

# 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 History<sup>1</sup>

- 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

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<sup>1</sup> 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.

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The 1987 Commission report stated on page 3:

The Objective was to propose a schedule which would establish an adequate level of support for children and would be equitable to the parents.

Among the Principles listed on page 8 was the following:

A schedule should recognize the involvement of both parents in the child's upbringing. It should take into account the financial support provided directly by parents in shared physical custody or extended visitation arrangements.

On page 11, the authors described the model chosen by the Commission: At least 18 states have adopted or are considering adoption of child support schedules that are based on the Income Sharing Model or on a hybridization of the Income Shares Model with the Cost Sharing Model. The model suggests first that parental income be totaled. Next, the percentage of that total income that would have been spent on the children had the family remained intact is calculated and allotted to child support. Finally, each parent pays the percentage of child support that would correspond to their relative share (percentage) of the combined total income. The actual flow of child support payments will then depend on the amount of time the child spends with each parent.

On page 12, the authors add: **The proposed schedule uses a hybrid Income and Cost Sharing Model similar to the one described in the previous section. It was chosen over the alternatives because of its neutrality regarding residential placement and because it is more equitable in regards to the parents' support obligation, while still providing economic protection for the children.**

**Comment [DS1]:** This section should be added as it clarifies the intention of the 1987 Child Support Commission not merely in terms of what was felt to be equitable but also the precise flow of obligation based upon the amount of time spent with the child and the Neutrality regarding the residential placement of the child. The purpose of a simple "per day" credit was therefore to minimize harmful litigation over the placement of the child.

- 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 Williams<sup>2</sup> 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.

**Comment [DS2]:** This paragraph should be deleted because it is factually incorrect for at least two reasons. First, as specifically stated above the 1987 Child support schedule was based on a combination of income and cost shares estimates. Second, the support schedule is substantially different than the Income Shares schedule proposed by Williams in 1987. (See Spring 2008 February Addendum, pages 36 to 37 for a detailed discussion of this issue.

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 report<sup>3</sup> 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.

**Comment [DS3]:** These sentences should also be deleted as being factually incorrect. There is no evidence that the discussion turned to the hardship on the NCP rather than the well being of the child.

**Comment [DS4]:** This sentence should be deleted. The NCP representatives to the 1986 Commission submitted a Minority Report complaining that the Table was too high specifically because the Table was in part based on the work of Weitzman. The NCP's ask for more research on the cost of child rearing because they believed that Weitzman's research was inaccurate and/or gender biased. 10 years later Dr. Weitzman data set was finally reviewed in a scientific journal and exposed to be extremely inaccurate. Weitzman was forced to admit that her research had been inaccurate and was based on what she called "math errors." Thus, these NCP fathers were eventually shown to be correct in their concern that the schedule was too high.

### 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.

**Comment [DS5]:** This sentence should be deleted. This comparative report was nothing but a rubber stamping of Dr. Betson's 1990 study funded by the same gender biased federal group that funded the Williams and Betson studies. I have provided the 2007 work group with at least a dozen credible scientific studies done by leading PHD Economists concluding that child rearing costs are substantially lower than in existing tables. These studies were simply ignored by Bassi et al (1990).

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

**Comment [DS6]:** This sentence should also be deleted as being inaccurate. Any State which adds a "150% multiplier" to their residential credit formula is requiring the lower time parent to pay 150% of what was estimated to have been the lower time parent's spending on the child in an intact family.

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

<sup>3</sup> 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.

§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.<sup>4</sup> 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.<sup>5</sup>

#### 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.<sup>6</sup> The Workgroup's objective was defined as "to continue the work of the 2005 child support guidelines work group, and produce

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

<sup>5</sup> Section 7 of 2SHB 1009 (Chapter 313, Laws of 2007)

<sup>6</sup> Section 7 of 2SHB 1009 (Chapter 313, Laws of 2007)

findings and recommendations to the legislature, including recommendations for legislative action, by December 30, 2008.”<sup>7</sup> 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.<sup>8</sup>

#### 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
- 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)

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.* See Appendix II for a list of the 14 issues.

- 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
- 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.
- 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 nineteen meetings. The final “working” meeting of the Workgroup was held December 4, 2008, and the Workgroup met on December 12, 2008 to review the final draft of this Report. 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](mailto: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.<sup>9</sup>
- 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.
- 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 of the prior Workgroup, but wished to discuss all of the fourteen issues fully.

### Prioritization of Issues

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

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.<sup>10</sup> 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 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 members<sup>11</sup> 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.

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

<sup>11</sup> 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.

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.<sup>12</sup>

### 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, 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.

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<sup>12</sup> See the section on Videotaping, above.

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.

### Recommendations

The Workgroup's main concern was that whatever child support schedule is ultimately adopted, it must:

- Be clear and easy to understand
- Be easy to implement
- Provide certainty and consistency while allowing flexibility to deal with unjust or inappropriate outcomes
- Cover the greatest possible number of families
- Provide specific guidelines

The Workgroup's recommendations on each of the fourteen issues set out in 2SHB 1009 are described in the following section. The Workgroup did not reach consensus on all of the issues.

The Chair defined "consensus" as a showing that all members of the Workgroup indicated that they could live with an option, and not necessarily a showing that each person who agreed had indicated whole-hearted support to the exclusion of all other issues.

## Issues to be Considered by the Workgroup<sup>13</sup>

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.

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<sup>13</sup> Section 7 of 2SHB 1009 (Chapter 313, Laws of 2007)

# Workgroup Recommendations on Each Issue

## Issue 1:

**How the support schedule and guidelines shall treat children from other relationships, including whether the whole family formula should be applied presumptively**

**The Workgroup recommends** that, at a minimum, “prior-born” children should be considered (*i.e.*, children born before the child who is the subject of the current support order).

The Workgroup was unable to reach consensus recommendations beyond the recommendation stated above, although the members engaged in lengthy discussions on this topic. The discussions centered on two main questions:

- Which children should be considered when determining the presumptive amount of support?
- Should the Whole Family Formula be used to determine the presumptive amount of support when there are children from other relationships?

Which children shall be considered in determining the presumptive amount of support under the guidelines?

While all members of the Workgroup agreed that children born prior to the children whose support is before the court need to be considered in setting the support obligation, there was no agreement with respect to other children.

- A majority of the workgroup felt that all children for whom the noncustodial parent had a legal obligation should be considered. Individuals supporting this position expressed that this was the way to be fair to all children; that as all of the children were legally entitled to support from the noncustodial parent, they needed to be taken into account when determining financial support; that considering all of the children reflected the practice in intact families where the occurrence of later-born children would usually result in a reduction in resources available to the first-born child.
- A minority of the workgroup felt that after-born children should not be considered in modifying support for the first family. The first family has an economic interest in the stability of the support order and has no voice in the decision by the noncustodial parent to have additional children in subsequent relationships. The custodial parent of a child from a subsequent relationship enters into the relationship knowing of the existence and financial obligation toward the child(ren) of the first relationship and the economics of that second relationship take that into account.

