

DRAFT REPORT OF THE CHILD SUPPORT SCHEDULE WORKGROUP

Background

Federal Requirements Regarding Child Support Schedules

42 USC §667(a), as a condition for states receiving federal money to run their child support program, requires states to enact child support guidelines for setting child support awards. The law requires that the guidelines be reviewed at least every four years to ensure that their application results in appropriate child support award amounts. The requirements for the four-year review are further defined in 45 CFR §302.56. As part of the review, the state must take into consideration:

...economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited. 45 CFR §302.56(h).

Washington State's Child Support Schedule History¹

- 1982: The Washington State Association of Superior Court Judges (ASCJ) approved the Uniform Child Support Guidelines, which recognized the equal duty of both parents to contribute to the support of their children in proportion to their respective incomes. Most counties adopted ASCJ guidelines, but others promulgated their own.
- 1984: The Child Support Enforcement Amendments of 1984 required states to establish child support guidelines, which were made available to judicial and administrative officials, but were not binding. The setting of child support through a statewide schedule was intended to standardize the amount of support orders among those with similar situations.
- 1986: The Governor's Task Force on Support Enforcement examined the ASCJ Guidelines and recommended that a statewide child support schedule be established, using gross income and a schedule be followed unless certain exceptional situations defined by the enabling statute were established. (Final Report, Sept. 1986).
- 1987: Legislation introduced to the House to create a statewide child support schedule. The legislature rejected a rebuttable presumption support schedule

¹ Provided by the Division of Child Support's Management and Audit Program Statistics Unit (MAPS)

proposed by the Governor's Task Force on Support Enforcement. May 18, 1987, Gov. Gardner signed SHB 418 creating the Washington State Child Support Schedule Commission and set guidelines by which they were to propose a statewide child support schedule to take the place of county support schedules by Nov. 1, 1987. (Laws of 1987, Chapter 440). The commission was directed specifically by the legislature to propose a schedule after studying the following factors:

- 1) Updated economic data
 - 2) Family spending and the costs of raising children
 - 3) Adjustments based upon the children's age level
 - 4) The basic needs of children
 - 5) Family size
 - 6) The parents' combined income
 - 7) Differing costs of living throughout the state
 - 8) Provision for health care coverage and child care payments
- 1987: The legislature created the Washington State Child Support Schedule Commission, comprised of an economist, representatives from parents' groups, attorneys, a judge and a court commissioner. Child support agency staff served as support staff to the Commission. The commission was charged with reviewing and proposing changes to the support schedule when warranted.
 - 1988: Recommendations from the Child Support Commission were adopted July 1, 1988 by the Washington State Legislature. Chapter 275, 1988 Laws, establishing a state schedule for determining child support was codified at Chapter 26.19 RCW. The Family Support Act in 1988 made the guidelines presumptive rather than advisory. The legislature adopted the rebuttable presumption statewide child support schedule proposed by the Commission and gave the Commission authority to make revisions subject to the approval of the legislature. (RCW 26.19 and schedule dated July 1, 1988). The January 26, 1988 support schedule contained: standards for setting support, worksheets, instructions and the basic obligation table. The July 1, 1988 support schedule changed the "basic obligation table" to the "economic table". In November 1988, the Commission proposed changes, accepted by the 1989 legislature and effective July 1, 1989. The major change was the inclusion of ordinary health care expenses in the economic table to be paid by the payee parent. A formula is provided to determine that amount. (Report dated November 1988 and schedule dated July 1, 1989).
 - 1989: Commission issued recommendations on applying the schedule to blended families. (Report on the Use of Support Schedule for Blended Families, December 1989). The 1989 support schedule included: standards for setting support, instructions, the economic table and worksheets.
 - 1990: The legislature attempted to change the way overtime pay, second (or multiple) families and a few other items are treated in the schedule. The Governor vetoed the attempted amendments on those major issues. (EHB 2888). EHB 2888 made no changes to the economic table itself, but did significantly impact its use. RCW 26.19.020 was amended to provide that any county superior court could adopt an economic table that varied no more than twenty-five percent

from that adopted by the commission for combined monthly net income of over \$2,500. Pursuant to HB 2888, the Child Support Order Summary Report Form is required to be completed and filed with the county clerk in any proceeding where child support is established or modified. RCW 26.19.035 requires that child support worksheets are to be completed under penalty of perjury, and the court is not to accept incomplete worksheets or worksheets that vary from the worksheets developed by the Administrative Office of the Court. An organization named POPS (Parents Opposed to Punitive Support) which consisted primarily of noncustodial parents with multiple families was the major force behind the attempted changes in 1990. They announced they would continue their efforts with the 1991 legislature. Also, POPS brought suit against OSE (now DCS) to gain access to judges' records on child support that had been collected for a study of child support orders. They were not successful.

