives the custodial parent's household income significantly below the 200% Federal Poverty Level. This is not fair and directly contradicts the legislative intent expressed under RCW 26.19.001.

The scenarios also show that Dr. Plotnick's formula will consistently require custodial parents to make "reverse transfer payments" to noncustodial parents, even when the custodial parent's household resources are only slightly better than the noncustodial parent's household resources. In Scenario Three, the custodial parent may gross \$42,000 per year, but this annual income places that household at 183% of the Federal Poverty Level. According to Dr. Plotnick's formula, the custodial parent in this scenario would be required to pay \$99 every month to the noncustodial parent when the noncustodial parent has 168 overnights per year. The formula is even worse for a custodial parent who works full-time at the "\$15 Minimum Wage" under Scenario Nine. Under this scenario, the custodial parent's percentage of household income is significantly lower than the noncustodial parent's household income according to Federal Poverty Guidelines, even though the custodial parent makes slightly more money. At 168 overnights under this scenario, the custodial parent would be required to pay \$29 per month to the noncustodial parent, an amount the custodial parent cannot afford at 141% of the Federal Poverty Level. When a custodial parent's household income is at or below 200% of the Federal Poverty Level, there is no situation where a custodial parent should be ordered to pay any money to the noncustodial parent. It is not fair; it is not just; and it directly contradicts the legislative intent expressed under RCW 26.19.001.

When these concerns were brought to the Workgroup, many Workgroup members argued two points in opposition to Legal Services' concerns. First, many argued that we should be more concerned with the money "following the child" instead of each household's economic situation.

While Legal Services' appreciates some of the points behind this policy statement, it ignores the fact that the household that has the children a majority of the time is going to bear more of the child rearing expenses. The Legislature recognizes that almost all child rearing expenses do not "follow the child." In addition, most child rearing expenses are not reduced by the temporary absence of the child in the primary residence. The only expenses that are actually reduced by the temporary absence of the child are food and entertainment. We understand the counter-argument that in many of the scenarios where the noncustodial parent has significant residential time, the noncustodial parent incurs duplicate expenses (e.g. rent, utilities) or significant increases in shared expenses like food, clothing, and entertainment. This is absolutely true, which is why we are not opposed to a residential credit formula in principle. However, Legal Services cannot support a formula that would reduce the resources available in the children's primary residence to untenable levels, which is what we are seeing with Dr. Plotnick's formula.

Similarly, the Legislature has not said that the intent of the child support schedule is to have "money follow the child." Rather, the legislative intent stated in RCW 26.19.001 is "to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living" and that the Legislature "intends that the child support obligation should be equitably apportioned between the parents." The legislative goals are equity and meeting children's needs, with a focus on the resources of both parents. Dr. Plotnick's formula falls short of those goals.

The other argument raised by Workgroup members was in regard to Legal Services' concerns about "reverse transfer payments." Many members argued that judicial officers would still be unlikely to order reverse transfer payments like the ones we are seeing in Scenarios Three and Nine because the Workgroup is recommending the residential credit remain a discretionary deviation. That may be true, but it does not guarantee uniformity. One of the strongest arguments in favor of Dr. Plotnick's formula is the uniformity it would bring to applications of residential credit deviation. Uniformity in application is an admirable goal. But just as the supporters of Dr. Plotnick's formula are seeking uniformity in situations when the deviation is applied, Legal Services is seeking uniformity in situations when the deviation should not be applied. If uniformity is the goal, then it should be the goal for all situations, and not just for when the formula is applied.

Opposition to Recommendation Three – Limits on Application of Dr. Plotnick's Formula

The majority of the Workgroup recommends "The residential schedule deviation should not be applied if the Self-Support Reserve is being applied to either party." This provision was proposed in an attempt to alleviate Legal Service's concerns about Dr. Plotnick's formula. Legal Services opposes this provision for two reasons. First, it would not sufficiently protect low-income custodial parent households. As seen in most of the attached scenarios, the Self-Support Reserve would not protect the low-income custodial parent households from the inequities in Dr. Plotnick's formula.

Second, this provision would create inequitable situations where a "reverse transfer payment" may be justified. For example, take the situation where a noncustodial parent only receives \$721

each month in SSI and a custodial parent's gross annual income is \$164,000 (similar to the economic situation in Scenario Seven). If the noncustodial parent in this situation has the children more than 30% of the time, Dr. Plotnick's formula would require a reverse transfer payment from the custodial parent. This would be equitable because of the huge disparity in household incomes and because the transfer payment would minimally affect the resources available for the children in the custodial parent's household. But if the majority's recommendation is adopted, this equitable "reverse transfer payment" cannot happen because the Self-Support Reserve applies to the noncustodial parent's income.

Instead of adopting this recommendation, Legal Services recommends the Legislature adopt provisions that better protect households where the children reside a majority of the time. For example, in New Jersey, courts presume that residential credits will not be applied when a custodial parent's household net income is at or below 200% of the Federal Poverty Level based on the household's size. *See* New Jersey Rules of Court Appendix IX-A(13)(b)(3). Legal Services strongly supports this provision.