- A majority of the Workgroup members felt that the children of both the noncustodial parent and of the custodial parent be considered when looking at children from other relationships.
  - Those supporting inclusion of the children of both the parents felt that the noncustodial parent and the custodial parent should be treated “equally” by any consideration of children from other relationships.
    - Those who supported including all children differed on how the children should be counted:
      - If there are two children in addition to the child whose support is being set, then the three-child rate should be used
      - If the noncustodial parent has one other child and the custodial parent has two, then the custodial parent’s child should each count as half of a child so that the three child rate is used in this case as well.
      - There was one suggestion that we determine the amount of children to be used in deciding what size family column in the economic table by adding the number of children of both parents and then dividing by two.
  - Those who supported including only the children of the noncustodial parent made more sense because the noncustodial parent’s resources had to be stretched to support all of those children.
    - One member suggested that any support paid for prior-born children be deducted from the noncustodial parent’s income before determining the monthly net income amount on which to set support for the after-born children.
- The subcommittee regarding children from other relationships reviewed the recommendations of the 2005 workgroup. After study and discussion the subcommittee produced a report containing the following majority recommendation:

Children Not Before the Court of the noncustodial parent shall be considered, pursuant to the Whole Family Formula, as part of the presumptive calculation (or in an above the line calculation). Judges are to be granted authority to deviate from this formula only under limited circumstances, when application of the formula would leave insufficient funds to meet the basic needs of the children in the receiving household and when taking the totality of the circumstances of both parents, application of the formula would be unjust. The children of the noncustodial parent that may be included in the formula are limited to:

- 1) Children for whom the noncustodial parent has a support ordered obligation;
- 2) Biological children;

- 3) Adopted children;
- 4) Children of the noncustodial parent's current marriage <sup>14</sup>residing with the noncustodial parent a majority of the time; and/or
- 5) Children for whom the noncustodial parent can prove by bank records or cancelled checks that he or she is paying reasonable child support. <sup>15</sup>
- 6) Step-children are not to be included in the formula.  
Application of the Whole Family Formula alone may not serve as the basis for a substantial change in circumstances for a modification of a child support order.

- One member of the subcommittee expressed reservations about the subcommittee's recommendation based on a strongly-held opinion that the recommendation would not protect first-born children from unreasonable reductions of their support in the future.

The Workgroup discussed whether, before you could count a child, there must be an order of support for that child. Several issues were identified with this concept:

- The 2005 Workgroup had determined that it wasn't necessary that the noncustodial parent actually pay support under an order, because there was an ordered obligation.
- One member suggested that we should count a child for whom the noncustodial parent is paying "a reasonable amount of support," which would mean that if the noncustodial parent was paying without an order the amount that would have reasonably been ordered, that child should be counted.
- Some members felt that unless the noncustodial parent was actually paying support under a support order, the child should not be counted.

Should the Whole Family Formula be used to establish the presumptive amount of support when there are children from other relationships?

The Workgroup could not agree on the use of the Whole Family Formula. As described above, the majority of members felt that all children of both parents should be considered when setting support. Objections to use of the Whole Family Formula centered on the fact that the formula does not take into account the additional children of the custodial parent, but instead focuses only on the children of the noncustodial parent.

#### **Issue 2:**

**Whether the economic table for calculating child support should include combined income greater than five thousand dollars**

**The Workgroup recommends that:**

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<sup>14</sup> These children were referred to as marital children during the course of the workgroup discussions, and as is reflected in the minutes

<sup>15</sup> The 2005 CSSW recommended the following language for this section: "Children for whom the noncustodial parent can prove that he or she is paying child support."

- The economic table should be entirely presumptive, and have no advisory amounts.
- The economic table should be extended past combined monthly net income (CMNI) of five thousand dollars.
- The economic table should include combined monthly net income (CMNI) of at least twelve thousand dollars per month.
  - The Workgroup was unable to agree whether the economic table should exceed CMNI of \$12,000 per month, and if so, how far it should go. There was support for extending the table to either \$15,000 CMNI or \$20,000 CMNI.
  - Those who argued in favor of extending the economic table stressed their concern that the economic table should provide certainty and predictability for all income levels.
  - Some members indicated that since the child support schedule is only reviewed on a quadrennial basis, the economic table should anticipate that CMNI may increase during that time and so should extend past \$12,000.
  - One member pointed out that there is not sufficient economic data above CMNI of \$12,000 to extend the economic table, and suggested that there be a formula provided to calculate support when CMNI exceeds \$12,000. Although a formula might not be simple to use, this member reflected that where CMNI exceeds \$12,000, the parties would most probably be represented by counsel.
  - Some members pointed out that how far the economic table is extended depends on the nature of the curve represented by whatever basis for the table is selected:
    - Some of the options show a curve which flattens out above CMNI of \$12,000, which means that there probably would not be a significant change in the monthly amount as income increased.<sup>16</sup>
    - Some of the options show a curve that continues to climb above CMNI of \$12,000, which means that the economic table would have to be extended past \$12,000 to provide amounts for the higher income families.<sup>17</sup>

**Issue 3:**

**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**

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<sup>16</sup> Those tables which have a flattening curve include the current economic table, the Krabill Table, the BR w/adj the McCaleb.

<sup>17</sup> The tables which have an upward curve include the Betson-Engel, the BEBR, and the Betson-Rothbarth.

**The Workgroup recommends** that the economic table should begin at 125% of the federal poverty guidelines (the self-support reserve) and should increase in \$100 increments.<sup>18</sup>

**The workgroup recommended** that the above recommendation be carried out by having the economic table start at \$1,000, which is slightly less than the current value of 125% of the federal poverty guideline.<sup>19</sup>

**Issue 4:**

**Whether the economic table should distinguish between children under twelve years of age and over twelve years of age**

**The Workgroup recommends** that the economic table should not distinguish between age groups, but should have only one category per family size.

- Although the Workgroup recommends that the legislature adopt a different basis for the economic table,<sup>20</sup> there was some discussion as to how this recommendation could be implemented if the legislature decides to stay with the current economic table while adopting other Workgroup consensus recommendations. Since there are currently two support amounts for each family size (Column A is for children aged 0-11 and Column B is for children aged 12-18), the members felt that the amounts should be averaged, but there was no agreement on how to average the amounts:
  - Some members indicated a preference for a “straight” average, which would add together the A amount and the B amount and then divide by two.
  - Some members indicated a preference for a “weighted” average, which reflects the fact that there are three 6-year age groups to deal with, namely age 0-5, 6-11 and 12-18. This approach would require adding two A amounts plus one B amount and dividing by three to get the average.

**Comment [DS7]:** I thought that a weighted average was the consensus of the work group. If not, I think it was the majority view of the work group.

**Issue 5:**

**Whether child care costs and ordinary medical costs should be included in the economic table, or treated separately**

**The Workgroup recommends** that the term “health care costs” should replace the term “medical costs.”

**The Workgroup recommends** that child care costs and ordinary health care costs should not be included in the economic table, but should be allocated between the parents based

<sup>18</sup> The Workgroup acknowledges that there are several ways to refer to the federal poverty guideline, such as “federal poverty level,” “federal poverty threshold,” or “federal poverty guidelines,” but whenever any of these terms are used by the Workgroup, they all mean the same thing (see footnote 17).

<sup>19</sup> As reported in the Federal register, Vol 73, No. 15, January 23, 2008, pp3971-3972, the 2008 poverty guideline for one person is \$10,400. 125% of this amount is \$13,000, which, expressed as a monthly amount is \$1,083.

<sup>20</sup> See discussion below at Issue 6.

on each parent's proportionate share of the combined income. [See also Issue 9, regarding extraordinary health care costs.]

**The Workgroup recommends** that the current "5% for ordinary medical costs" should be removed from the economic table.

**Issue 6:**

**Whether the estimated cost of child rearing, as reflected in the economic table, should be based on the Rothbarth estimate, the Engel estimator, or some other basis for calculating the cost of child rearing**

**The Workgroup recommends** that:

- The Economic Table should have monthly income starting at \$1,000 per month and go up in \$100 increments
- Should be based on net, not gross, income
- Do away with column A and B
- There should be no advisory part of table, it should be all presumptive
- The table should go beyond \$5,000; at least to \$12,000<sup>21</sup>
- Income shares model – child support divided between parents according to their income

Although the Workgroup could not agree on one option for the basis of the economic table, they discussed many options and ultimately identified ten options for discussion. Three of these options received the support of a majority of the Workgroup members.