- The September 1, 1991 support schedule eliminated the residential credit (standard 10) in determination of child support and substituted the residential schedule as a standard for deviation, following enactment of ESSB 5996. The legislature made other changes including amendments to RCW 26.19.020 to mandate a uniform statewide economic table based on the Clark County model. The table is presumptive up to \$5000, and advisory up to \$7000.

The Washington child support schedule is based on the Income-Shares Model developed by Robert Williams² in 1987, which at that time was used in 33 states. It is based on the combination of incomes of both parents to estimate the proportion that would be spent on children in an intact family. After all factors are considered, the noncustodial parent is ordered to transfer child support to the parent with whom the child resides a majority of the time.

At the time of the development of the statewide child support schedule, there was considerable attention given to the issue of whether the schedule reflected the appropriate level of support for children. The focus of the discussion, however, turned to the issue of the hardship the schedule imposed on the nonresidential parent rather than the well-being of the child. The fathers' rights activists expressed concern that the schedule was too high. A comparative report³ indicated that the support schedules of income shares states tended to cluster closer to the lower bound of the range of estimates of expenditures on children than they did to the upper bound on the range of estimates. Further, no state that had adopted the income shares model required the noncustodial parent to pay more in child support than would have been spent to support the child in an intact family.

² Robert Williams, 1987, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report*.

³ Laurie Bassi, Laudan Aron, Burt S. Barnow, and Abhay Pande, 1990, *Estimates of Expenditures on Children and Child Support Guidelines*, U.S. Department of Health and Human Services.

History of Child Support Schedule Reviews in Washington State

The first comprehensive review of the support schedule since the enactment of the 1988 support schedule, when the child support schedule became presumptive, was initiated in 1993. The chairs of the Judiciary Committee of the Washington House of Representative and the Law and Justice Committee of the Washington State Senate asked the Washington State Institute for Public Policy to conduct a study of the Washington State Child Support Schedule. The study entitled, *Child Support Patterns in Washington State: 1993-1994*, by Steve Aos and Kate Stirling, was issued in March 1995. The study found that Washington's support guidelines fell within the median level of the range for raising children at the time. Based on that report, the legislature did not act to make any changes to the support schedule at that time.

During the 2003 legislative session, the Department of Social and Health Services' Division of Child Support provided the Speaker of the House of Representatives and the Majority Leader of the Washington State Senate with a copy of a report entitled, *A Review of the Washington State Child Support Schedule, March 2003, Completed under Contract for the Washington State Division of Child Support*, by Kate Stirling, Ph.D.. The Division of Child Support also provided a letter requesting that the legislature review the support schedule as required under RCW 26.19.025, 42 USC §667(a), and 45 CFR §302.56. The Legislature passed SSB 5403, the Supplemental Operating Budget for the state's fiscal year 2002-2003. Included in Section 207(8) of that bill is the following language:

In reviewing the budget for the division of child support, the legislature has conducted a review of the Washington state child support schedule, chapter 26.19 RCW, and supporting documentation as required by federal law. The legislature concludes that the application of the support schedule continues to result in the correct amount of child support to be awarded. No further changes will be made to the support schedule or the economic table at this time.

In February of 2005, DCS received a letter from the Regional Administrator at the Federal Office of Child Support Enforcement (OCSE) indicating that the child support guidelines had not been reviewed as required by 45 CFR 302.56, and warning that the Washington state child support plan might be disapproved if the review did not occur. Failure to have an approved state child support plan could result in the loss of all federal funding for the child support program (roughly \$85 million per year) and loss of up to 5% of the \$400 million in the Temporary Assistance for Needy Families (TANF) funding. As a result of this warning, Governor Gregoire directed the Division of Child Support to put together a workgroup to make recommendations to the legislature no later than January 15, 2006. The Governor directed that the workgroup provide a report that contains recommendations for needed amendments to our child support guideline statutes, a process for improving record keeping of orders entered, and a better method of ensuring that our child support guidelines are reviewed and updated as federally required. As part of the review, DCS contracted with Policy Studies, Inc., to do a review and analysis of the support schedule in compliance with 45 CFR 302.56(e) and (h). The

Workgroup delivered its report to the Governor and the Legislature in January 2006.⁴ Although several consensus items were included in the Workgroup's Report, the Legislature made no changes to the child support schedule in the 2006 legislative session.

