

# 2015 CHILD SUPPORT SCHEDULE WORKGROUP

## PARENTING PLANS SUBCOMMITTEE REPORT

**MEMBERS:** JUDGE RICHARD OKRENT, JULIRAE CASTLETON, MERRIE GOUGH, INGA LAURENT, REPRESENTATIVE KILDUFF, KRIS AMBLAD, KALA JACKSON

### **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**

**Enforcement:** What happens if a credit is given but the plan is not followed?

- Not as much time as directed
- More time than directed
- What is the remedy: take the credit away; modify it; or some other penalty?

**Threshold:** How long before court action can be taken?

**Administrative Process:** How to apply a residential credit in the Administrative setting?

### **Findings:**

**Enforcement:**

**The subcommittee recommends new statutory language in RCW Chapter 26 and 74.20A.059, to the effect that if a residential credit is given; but a parent does not spend the time with the child/ren, then the other party may file:**

- a petition to modify the child support order to ask the court or administrative tribunal to modify the residential credit;
- a motion to adjust the child support order to ask the court to adjust the residential credit;
- motion for contempt, and ask the court to coerce compliance with the order including suspending or temporarily reducing the residential credit

Judge Richard Okrent advised the subcommittee that the use of contempt sanctions for violations of any aspect of the parenting plan including failure to exercise the residential provisions of the parenting plan or the use by a parent or parents of the residential credits as a dodge to avoid child support obligations is punishable by contempt.

The court has inherent power to enforce its orders by any means necessary to compel compliance. Among the chief sanctions used to enforce child support orders and parenting plan violations is contempt. The subcommittee agrees that use of the residential schedule or residential credit as a dodge to avoid paying child support may be enforced via contempt.

Many on the subcommittee found the contempt process not very user friendly for self-represented parties and think it would be easier to allow the parties to ask the court to modify or end the residential credit by a motion, such as a motion for adjustment.

### **Threshold for Reconsideration:**

The subcommittee considered a variety of threshold ideas including:

- Missing a substantial percentage of residential time
- More than 80% of time
- A look back period: Three months; Six months; One year
- No threshold

Subcommittee members do not recommend a minimum threshold for reconsideration of a residential credit.

### **Administrative Process:**

The Workgroup's recommendation is:

- A residential credit should not be applied by the Department at the beginning of the establishment process (Notice and Finding of Financial Responsibility).
- After the Notice and Finding of Financial Responsibility (or Notice and Finding of Parental Responsibility) is served, either party may object and request a hearing and request that a residential schedule deviation be applied as part of the hearing process.
- The parents may agree to the number of overnights and residential credit as part of the settlement or hearing process.
- If the parents cannot agree, the ALJ may apply a residential credit based upon findings of fact at a hearing.