Options identified (in no particular order):

1. The Betson-Engel table from the 2005 Workgroup Report<sup>22</sup>
2. The average of the Betson-Engel and Betson-Rothbarth tables, with extensions based on numbers provided by Jane Venohr to the 2005 Workgroup<sup>23</sup>
3. The Betson-Rothbarth table from the 2005 Workgroup Report<sup>24</sup>
4. The Betson-Rothbarth table with adjustments made to even out the curve<sup>25</sup>
5. The Best Fit Curve, also known as the Krabill Table, after ALJ Krabill<sup>26</sup>
6. The current table, adopting all of the other consensus recommendations of the Workgroup<sup>27</sup>
7. The McCaleb Table<sup>28</sup>
8. Acknowledgement that the Workgroup lacked sufficient knowledge to pick a table and therefore opts to leave it up to the Legislature<sup>29</sup>

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<sup>21</sup> The subcommittee could not agree on how high the table should go, but agreed that it should go at least up to \$12,000 per month combined net income. See discussion about Issue 2, above.

<sup>22</sup> We will provide citations for how to look this up.

<sup>23</sup> We will provide citations for how to look this up.

<sup>24</sup> We will provide citations for how to look this up.

<sup>25</sup> We will provide citations for how to look this up.

<sup>26</sup> We will provide citations for how to look this up.

<sup>27</sup> We will provide citations for how to look this up.

<sup>28</sup> We will provide citations for how to look this up.

9. A cost-shares model<sup>30</sup>
10. The average of all available options.<sup>31</sup>

Preferences: The chair of the Workgroup posed the following questions at the November 21, 2008 meeting regarding the ten identified options:

- Is there one option that you support to the exclusion of considering any other option?
  - One member could only support option number 2
  - One member could only support option number 7
  - This meant that there would be no consensus recommendation by the Workgroup.
- Is this option one you absolutely *cannot* support?

Based on the non-support votes, the Workgroup identified three options as the least-opposed and therefore the most popular. Tied for first place were options 2 (Betson-Engel/Betson-Rothbarth, known as “BEBR”) and 4 (Best Fit Curve, known as “The Krabill Table”), and third place went to option 3 (Betson-Rothbarth with adjustments, known as “BR w/adj”).

At the request of some Workgroup members, DCS staff sent an e-mail message to the six members of the Workgroup who had not attended the November 21, 2008 meeting. Of those six, only two responded. One gave opinions, the other abstained and agreed to follow the recommendations of the Workgroup. These responses did not change the results from the November 21 meeting.

At the December 4, 2008 meeting, the Chair asked Workgroup members to identify if they could absolutely not live with any one of the three options identified as “most popular” at the last meeting.

1. Five members indicated that they could not live with the BEBR option.
2. Two members indicated that they could not live with the BR w/adj option.
3. Five members indicated that they could not live with the Krabill Table.

After allowing each member a short time to discuss the three options, the Chair took another vote, asking again which of the three each member of the Workgroup could not support. BEBR still had five votes; BR w/adj now had three votes; and the Krabill Table now had four votes. The Chair then asked the members to vote for their favorite of the three options: BEBR received one vote, BR w/adj received five votes and the Krabill Table received five votes.

Issues identified in the discussion included concerns that:

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<sup>29</sup> Due to the nature of this option, there are no examples or other references provided for this option.

<sup>30</sup> We will provide citations for how to look this up.

<sup>31</sup> Again, due to the nature of this option, there is no example provided.

**Comment [DS8]:** I would like a sentence added and noted that at least five work group members recommend adopting the McCaleb et al (2004) Table and their reasons for favoring this model are included in the Minority Report on the Economic Table. **Please reference the fact that a Minority Report recommending the McCaleb Table is included beginning on page XX of this report.**

- The only available data appears to deal with the middle range of incomes, and information is sparse for both the higher and lower incomes.
- Similar situations should be treated similarly, we want to avoid a cliff effect where a small change in income results in a large change in obligation.
- The report presented by PSI to the 2005 Workgroup indicated that the current support amounts in the lower income ranges of the current table set support below the poverty level, and this problem was also seen in some of the options for this Workgroup.
- Several members of the Workgroup expressed concern that, in today's troubled economic times, it might not be appropriate to raise child support levels from where they are currently set. It was pointed out that this approach tended to favor the paying parent, because a failure to raise child support levels appropriately would tend to harm the receiving parent.

**Issue 7:**

**Whether the self-support reserve should be tied to the federal poverty guidelines**

**The Workgroup recommends** that the self-support reserve should be tied to the federal poverty guidelines<sup>32</sup> and not be based on the need standard as is currently done.

**The Workgroup recommends** that the self-support reserve be set at 125% of the federal poverty guidelines and that the statute should not set a specific numerical value.

**The Workgroup recommends** that the self-support reserve should apply only to the noncustodial parent's support obligation.

**The Workgroup recommends** that Worksheets and instructions should provide a website location<sup>33</sup> to find information about the federal poverty level. The worksheets and instructions should provide direction about how to go from an annualized federal poverty level to 125% of a month's worth of the federal poverty level.

A majority of the workgroup recommends that the self-support reserve apply only to the noncustodial parent's obligation. A minority of the workgroup expressed conditional support for this recommendation in that they were willing to support it on condition that application of the self support reserve to the noncustodial parent's obligation be subject to consideration of equity to the custodial parent household.

- The minority suggested that the following language, if added to RCW 26.19.065(2)(b) would alleviate their concerns:

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<sup>32</sup> See footnote 17 above.

<sup>33</sup> The workgroup suggests using the U.S. department of Health and Human Services Poverty Guidelines, research, and measurement webpage: <http://aspe.hhs.gov/poverty/> as the site to consult to obtain the annual income figure.

“ . . .when it would be unjust or inappropriate to apply the self support reserve limitation after considering the best interests of the child and the circumstances of each parent.”

- The workgroup member representing the Family Law Executive Committee (FLEC) indicated that it was the position of FLEC that the self support reserve should apply to both parents.

**Issue 8:**

**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**

**The Workgroup recommends** that RCW 26.19.071(6) be revised to provide instruction on how to impute income when adequate information regarding income is not available.<sup>34</sup>

**Issue 9:**

**How extraordinary medical expenses should be addressed, either through the basic child support obligation or independently**

**The Workgroup recommends** that the term “health care costs” should replace the term “medical costs.”

**The Workgroup recommends** that the distinction between ordinary and extraordinary health care expenses should be abolished, that all health care expenses should be addressed independently of the basic child support obligation, and that all health care expenses should be allocated between the parents based on each parent’s proportionate share of the combined income.

In support of this recommendation, Workgroup members noted that the distinction between ordinary and extraordinary medical expenses is a term of art, having to do with whether the expenses total more than 5% of the monthly child support obligation and that families and pro se parties in family law matters often do not understand the meaning and application of the current distinction. Members of the Workgroup also noted that health care expenses vary widely between families, and over time within the same family. Attempting to address health care expenses through including them as a component of the basic child support obligation results in confusion for the parties, and can both over-serve and under-serve the custodial household.

**Issue 10:**

**Whether the amount of the presumptive minimum order should be adjusted**

**The Workgroup recommends** that the presumptive minimum order should be increased to fifty dollars per month per child, and should always be expressed as a “per month per child” obligation.

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<sup>34</sup> See Appendix V for proposed language.