In the 2007 legislative session, the Washington Legislature established the Child Support Schedule Workgroup, which was tasked to "continue the work of the 2005 child support guidelines workgroup, and produce findings and recommendations to the legislature, including recommendations for legislative action, by December 30, 2008." The Workgroup was given fourteen specific issues to consider.⁵

The Current Schedule Review under 2SHB 1009

The DSHS Division of Child Support (DCS) was directed to convene a workgroup "to examine the current laws, administrative rules, and practices regarding child support," with membership dictated by 2SHB 1009.⁶ The Workgroup's objective was defined as "to continue the work of the 2005 child support guidelines work group, and produce findings and recommendations to the legislature, including recommendations for legislative action, by December 30, 2008."⁷ The Workgroup was directed to "review and make recommendations to the legislature and the governor regarding the child support guidelines in Washington state." In preparing the recommendations, the Workgroup was required, at a minimum, to review fourteen specific issues.⁸

Members of the Workgroup

Membership of the Workgroup was specified in Section 7 of 2SHB 1009. The Director of the Division of Child Support was designated as the Chair of the Workgroup, and DCS was directed to provide staff support to the Workgroup.

The Speaker of the House of Representatives appointed:

- Jim Moeller (D) and
- Larry Haler (R)

The President of the Senate appointed:

- Jim Kastama (D) and
- Mike Carrell (R)

The Governor, in consultation with the Division of Child Support, appointed the remaining members of the Workgroup:

- David Stillman, the Director of the Division of Child Support

⁴<http://www.dshs.wa.gov/word/esa/dcs/reports/Child%20Support%20Schedule%20Review%20draft%20Report.doc>

⁵ Section 7 of 2SHB 1009 (Chapter 313, Laws of 2007)

⁶ Section 7 of 2SHB 1009 (Chapter 313, Laws of 2007)

⁷ *Ibid.*

⁸ *Ibid.* See Appendix ___ for a list of the 14 issues.

- Deirdre Bowen, a professor of law specializing in family law
- Kathleen Schmidt, nominated by the Washington State Bar Association's Family Law Executive Committee (FLEC)
- Dr. David Betson, an economist. Dr. Betson resigned from the Workgroup in September 2008
- Sharon Curley, a representative of the tribal community. Ms. Curley resigned from the Workgroup in April 2008
- The Honorable Christine Pomeroy and Commissioner Robyn Lindsay were nominated by the Superior Court Judges' Association. Commissioner Lindsay resigned after the September 2007 meeting and was replaced at the December 2007 meeting by Commissioner Rich Gallaher
- Merrie Gough, nominated by the Administrative Office of the Courts (AOC)
- Angela Cuevas, a prosecutor nominated by the Washington Association of Prosecuting Attorneys (WAPA)
- Michelle Maddox, nominated by legal services. Ms. Maddox resigned after the May 2008 meeting and was replaced by Kristofer Amblad at the June 2008 meeting;
- Robert Krabill, an administrative law judge (ALJ) nominated by the Office of Administrative Hearings (OAH)

Three noncustodial parents:

- Jason Doudt
- Alvin Hartley and
- David Spring;

Three custodial parents:

- Kristie Dimak
- Kimberly Freeman (Ms. Freeman resigned before the first meeting and was replaced by Colleen Sachs at the November 2007 meeting) and
- Traci Black (Ms. Black resigned in December 2007 and was replaced by Adina Robinson at the September 2008 meeting)

Overview of Process

Workgroup Meetings

The first meeting of the Child Support Schedule Workgroup was held September 21, 2007. The workgroup continued to meet on a monthly basis until the frequency of meetings was increased in the late summer of 2008, for a total of _____ meetings. The majority of the meetings were held either in the SeaTac Airport Conference Center or near the airport, to accommodate those Workgroup members who had to travel. There were meetings in Olympia during the legislative session. The meetings that included a public forum (see below) were held in Spokane, Vancouver and Seattle.