APPENDIX – SCENARIOS USING DR. PLOTNICK’S FORMULA

Scenario	Combined net income of parties	NCP proportional share	NCP % FPL before transfer payment (1 person household)	CP % FPL before transfer payment (3 person household)	Residential Time with NCP	% time with NCP	transfer payment (residential credit applied)	NCP % FPL after transfer payment (1 person household)	CP % FPL after transfer payment (3 person household)
1	\$3,348 NCP = \$1,674 CP = \$1,674	50%	171%	100%	No overnight visitation	0%	\$445.00	125%	127%
					One overnight per week	14%	\$413.00	129%	125%
					every other weekend, 2 weeks summer, 1 week Winter	20%	\$401.00	130%	124%
					every weekend, 2 weeks summer, 1 week Winter	34%	\$214.00	149%	113%
2	\$4,735 NCP = \$3,061 CP = \$1,674	65%	312%	100%	every weekend, 8 weeks summer, 1 week Winter	46%	\$53.00	165%	103%
					No overnight visitation	0%	\$709.00	240%	142%
					One overnight per week	14%	\$670.00	244%	140%
					every other weekend, 2 weeks summer, 1 week Winter	20%	\$654.00	245%	139%
3	\$4,735 NCP = \$1,674 CP = \$3,061	35%	171%	183%	every weekend, 2 weeks summer, 1 week Winter	34%	\$426.00	269%	125%
					every weekend, 8 weeks summer, 1 week Winter	46%	\$228.00	289%	113%
					No overnight visitation	0%	\$382.00	132%	206%
					One overnight per week	14%	\$343.00	136%	203%
					every other weekend, 2 weeks summer, 1 week Winter	20%	\$327.00	137%	202%
					every weekend, 2 weeks summer, 1 week Winter	34%	\$99.00	161%	189%
					every weekend, 8 weeks summer, 1 week Winter	46%	(\$99.00)	181%	177%

Scenario	Combined net income of parties	NCP proportional share	NCP % FPL before transfer payment (1 person household)	CP % FPL before transfer payment (3 person household)	Residential Time with NCP	% time with NCP	transfer payment (residential credit applied)	NCP % FPL after transfer payment (1 person household)	CP % FPL after transfer payment (3 person household)
4	\$7,304 NCP = \$5,630 CP = \$1,674	77%	574%	100%	No overnight visitation	0%	\$1,223.00	449%	173%
					One overnight per week	14%	\$1,166.00	455%	170%
					every other weekend, 2 weeks summer, 1 week Winter	20%	\$1,143.00	457%	168%
					every weekend, 2 weeks summer, 1 week Winter	34%	\$811.00	491%	148%
5	\$7,304 NCP = \$1,674 CP = \$5,630	23%	171%	336%	every weekend, 8 weeks summer, 1 week Winter	46%	\$523.00	520%	132%
					No overnight visitation	0%	\$365.00	133%	358%
					One overnight per week	14%	\$309.00	139%	355%
					every other weekend, 2 weeks summer, 1 week Winter	20%	\$289.00	142%	353%
6	\$11,986 NCP = \$10,312 CP = \$1,674	86%	1051%	100%	every weekend, 2 weeks summer, 1 week Winter	34%	(\$47.00)	175%	333%
					every weekend, 8 weeks summer, 1 week Winter	46%	(\$334.00)	205%	316%
					No overnight visitation	0%	\$2,004.00	847%	220%
					One overnight per week	14%	\$1,921.00	855%	215%
6	\$11,986 NCP = \$10,312 CP = \$1,674	86%	1051%	100%	every other weekend, 2 weeks summer, 1 week Winter	20%	\$1,887.00	859%	213%
					every weekend, 2 weeks summer, 1 week Winter	34%	\$1,399.00	909%	184%
					every weekend, 8 weeks summer, 1 week Winter	46%	\$978.00	952%	158%

Scenario	Combined net income of parties	NCP proportional share	NCP % FPL before transfer payment (1 person household)	CP % FPL before transfer payment (3 person household)	Residential Time with NCP	% time with NCP	transfer payment (residential credit applied)	NCP % FPL after transfer payment (1 person household)	CP % FPL after transfer payment (3 person household)
7	\$11,986 NCP = \$1,674 CP = \$10,312	14%	171%	616%	No overnight visitation	0%	\$326.00	137%	635%
					One overnight per week	14%	\$243.00	146%	630%
					every other weekend, 2 weeks summer, 1 week Winter	20%	\$210.00	149%	628%
					every weekend, 2 weeks summer, 1 week Winter	34%	(\$279.00)	199%	599%
8	\$4,039 NCP = \$2,375 CP = \$1,674 (\$15 Min Wage Scenario)	59%	241%	100%	every weekend, 8 weeks summer, 1 week Winter	46%	(\$700.00)	242%	574%
					No overnight visitation	0%	\$558.00	184%	133%
					One overnight per week	14%	\$524.00	188%	131%
					every other weekend, 2 weeks summer, 1 week Winter	20%	\$511.00	189%	131%
9	\$4,039 NCP = \$1,674 CP = \$2,375 (\$15 Min Wage Scenario)	41%	171%	141%	every weekend, 2 weeks summer, 1 week Winter	34%	\$313.00	209%	119%
					every weekend, 8 weeks summer, 1 week Winter	46%	\$142.00	227%	108%
					No overnight visitation	0%	\$388.00	131%	164%
					One overnight per week	14%	\$354.00	135%	162%
9	\$4,039 NCP = \$1,674 CP = \$2,375 (\$15 Min Wage Scenario)	41%	171%	141%	every other weekend, 2 weeks summer, 1 week Winter	20%	\$341.00	136%	162%
					every weekend, 2 weeks summer, 1 week Winter	34%	\$142.00	156%	150%
					every weekend, 8 weeks summer, 1 week Winter	46%	(\$29.00)	174%	140%
					every weekend, 2 weeks summer, 1 week Winter	34%	\$142.00	156%	150%