**The Workgroup recommends** that RCW 26.19.065(2) should be amended to explain the circumstances considered by the court when determining whether to deviate below the presumptive minimum.<sup>35</sup>

**Issue 11:**

**Whether gross or net income should be used for purposes of calculating the child support obligation**

**The Workgroup recommends** that the child support obligation should be calculated based on net income.

**The Workgroup recommends** that RCW 26.19.071(5)(g) be revised regarding voluntary retirement contributions.<sup>36</sup>

**The Workgroup recommends** that RCW 26.19.071(5)(h), concerning the deduction for business expenses and self-employment taxes for self-employed persons, is adequate and does not need revision.

**Issue 12:**

**How to treat overtime income or income from a second job for purposes of calculating the child support obligation**

**The Workgroup recommends** that RCW 26.19.071(3) and (4), dealing with overtime and income from a second job, be amended.<sup>37</sup>

- The Workgroup felt that when there were second jobs or overtime, that a base amount of 40 hours per week would be included in income, but that under certain circumstances, income over 40 hours per week could be excluded.
  - The Workgroup felt that the income over 40 hours could be excluded as long as overtime or a second job was worked to provide for the needs of the current family, to retire past relationship debts or to retire child support, and the court found that the income would cease when the debt had been paid off.
  - The Workgroup recommended that if the person working overtime or second job asked for a deviation for any other reason, the court could consider the extra income, but did not need to include that income. This would mean a revision of RCW 26.19.075.<sup>38</sup>

**Comment [DS9]:** I thought the recommendation was that income over 40 hours SHOULD be excluded. Given the extreme gender bias of our current courts, using the work COULD would make this a meaningless change.

<sup>35</sup> See Appendix V for the draft statutory language.

<sup>36</sup> See Appendix V for the draft statutory language.

<sup>37</sup> See Appendix V for the draft statutory language.

<sup>38</sup> See Appendix V for the draft statutory language.

**Issue 13:**

**Whether the noncustodial parent's current child support obligation should be limited to forty-five percent of net income**

**The Workgroup recommends** that application of the 45% limitation in RCW 26.19.065 be consistent with the following recommendations:

- The 45% limitation should apply to all of the NCP's biological and legal children.<sup>39</sup>
- RCW 26.19.065(1) should be rearranged for clarity.<sup>40</sup>
- The current language re good cause to exceed the 45% limitation should be retained, but should be augmented to provide that the court should consider the circumstances of both households in determining whether it would unjust or inappropriate to apply the 45% limitation.
- Day care and other extraordinary expenses should continue to be excluded from the 45% limitation. Discussion indicated that (1) this might need to be clarified because despite the language in the statute, there is statewide inconsistency on whether those expenses are considered in conjunction with the 45% limitation; (2) the worksheets and all of the computerized calculation programs apply the 45% limitation only after the day care and other expenses are added into the obligation.

The Workgroup discussed the following issues related to the 45% limitation but was unable to reach consensus:

- Whether each of the noncustodial parent's children should be entitled to an equivalent share of the 45% of net income which is available for child support. The majority seemed inclined to say that the available 45% should be split on a per-child basis, not on a per-case basis. The main concern was that different orders for the same noncustodial parent should not each encumber 45% of the NCP's income, which could result in a noncustodial parent with three families being obligated for support in the amount of 135% of monthly income.
  - Many of the workgroup members agreed with the idea that the 45% limitation should apply to all of the NCP's children but expressed reservations about how such a rule could be applied. Two proposals were suggested:
    - When setting support the court sets support for the children in front of it. If the presumptive amount of support causes the total support owed by the non-custodial parent to exceed 45% of the NCP's net income the court may reduce the support award, but not lower than the children's pro-rata share of 45% of net income. It is the obligation of the NCP to initiate modification actions

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<sup>39</sup> This issue is closely related to Issue 1, which deals with the consideration of children from other relationships. See the discussion under Issue 1 for a description of the concerns regarding which children should be considered, and whether we should consider only children of the noncustodial parent, but also of the custodial parent.

<sup>40</sup> See draft revision to RCW 26.19.065 is in Appendix V.

regarding the support for other children in order to reduce the NCP's support obligation to 45%.

- The court sets support for the children in front of it considering any presumptive adjustment for other children for children from other relationships. This figure is then tested against the 45% limitation and additional deviations are taken if appropriate.
  
- While the Workgroup recognized that the 45% limitation can in reality only be applied to the order currently before the court (other orders may be from other states, for instance, and the Washington court may not have jurisdiction over all of the involved parties), the members could not reach consensus on what the effect on the other orders might be.
- Whether the fact that the 45% limitation is applied in one case should automatically qualify the NCP's other orders for modification (in other words, is the fact that one order applies the 45% limitation a "substantial change of circumstances" such that other orders now qualify for modification regardless of when they were entered), or whether the 45% limitation should only be considered when another order meets the statutory requirements for modification.
- Whether the good cause ground of "larger families" should be expanded to provide not only for one family with multiple children but for one NCP who has children with several different custodial parents ("multiple families").

#### **Issue 14:**

#### **Whether the residential schedule should affect the amount of the child support obligation**

**The Workgroup recommends** that the residential schedule should affect the amount of the child support obligation.

**The Workgroup recommends** that before a residential credit may be considered, there must be some kind of court order in place providing for residential time for the child and the noncustodial parent.

**The Workgroup recommends** that the residential schedule credit should be based on a formula, which would allow for an above-the-line adjustment based on the number of overnights spent with the paying parent.

**The Workgroup recommends** that the statute provide for a below-the-line adjustment or deviation to allow a residential credit based on other time spent with the child, such as after-school or other times to accommodate the parents' work schedules.

**The Workgroup recommends** that the residential credit should not be granted if the adjustment will result in insufficient funds in the household receiving support to meet the basic needs of the child, or if the child is receiving TANF (temporary assistance for needy families).

The Workgroup was unable to agree on the formula for determining the residential credit, and whether a multiplier should be used. The Workgroup spent a considerable amount of time discussing three proposals:

1. A cross-credit with a 1.5 multiplier<sup>41</sup>
2. A per-day calculation with no multiplier
3. A formula with a variable multiplier

At the December 4, 2008 meeting, the Chair asked the Workgroup who could not live with the cross-credit with the 1.5 multiplier. Three members indicated their opposition, but this method appeared to be the majority recommendation. Discussion of this issue identified the following issues for consideration, but no consensus recommendation was reached:

- Should there be a threshold before the credit is allowed? Several members felt that any threshold could lead to a cliff effect, and could lead to increased litigation over the parenting plan to make sure that the threshold was met. Those who wanted a threshold supported different thresholds.<sup>42</sup>
  - Some members argued for no threshold at all, and wanted a residential credit even if the noncustodial parent had the child one day each year.
  - Some members pointed out that with most formulas, the residential credit is minimal until you get to 20% of the year.
  - Some members felt that there should be a “significant investment in parenting responsibility” and argued for a 30 to 35% threshold.
  - There were conflicting opinions as to how many noncustodial parents actually have more than 20% of time with their children. Some argued that the trend in the courts is going toward more time with the noncustodial parent.
  - After the discussion, the Chair polled the group regarding a suggested threshold:
    - 3 members thought there should be no threshold
    - 1 member thought the threshold should be 70 nights
    - 2 members thought the threshold should be 100 overnights
    - 6 members thought the threshold should be 120 overnights
    - There is consensus that the threshold should not exceed 120 overnights.
- Should there be a multiplier used?