Several subcommittees were created and they met by phone or email between Workgroup meetings.

Each Workgroup member was presented with a notebook of materials, including a copy of the Report of the 2005 Workgroup. These notebooks were supplemented at each meeting with additional materials created either by DCS staff or Workgroup members.

Public Participation

The Division of Child Support provided several resources to make information on the Workgroup available to the public.

- DCS established a web page for the Child Support Schedule Workgroup at <http://www.dshs.wa.gov/dcs/Resources/workgroup.asp>, and posted agendas, meeting minutes, and other information including materials prepared by DCS staff and some Workgroup members.
- DCS created a listserv (<http://listserv.wa.gov/cgi-bin/wa?A0=SUPPORTSCHEDULEWORKGROUP>) as a broadcast list with open subscription. This type of listserv is open to anyone, and is used only to send out notices, not as a discussion portal.
- DCS created an e-mail address (SupportSchedule@dshs.wa.gov) for anyone to use for providing comments to the Workgroup. Messages received in that email box that dealt with child support, the schedule, or Workgroup issues, were forwarded to the entire Workgroup, and a digest of such messages was distributed on the Support Schedule listserv at least once each month.
- At each meeting, members of the public and interest groups were invited to attend. Time was set aside during each meeting to allow members of the public to address their concerns to the workgroup members.⁹
- Subcommittee meetings were held by conference call and members of the public were encouraged (on the web page and by listserv) to call in and listen to the discussions.

⁹ Normally, fifteen minutes was allocated on the agenda, but all members of the public who wished to address the Workgroup were given an opportunity.

- As discussed below, all meetings except the September 2007 meeting were videotaped, and DCS made copies available, and the web page linked to video of the three most recent meetings.

“Continuation” of the 2005 Workgroup

The legislative mandate for the Workgroup was “to continue the work of the 2005 child support guidelines work group.” At the October 22, 2007 meeting, the Workgroup reviewed the recommendations of the 2005 Workgroup. After much discussion, the Workgroup determined that they were not willing to adopt any of the recommendations, but wished to discuss all of the fourteen issues fully.

Prioritization of Issues

Using a weighted voting system (three votes per each member who was present at the October 22 meeting), the Workgroup decided that the three most important issues were Issue 6 (the economic table), Issue 14 (residential schedule credit) and Issue 1 (children from other relationships and/or Whole Family Formula). As time went on, the Workgroup was able to reach consensus on several of the other issues, but discussion of these three issues continued well into the fall of 2008.

Videotaping

Starting with the October 22, 2007 meeting, DCS hired a videographer to record Workgroup meetings.¹⁰ All Workgroup members received a copy of the DVD for each meeting.

DCS made DVDs available for viewing on the internet through the Child Support Schedule Workgroup’s web page. Due to space limitations, only the last three meetings are available on the internet at any time. Copies of the DVDs of the meetings were available for purchase, and initially DCS sold several for the same amount DCS paid Bristol Productions to produce the copies. In January 2008, DCS purchased software and equipment which allowed it to produce copies of the DVDs at a minimal cost, and was then able to waive a copying and/or postage fee for requests for DVD copies for one meeting at a time.

Public Forums

From the beginning the workgroup was committed to having this process be an open process, including opportunities for public input. To help accomplish this goal, three public forums were organized and held. The workgroup voted to hold one forum in Seattle and one in Spokane, in order to get input from members of the public in urban centers in both Eastern and Western Washington. The third public forum was held in

¹⁰ Bristol Productions, Karl Schmidt, recorded all Workgroup meetings from October 22, 2007 through December 2008.

Vancouver, to make sure that there was an opportunity for input from a more small-town constituency.

Each “public forum” was a specific time set aside to hear concerns from members of the public. On each of the three days, the Workgroup met from 9:00 am until 1:30 pm, during which the usual fifteen-to-thirty minute period for public comment occurred. At 2:00 pm, the public forum began and continued for as long as there were people who wanted to address the Workgroup. A number of DCS staff members¹¹ attended each public forum in case any attendees wanted to talk to representatives from DCS about specific case problems. There was space provided for vendor booths provided by parent groups. At all three meetings, the majority of the attendees were noncustodial parents or interested in issues from the noncustodial parent’s perspective. Not everyone who attended addressed the Workgroup.

