

## 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 Kauano

**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 facie 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 returned 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 Public 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 arrears abated it would free parents to use their resources solely on reunifying with their children. In most cases the arrears 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.

## Recommendations

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](#)