**Comment [DS10]:** I consistently pointed out that the three studies done on shared parenting all concluded that at 20% of the time the vast majority of lower time parents provided a bedroom for the child and therefore incurred higher “per day” costs than the higher time parent. Therefore child support awards will not be equitable unless a straight per day residential credit is provided at 20% of residential time. I would like this information added to this section of the report.

<sup>41</sup> See Appendix VI for a description of the three formulas.

<sup>42</sup> Quite a bit of the discussions around the residential credit concerned the concept of “shared parenting” and whether there should be a statutory presumption in favor of shared parenting. The Workgroup acknowledges that the child support schedule does not control parenting plans, but some members felt that the child support schedule should in some way support shared parenting. No consensus recommendation was reached for or against shared parenting, but the Workgroup discussed whether a residential credit would encourage a parent to seek more time with the child.

- Those arguing for a multiplier indicated that shared parenting results in increased costs to both households; even though income does not increase, the percentage of income each parent spends on the child increases.
- Those arguing for no multiplier indicated that since the income of the parties does not rise, there is no increase in the amount either parent spends on the child.
- The variable multiplier was proposed by the economist, Dr. Betson, who argued that there should be recognition of the fact that some expenses are fixed and others are variable, and that the impact on the households varies with the amount of time spent with each parent. Ultimately, this proposal was rejected by the Workgroup because the members felt it was just too complicated and nobody really understood how it worked.

**Comment [DS11]:** It is important to add that nearly all scientific studies have concluded that the cost of children is related to the income of the parents. Therefore it is not merely the opinion of some work group members that costs for children cannot rise without a rise in income, it is the scientific literature.

In addition, the three studies on shared parenting costs all concluded that once 20% of time is exceeded, the lower time parent's per day costs are greater than the higher time parent's per day costs. The reason multipliers are not appropriate is because they result in the higher time parent receiving a greater share of the per day costs when we know that the lower time parent's per day costs are greater. I would like this information added to this section.

**The Workgroup recommends** that there be a way to remove the residential credit when the paying parent does not utilize all of the residential time in the parenting plan.

- The Workgroup discussed, but was unable to reach a consensus recommendation regarding, how this would happen. Issues identified include:
  - How long should the parent be out of compliance with the parenting plan before the credit should be removed?
  - Would the credit be removed totally, or would the credit be adjusted?
  - What would be the mechanism by which the dispute was brought to the tribunal? Would this be similar to the provision for reimbursement of daycare overpayments in RCW 26.19.080(3)?
- The Workgroup discussed, but was unable to reach a consensus recommendation regarding, whether a residential credit should survive a relocation by the custodial parent.

**Comment [DS12]:** It is incorrect to state that "no one" understood it because I understand it perfectly well. I agree that the Betson graduated method is complicated. In addition his method is not equitable because it results in the higher time parent receiving twice the per day cost of the lower time parent when the lower time parent has higher per day costs.

**Comment [DS13]:** I have consistently advocated that BOTH parents must be held accountable for actions which create inequity for the other parent. I would like it noted that some work group members think that BOTH parents must be held accountable their actions and that a proposal for how this should be done is included in the Minority report on Residential Credits.

**Comment [DS14]:** Please reference the fact that a Minority Report on Residential Credits is included on page XX of this report and includes recommendations for dealing with the issue of residential credits in the event of a relocation of the child.

## MINORITY REPORT ON THE ECONOMIC TABLE

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The following recommendation is written by David Spring, with the support of Work Group members, Alvin Hartley, Jason Doudt, Colleen Sachs, Administrative Law Judge Robert Krabill, Senator Jim Kastama and Senator Mike Carrell. .

### Regarding Issue 6:

Whether the estimated cost of child rearing, as reflected in the economic table, should be based on the Rothbarth estimate, the Engel estimator, or some other basis for calculating the cost of child rearing

The Betson-Rothbarth estimate suffers from several serious drawbacks.<sup>43</sup> It is based on using spending on adult clothing to estimate the cost of child rearing in intact families. Dr. Betson's own analysis of this method is that adult clothing purchases explain less than 10% of the variation in child rearing costs.<sup>44</sup> In plain English, this means **there is almost no relationship between spending on adult clothing and spending on children**. In order to try to create a relationship where no exists, Dr. Betson eliminated over 95% of the Consumer Expenditure Survey respondents (including all of incomplete responders) from his sample.<sup>45</sup> These exclusions led to extremely biased results which greatly inflated the Betson-Rothbarth estimate of the cost of child rearing in intact families.

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Many PHD economists have criticized the Rothbarth method for being unreliable and invalid and have also reported an inconsistent relationship between spending on adult clothing and spending on children. For example, Bradbury (1994) reported that adult clothing expenditures (Rothbarth model) was only able to explain 1% of the variation in child spending. On page 133, Bradbury noted "*the estimates are still far from the precision required for policy applications... the large degree of variation in clothing expenditure meant that these were not statistically significant... the standard errors for all these estimates are quite large, and so it is difficult to make any strong inferences.*"<sup>46</sup>

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We therefore cannot support the Betson Rothbarth method as a basis for our Economic Table.

<sup>43</sup> See Spring, D (2008) Analysis of Child Rearing Costs, submitted to the Washington State Child Support Work Group, January 6, 2008, Section Three, pages 60 to 90 for a more detailed explanation of the drawbacks of the Betson Rothbarth method.

<sup>44</sup> Betson, D. (1990) Alternative Estimates of the Cost of Children From the 1980-86 Consumer Expenditure Survey. *Institute for Research on Poverty, University of Wisconsin*, Special Report No. 51. page 130.

<sup>45</sup> The exact number of exclusions is unknown because Dr. Betson refuses to release this information despite repeated requests from Work Group members that he disclose this information.

<sup>46</sup> Bradbury, B. 1994, Measuring the Cost of Children, *Australian Economic Papers*, June 1994, 120-138.

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The Betson Engel method is based on using spending on food to estimate spending on children. The Engel method results in a percentage of explained variation that is much higher than the Rothbarth method. In his 1990 study, Dr. Betson estimated the explained variation to be about 50% and in their 2004 study, McCaleb et al. estimated the explained variation to be 68%.<sup>47</sup> In plain English, this means there is a strong relationship between family spending on food and total spending on children.

Despite this relationship, the Betson Engel method still suffers from several serious drawbacks. Like the Betson-Rothbarth method, Dr. Betson systematically eliminated over 95% of the Consumer Expenditure Report (CEX) responders (including all of the incomplete responders)<sup>48</sup> in order to artificially drive up the cost of child rearing. Dr. Betson also used a “Per Capita adjustment” with both his Rothbarth and Engel calculations. The “per capita” assumption is that children cost the same as adults. For example, if two adults live in a one bedroom apartment costing \$800 per month and they move to a two bedroom apartment costing \$1,000 per month, the marginal or additional cost of housing for the child would be \$200 per month (or 20% of the total intact family housing cost). But the “per capita” estimate would be \$1,000 divided by three people or \$333 per month or 33% of the total family housing cost. Dozens of PHD Economists have severely criticized the “per capita” assumption as being a knowingly false means of driving up the cost of child rearing from about 20% to about 33% of total family costs.<sup>49</sup> We therefore cannot support the Betson Engel method as it is known to have used many math tricks to artificially inflate the cost of child rearing.