The first public forum was held May 31, 2008 at the Ramada Inn at Spokane Airport. The attendance on this date was estimated at between 35-45 members of the public. The public forum adjourned at 3:45 pm.

The two public forums held in Western Washington had higher attendance. On September 13, 2008, approximately 60 members of the public came to the meeting at the Vancouver Hilton, and the public forum was adjourned at 4:45 pm. The largest crowd was at the September 27, 2008 meeting at the SeaTac Red Lion Hotel, where around 70 members of the public attended. The public forum adjourned at 5:15 pm on that date.

All three public meetings were recorded. This allowed workgroup members who were not able to attend the opportunity to listen to the comments and concerns of the public. As with every other meeting of the Workgroup, these DVDs were made available for the public.¹²

Subcommittees

Given the breadth and depth of the material presented at the first few meetings, the Workgroup realized that they would need subcommittees to do the homework to study and discuss certain topics and then make recommendations to the larger group. The subcommittees met by conference call and were supported by a DCS staff member. All conference calls were publicized on the web page and the listserv, and members of the public were able to call in and listen to the meetings. Membership on the subcommittees varied throughout the duration of the Workgroup. Eventually, there were five subcommittees:

- Presumptive Minimum Obligation and 45% Limit This subcommittee was chaired by Kris Amblad. Members were Angela Cuevas, Jason Doudt,

¹¹ DCS staff included support enforcement officers from the local field office, someone from the DCS Headquarters Community Relations Unit, and a DCS conference board chair.

¹² See the section on Videotaping, above.

Commissioner Rich Gallaher, Merrie Gough and David Spring. They also discussed issues around the need standard limitation.

- Residential Credit This subcommittee was chaired by David Spring. Members were Kris Amblad, Jason Doudt, Alvin Hartley, and Kathleen Schmidt.
- Economic Table Kathleen Schmidt and ALJ Robert Krabill were the co-chairs of this subcommittee, which was the result of combining one subcommittee to discuss the basis of the economic table and another to discuss the extent of the table. Members were Kristie Dimak, Jason Doudt, Merrie Gough, Judge Christine Pomeroy and David Spring.
- Children from Other Relationships Kris Amblad chaired the subcommittee. Members were Kristie Dimak, Jason Doudt, Alvin Hartley, ALJ Robert Krabill and Michelle Maddox.
- Determination of Income This subcommittee was made up of Angela Cuevas, Commissioner Rich Gallaher, Merrie Gough and ALJ Robert Krabill.

At the October 23, 2008 meeting, each subcommittee gave a report to the Workgroup which listed any issues on which the subcommittee had reached consensus and wanted the Workgroup to adopt, and also those issues which the subcommittee had identified but was unable to agree upon.

Issues to be Considered by the Workgroup¹³

The work group shall review and make recommendations to the legislature and the governor regarding the child support guidelines in Washington state. In preparing the recommendations, the work group shall, at a minimum, review the following issues:

- a) How the support schedule and guidelines shall treat children from other relationships, including whether the whole family formula should be applied presumptively;
- (b) Whether the economic table for calculating child support should include combined income greater than five thousand dollars;
- (c) Whether the economic table should start at one hundred twenty-five percent of the federal poverty guidelines, and move upward in one hundred dollar increments;
- (d) Whether the economic table should distinguish between children under twelve years of age and over twelve years of age;
- (e) Whether child care costs and ordinary medical costs should be included in the economic table, or treated separately;
- (f) Whether the estimated cost of child rearing, as reflected in the economic table, should be based on the Rothbarth estimate, the Engle estimator, or some other basis for calculating the cost of child rearing;
- (g) Whether the self-support reserve should be tied to the federal poverty level;
- (h) How to treat imputation of income for purposes of calculating the child support obligation, including whether minimum wage should be imputed in the absence of adequate information regarding income;
- (i) How extraordinary medical expenses should be addressed, either through the basic child support obligation or independently;
- (j) Whether the amount of the presumptive minimum order should be adjusted;
- (k) Whether gross or net income should be used for purposes of calculating the child support obligation;
- (l) How to treat overtime income or income from a second job for purposes of calculating the child support obligation;
- (m) Whether the noncustodial parent's current child support obligation should be limited to forty-five percent of net income; and
- (n) Whether the residential schedule should affect the amount of the child support obligation.

¹³ Section 7 of 2SHB 1009 (Chapter 313, Laws of 2007)