

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;

~~(de) 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;~~

(ef) 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.

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

Citations

RCW 26.19.071

RCW 26.19.011

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