In 2004, the Florida State legislature funded a study on child rearing costs conducted by three leading PHD economists from Florida State University (McCaleb et al, 2004). These three economists chose a “marginal Engel” method in part because of the high level of validity and reliability of this method (including a high percent of explained variation) and in part because the original Florida State Economic Table was based on a “marginal Engel” study on the cost of children conducted by Espenshade in 1984.<sup>50</sup>

The authors of the Florida State study specifically rejected the per capita adjustment in the Betson Engel method stating on page 34 of their report:

*Following Espenshade, we (the Florida State study) uses the log of total family expenditures and its square and the log of family size to control for total family spending and economies of scale. The Betson model uses the log of per capita family expenditures*

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<sup>47</sup> McCaleb, T.S., Macpherson, D.A., & Norrbin, S.C., (2004) *Review and Update of Florida’s Child Support Guidelines*, Report to the Florida State Legislature, Florida State University Department of Economics, Tallahassee, Florida, page 13.

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<sup>48</sup> Incomplete CEX responders tend to be up to 10 years younger and much poorer than complete responders. Because they have higher fixed expenses, they likely spend less on children. See Spring, D (2008) *Analysis of Child Support Issues*, submitted to the Washington State Child Support Work Group, January 6, 2008, Section Three, page 78 for a more detailed explanation of this subject.

<sup>49</sup> See Spring, D. (2008) *Addendum to Analysis of Child Support Issues*, pages 17 to 20 submitted to the Washington State Child Support Work Group on February 20, 2008 for a more detailed discussion of this topic.

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<sup>50</sup> Espenshade, T. 1984, *Investing in Children: New Estimates of Parental Expenditures*, The Urban Institutes Press, Washington DC.

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and its square and the log of family size to control for total family spending and economies of scale. There does not appear to be any substantive economic rationale for choosing one of these specifications over the other, but this **difference in specification seems to be driving the differences in estimates.**

The authors of the Florida State study also included incomplete responders in their “marginal-Engel” analysis. These two substantial differences between the Betson Engel Per Capita method and the Florida State Engel Marginal method (i.e., usage of a marginal adjustment factor and usage of a less biased sample) greatly increased the percentage of explained variation from about 50% to about 68%. This means the Florida State Engel method was more robust at explaining variations in family spending on children than the Betson Engel method.

Because the Florida State 2004 study is still the most robust, reliable and statistically valid study on the cost of child rearing ever produced, **we recommend that the Washington State Legislature use the Florida State University method and adopt the associated Economic Table as the basis for revising our current Economic Table.**

**Response to reasons given by other Work Group members for not endorsing the Florida State Table.**

The primary reason given for not supporting the Florida State table was that it would not result in a substantial increase in child support awards over our current Economic Table. There was a persistent belief by many Work Group members that the Economic Table must be raised due to “inflation” since the original Table was adopted in 1990. There is no doubt that the absolute cost of raising a child has risen since 1990. However, the Economic Table adjust for increases in child costs because as income goes up, so does the amount for child support. What is relevant is not inflation, but whether the RATIO of child costs to total costs has gone up. Numerous studies have concluded that there has been no significant change in this ratio since 1990. For example, comparing Betson’s 1990 studies of the per capita Engel and Rothbarth methods (using 1980 to 1987 CEX data) to his more recent studies using 1996 to 1998 CEX data confirms that during this 15 year span of time, **Betson found that total child cost rate had fallen slightly. Ten studies from five different sources have all confirmed that there has been no significant change in child rearing costs in more than 40 years.**<sup>51</sup>

**Stability of Child Cost Estimates over Time**

<u>Study Method &gt;&gt;&gt;</u>	<u>Per Capita Rothbarth Cost</u>	<u>Per Capita Engel Cost</u>
<u>Beginning Estimate yr</u>	<u>25%</u> <u>(Betson, 1990)</u>	<u>33%</u> <u>(Betson, 1990)</u>
<u>Ending Estimate yr</u>	<u>26%</u> <u>(Betson, 2001)</u>	<u>30%</u> <u>(Betson, 2001)</u>
<b><u>Change over time</u></b>	<b><u>&lt;+ 1%&gt;</u></b> <b><u>In 15 years</u></b>	<b><u>&lt;minus 3%&gt;</u></b> <b><u>In 15 years</u></b>

Betson (1990) used 1980 to 1987 CEX data. Betson (2001) used 1996 to 1998 CEX data.

<sup>51</sup> See Spring, D. (2008) Addendum to Analysis of Child Support Issues, page 22 for a more detailed explanation of studies on the stability of child costs over time.

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It is therefore disturbing that the very members of the Work Group most supportive of adopting one of Dr. Betson's tables are the same people who maintain that we need to change to his Tables due to "inflation" given that all of **Dr. Betson's studies have concluded that there has been no significant change in the cost of child rearing since 1990.** In short, these Work Group members are willing to endorse the portions the Dr. Betson's studies which support their pre-determined goal of raising the Economic Table, but they refuse to endorse the portions of Dr. Betson's studies that conclude there has been no change in the cost of child rearing since 1990.

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A second criticism of the Florida State University Economic Table is that the Florida State Legislature never adopted the Florida State University Table. Given the failure of Work Group members to understand that the Economic Table is independent of inflation, it would not be surprising if members of the Florida State legislature suffered from a similar confusion. Many members of the Child Support Work Group has said publically that they were intent on raising the Economic Table either because they belonged to groups intent on raising the Table or because they personally believed that the Economic Table should be raised. No doubt there were legislators in Florida who also simply could not accept the fact that as a percentage of total income there has been no significant change in the cost of child rearing since 1990.

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At the current median combined monthly net income level of \$4,000 per month, **the Florida State University Table results in an increase of about 7% over the current Table** (when the current table is reduced to a single age column and has had the deduction for medical expenses). Meanwhile, **the Betson Rothbarth Table even with adjustments at the lower and upper ends results in an increase in child support rates of over 40%. The Betson Rothbarth-Engel average results in an increase in child support obligations of 70%.** Enacting such huge increases in the face of numerous studies showing no increase in the percentage cost of raising a child over time is outrageous.

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Raising child support rates well beyond what was likely to be spent on the child in an intact family also creates a huge financial incentive for divorce. The doubling in child support rates in the late 1980's resulted in "windfalls to the custodial parents"<sup>52</sup> Excessively high child support rates created an incentive to create more fatherless children, through either divorce or unwed childbearing. Current child support rates are so high that, according to a study by Robert Willis (2004), **less than one third of child support payments are actually spent on children;** the rest is profit for the custodial parent. Willis concluded that support levels that greatly exceed the actual cost of child rearing have created "*an incentive for divorce by the custodial mother*".<sup>53</sup>

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<sup>52</sup> Christensen, B. (2001) The Strange Politics of Child Support, *Society*, 39 (1) page 66.

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<sup>53</sup> Willis, R.J. (2004) Child Support and the Problem of Economic Incentives. In *The Law and Economics of of Child Support Payments*, edited by W. S. Comanor, 31-59, Cheltenham, U.K.: Edward Elgar. See page 42.

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Sadly, such dramatic increases are unlikely to have any benefits for children of divorce. Instead, according to a study conducted by the Washington State Division of Child Support: “If the obligor’s support obligation exceeded 20% of the obligor’s gross income, especially obligors in the lower economic echelons, the less likely the obligor would be able to pay even the current support obligation, which in turn results in increasingly large accruals of back-support.” <sup>54</sup>

The federal Office of Child Support Enforcement (OCSE) has also recognized that more than \$90 billion dollars in arrears (the vast majority of arrears claimed in 2004) is based upon awards that are beyond the parents’ ability to pay: “The best way to reduce the national child support debt is to avoid accumulating arrears in the first place. The best way to avoid the accumulation of arrears is to set appropriate orders initially... Designing a system that establishes appropriate orders will encourage payment of child support” (U.S. HHS, 2004).

It is also disturbing that the slim majority of the Work Group who did not endorse the Florida State University Table chose to ignore the testimony of over one hundred members of the public who spoke at the three public hearings held in Washington State in 2008. As in 2005, over 90% of those who spoke opposed any increase in the Economic Table. Lower time parents consistently stated that excessively high child support rates had them close to bankruptcy and living out of their cars. **Even the majority of the higher time parents who spoke at these public hearings urged the Work group not to increase the Economic Table.** They testified that raising child support rates would only increase defaults and thereby reduce the actual amount they receive. Instead, they wanted rates lowered so that the lower time parent might actually be able financially to survive and spend more time with their child.

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For all of the above reasons, we urge the Legislature to adopt the Florida State University 2004 study and associated Economic Table as the basis for revising and updating our current Economic Table. <sup>55</sup>

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<sup>54</sup> Carl Formoso, Ph.D., Determining the Composition and Collectibility of Child Support Arrearages, Vol. I: The Longitudinal Analysis, Washington State Division of Child Support’s Management and Audit Program Statistics Unit May 2003. *Id.* at pages 1 and 37.

<sup>55</sup> Additional reasons for rejecting the Betson methods and for adopting the Florida State Table are provided in David Spring’s 2008 January Analysis of Child Support Issues and February Addendum to the Analysis. These references also include a detailed history of child support Tables and a detailed summary of the research on the cost of raising children from 1960 to the present day. Questions and comments can be emailed to the author: [wildernesspting@aol.com](mailto:wildernesspting@aol.com).

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**MINORITY REPORT ON THE RESIDENTIAL CREDIT**

The following recommendation is written by David Spring, with the support of Work Group members, Alvin Hartley, Jason Doudt, Administrative Law Judge Robert Krabill, Senator Jim Kastama and Senator Mike Carrell. .

**Issue 14: Whether the residential schedule should affect the amount of the child support obligation**

As with their decision on the Economic Table, the majority of the Work Group has chosen to recommend a 150% multiplier be added to the Economic Table whenever there was a request for a residential credit. **This multiplier ignore the scientific research on the cost of child rearing in shared parenting situations. There are three studies on this costs of child rearing in shared parenting arrangements and all three support using a simple “per day” credit with a 20% threshold and with no multiplier. Even Dr. Betson has admitted there are no scientific studies which support the use of any multipliers.**

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The purpose of the 150% multiplier is to eliminate any substantial residential credit for over 90% of all divorced parents. It is a direct attack on shared parenting in that without an equitable residential credit, shared parenting is financially almost impossible.

**All three studies done on the cost of shared parenting concluded that parents who care for the child 20% of the time (and therefore provide the child with a bedroom) have much higher “per day” costs than the other parent who cares for the child 80% of the time.. This is because the lower time parent is paying for the child’s bedroom even on days when the child is not there. An important study was conducted by Fabricius and Braver which has shed new light on how much non-majority fathers actually spend on their children while the children are in their care.<sup>56</sup> Rather than asking majority mothers for this information (as the CEX does) or non-majority fathers for this information, the authors deliberately sought out a less biased source of information... the children of divorce. In a survey of several hundred children of divorce, the authors found that fathers direct expenses on children increased in a linear fashion according to the amount of time the fathers spent with their children. Contrary to the standard assumption of the Betson-Rothbarth model that NCPs’ do not incur child costs, even fathers who were given very little residential time with their children still incurred significant direct expenses. For example, children who spent an average of 20% of their time with their father, 77% of those fathers provided a bedroom for the child. Given that housing is the single greatest component of child costs, this is a very surprising result confirming that most non-majority parents incur not only significant un-credited child costs, but per month child costs that are comparable to the child costs incurred by majority parents! On page 12 of their report, the authors concluded, “The current findings suggest that the typical assumptions about the economics of noncustodial fathers may simply be wrong”. .... the non-majority parents non-credited expenses will always exceed those of the majority parent as the non-majority parent will have more days per year when the child is not with**

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<sup>56</sup> Fabricius and Braver, (2003) *Non-Child Support Expenditures on Children by Non-residential Divorced Fathers*, *Family Court Review*, Vol. 41, 2003

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that parent yet the parent is still incurring child costs (such as for the room the child is not using). Since both parents incurred nearly identical fixed “child cost” expenses on a monthly basis (such as paying for a bed room for the child whether the child is in the bedroom or not), it is far more likely that the non-majority parent has higher daily costs than a parent who has a higher percentage of time with the child. Given the straight-line relationship just described the only equitable solution is a straight-line cross credit calculation.

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Henman and Mitchell (2001) also conducted a detailed comparison of the ratio of costs incurred by majority and non-majority parents, and concluded that the lower time parent’s per day child costs were greater than the higher time parent’s per day costs once time with the lower time parent exceeded 20%.<sup>57</sup>

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Murray Woods and Associates (1999)<sup>58</sup> found that, of non-custodial parents who had visitation with their children, about 90 percent of these parents provided a separate bedroom for the child. Given that housing is the single greatest component of child costs, this confirms that the vast majority of lower time parents are incurring per day child costs far greater than higher time parents.

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Yet despite this consistent research on per day costs, the Work Group has recommended a method (the Williams 150% multiplier) which gives the higher time parent a far greater share of the per day cost than the lower time parent. For example, the chart below shows that at an 80%/20% time split (currently the most common residential schedule), the lower time parent should receive a credit of 20% of the total obligation with the higher time parent receiving 80% of the total obligation. **With the 150% multiplier, the 20% parent receives nothing even though 75% of more of them are providing the child with a bedroom!**

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The following chart also confirms that the 150% multiplier results in the higher time parent receives per day costs at rates much greater than the lower time parent even when the lower time parent cares for the child 35% of the time. This preferential treatment for the higher time parent is contrary to existing Washington State Law.

The Washington State Child Support Act (1988) states in part: RCW 26.19.001 states: *The legislature intends, in establishing a child support schedule, 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. The legislature also intends that the child support obligation should be equitably apportioned between the parents.*

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<sup>57</sup> Henman, P. and Mitchell, K., (2001) Estimating the Costs of Contact for non-residential parents: A budget standards approach, Journal of Social Policy, Volume 30, Issue 3, pp. 495–520).

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<sup>58</sup> Murray Woods & Associates (1999) The Behavior and Expenditures of Non-resident Parents During Contact Visits (Policy Research Paper Number 75). Australia: Department of Family and Community Services.

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It is clearly not equitable when the lower time parent has much higher per day costs than the higher time parent yet receives no credit at all.

**TABLE TWO: RESIDENTIAL CREDIT AS A PERCENT OF THE TOTAL OBLIGATION WHEN BOTH PARENTS HAVE EQUAL INCOME**  
**(Per day cost at \$900 total obligation)**

<u>% of time with child</u>	<u>Traditional Per day Credit with NO multiplier</u>	<u>Betson Graduated Multiplier</u>	<u>Williams 150% Multiplier</u>
0%	0%	0%	0%
10%	10%*	5%*	0%
<b>20%</b>	<b>20%</b> <b>\$30/day</b>	<b>10%</b> <b>\$15/day</b>	<b>0%</b> <b>\$0.00/day</b>
30%	30%	25%	20%
40%	40%	35%	35%
50%	50%	40%/60%	50%
60%	60%	65%	65%
70%	70%	75%	80%
<b>80%</b>	<b>80%</b> <b>\$30/day</b>	<b>90%</b> <b>\$34/day</b>	<b>100%</b> <b>\$30/day</b>
90%	90%	95%	100%
100%	100%	100%	100%

The 1987 Washington State Child Support Commission report stated on page 3:  
The Objective was to propose a schedule which would establish an adequate level of support for children and would be equitable to the parents.

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Among the Principles listed on page 8 was the following:

**A schedule should recognize the involvement of both parents in the child's upbringing. It should take into account the financial support provided directly by parents in shared physical custody or extended visitation arrangements. .**

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On page 11, the authors described the model chosen by the Commission: At least 18 states have adopted or are considering adoption of child support schedules that are based on the Income Sharing Model or on a hybridization of the Income Shares Model with the Cost Sharing Model. The model suggests first that parental income be totaled. Next, the percentage of that total income that would have been spent on the children had the family remained intact is calculated and allotted to child support. Finally, each parent pays the percentage of child support that would correspond to their relative share (percentage) of the combined total income. The actual flow of child support payments will then depend on the amount of time the child spends with each parent.

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On page 12, the authors add: **The proposed schedule uses a hybrid Income and Cost Sharing Model, similar to the one described in the previous section. It was chosen over the alternatives because of its neutrality regarding residential placement and because it is more equitable in regards to the parents' support obligation, while still providing economic protection for the children.**

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The 1987 Child Support Commission also issued Residential Credit work sheets showing that the simple and fair “per day” method was used to calculate residential credits.

Clearly it has been the intention of our legislature to remain neutral regarding the residential placement of the child by treating both parents as equitably as possible. Adding a 150% multiplier would end 20 years of neutrality by giving a huge financial preference to the higher time parent. The predictable result of such favoritism will be a huge increase in child custody litigation as both parents fight over who will be the financially preferred parent.

The Washington State Parenting Act states:

“The State recognizes the fundamental importance of the parent/child relationship to the welfare of the child; and that **the relationship between the child and each parent should be fostered** unless inconsistent with the child’s best interest.” RCW 26.09.002

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Washington State Law thus assumes that the child will have two households after divorce and that the relationship between the child and each parent should be fostered. In other words, State law recognizes that both households are important to the child. Washington State law, in the form of the Parenting Act, does not support the concept of a “single parent” family. A child always has two parents.

Washington State law also does not support the concept of a custodial parent. The legislature believes that children are NOT objects to be owned, but instead, children are people with an emotional need for a life-long relationship with both of their parents. In 1987, when the Washington State legislature adopted the Parenting Act, they eliminated the concept of “custody” as not being in the best interest of the child.

RCW 26.09.285 precludes use of custody designation with any statute that does not require a designation of custody. RCW 29.06.285 states:

**Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under the parenting plan.**

In re Marriage of Kimpel, 122 Wn. App. 729, (2004), Division III stated:

The "state and federal statutes" likely referred to in RCW 26.09.285 include the Food Stamp Program, 7 U.S.C. § 2015; the Criminal Code (Kidnapping), 18 U.S.C. § 1204; federal regulations issued on Veterans' Benefits, 38 C.F.R. 3.24, 3.57, and 3.850; Social Security, 42 U.S.C. § 1396r-1a; and Juvenile Justice and Delinquency Prevention - Missing Children, 42 U.S.C. § 5773 and § 5775. None are argued here.

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Thus both case law and State law prohibit the use of the concept of custody except in those narrow cases where designation of custody is required. The Child Support Act is not one of those Statutes. Therefore it is against Washington State law to use designation of custody as a basis for forcing one parent to have a higher burden to support the child

than the other parent or to place one parent in a privileged financial position just because they are the “custodial” parent.

Adopting a 150% multiplier would therefore be contrary to the past 20 years of advances for shared parenting in Washington State law and throw us back into the days where parents fought over which one would get control, physically and financially of the child.

The obvious solution to these problems is retain an equitable residential credit that treats both parents in a fair and equal manner for the costs incurred during their residential time with the child. The only way to treat both parents fairly is by **assuming that the per day child costs are equal at both households.** The only residential credit method that treats both parents fairly and equally is the traditional residential credit formula. For this and the many other reasons cited above, **we recommend that the Legislature retain the traditional “per day” credit method, but make the credit presumptive and lower the threshold needed to qualify for this credit down to 20% of residential time to be in keeping with the scientific literature on shared parenting.**<sup>59</sup>

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#### **Proposal for preventing either parent from abusing the residential credit.**

There is a danger that either parent may take actions intended to make the residential credit provision less equitable for the other parent. It is ironic that the majority wants a proposal to insure that the lower time parent treats the higher time parent fairly, but refuses to consider any proposed language to make sure that the higher time parent treats the lower time parent fairly. We have therefore include language intended to protect both parents from unfair treatment by the other parent.

#### **Per Day Residential Credit Statutory Proposal** **(changes in bold and/or underlined)**

##### **New Section: Adjustments to the standard calculation.**

##### **(1) Reasons for adjustments to the standard calculation include but are not limited to the following:**

(a) **Shared Residential schedule 20% or more.** The court **shall** adjust the standard calculation if there is a written parenting plan or court order that the child or children spend 20% (71) or more overnights in a calendar year with the parent who is obligated to make a support transfer payment. The residential schedule adjustment shall be determined by a **simple ratio of the amount of time each parent cares for the child as set forth below:**

(1) determination of the basic child support obligation based on the combined net income of both parents line 5 of worksheet. (deleted: which is then multiplied by 1.5);

(2) application of the proportional share of net income of each parent line 6 of worksheet to the basic child support obligation. ( deleted: after it has been multiplied by 1.5);

(3) determination of the percentage of overnights spent with the obligated parent in order to determine the percentage of time spent with each parent;

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<sup>59</sup> For a more detailed explanation of the benefits of a simple “per day” credit, see Spring, D. (2008) Analysis of Child Support Issues, Section 8, pages 154 to 158.

(4) multiply the percentage of the time spent with each parent by the obligation of each parent as determined in step (2);

(5) subtract lesser amount from greater amount in step (4) to determine the transfer payment (also called) the adjusted amount of child support to be paid by the obligor.

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For example: father's net income is \$3,000 per month (60%); mother's net income is \$2,000 per month (40%); father spends 20% of overnights with the child of the parties; mother cares for the child 80% of the time. Assume the total child support obligation as determined by the Economic Table is \$900. Thus, the per day cost for the child is \$30 per day. The father's share of the total obligation, based on his ratio of income is \$540 and the mother's share of the total obligation is \$360. The father's monthly residential credit is the total obligation (\$900) times the ratio of time spent caring for the child (20%) or 6 days per month equals \$30 per day times 6 days equals \$180. The mother's monthly residential credit is also the total obligation (\$900) times the ratio of time she spends caring for the child (80%) or 24 days times \$30 per day equals \$720 per month. The transfer payment is the lower time parent's share of the total obligation minus the lower time parent's residential credit. In this case, the transfer payment is the father's share of the total obligation \$540 minus the father's residential credit \$180 equals \$360. This results in a total payment to the mother of her own share of the total obligation (\$360) plus the transfer payment of \$360 equals \$720. Thus both parents receive \$30 per day for each day they care for the child.

The court may not adjust the standard calculation on the basis of the residential schedule if the adjustment 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.

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*Adjustments to the residential credit based on a substantial change in circumstances: Either parent may seek an adjustment to increase or decrease the residential credit based upon providing evidence of a substantial change in circumstances to the court. The court shall make a written finding as to which parent was primarily responsible for the change in circumstances. If the court finds that the obligor parent failed to take full advantage of their residential time with the child, the court shall reduce the residential credit to the credit the parent would have received based upon the time actually spent caring for the child. However, if the court finds that action of the higher time parent was responsible for the reduction in the lower time parent's residential time with the child, such as voluntarily relocating the child so far away from the lower time parent as to make the prior residential schedule impractical, then the prior residential credit shall be retained. In cases where both parents or neither parent was primarily responsible for the change in residential schedule, the court will make an equitable determination on a case by case basis.*