

DRAFT STATUTES

RCW 26.19.065¹

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Standards for establishing lower and upper limits on child support amounts.

- (1) **Limit at forty-five percent of a parent's net income.** Neither parent's ~~((total))~~ child support obligation owed for all his or her biological or legal children may exceed forty-five percent of net income except for good cause shown. ~~((Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.))~~

(a) Each child is entitled to a pro-rata share of the income available for support, but the court only applies the pro-rata share to the children in the case before the court.

(b) Before determining whether to apply the forty-five percent limitation, the court must consider whether it would be unjust or inappropriate to apply the limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include but are not limited to comparative hardship to the affected households, assets or liabilities, and any involuntary limits on either parent's earning capacity (e.g., incarceration, disabilities or incapacity).

(c) Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

(2) ~~((Income below six hundred dollars. When combined monthly net income is less than six hundred dollars))~~ **Presumptive minimum support obligation.**

(a) When a parent's monthly net income is below 125% of the federal poverty guideline, a support order of not less than ~~((twenty-five))~~ fifty dollars per child per month shall be entered ~~((for each parent))~~ unless the obligor parent establishes that it would be unjust or inappropriate to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interests of the child and the circumstances of each parent. Such circumstances can include comparative hardship to the affected households, assets or liabilities, and earning capacity.

(b) The basic ~~((A parent's))~~ support obligation of the parent making the transfer payment, excluding health care, day care and special child-rearing expenses, shall not reduce his or her net income below ~~((the need standard for one person established pursuant to RCW 74.04.770))~~ self support reserve of 125% of the federal poverty level, except for the presumptive minimum payment of ~~((twenty-five))~~ fifty dollars per child per month or ~~((in cases where the court finds reasons for deviation))~~ 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. Such circumstances include but are not limited to comparative hardship to the affected households, assets or liabilities, and earning capacity. This section shall not be

¹ See discussion of Issue 13 regarding the 45% limitation, Issue 2 regarding extending the economic table, Issue 3 regarding the lowest level of the economic table, Issue 7 regarding the self-support reserve, and Issue 10 regarding the presumptive minimum obligation.

construed to require monthly substantiation of income.

(3) **Income above ~~((five thousand and seven)) twelve thousand dollars.~~** The economic table is presumptive for combined monthly net incomes up to and including ~~((five)) twelve~~ thousand dollars. ~~((When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars.))~~ When combined monthly net income exceeds ~~((seven)) twelve~~ thousand dollars, the court may ~~((set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may))~~ exceed the ~~((advisory)) presumptive~~ amount of support set for combined monthly net incomes of ~~((seven)) twelve~~ thousand dollars upon written findings of fact.

RCW 26.19.071²

RCW 26.19.071

Standards for determination of income.

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime, except as excluded for income in subsection (4)(h);
- (f) Contract-related benefits;
- (g) Income from second jobs, except as excluded for income in subsection (4)(h);
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;

² See discussion of Issue 8 regarding imputation of income, and Issue 12 regarding overtime and income from second jobs, and Issue 11 regarding determination of net income.

- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits; and
- (t) Disability insurance benefits.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or new domestic partner or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Temporary assistance for needy families;
- (e) Supplemental security income;
- (f) General assistance; ((and))
- (g) Food stamps; and

(h) Overtime or income from second jobs beyond 40 hours per week averaged over a 12 month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, and the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered maintenance to the extent actually paid;

(g) ((Up to two thousand dollars per year in voluntary pension payments actually made if the contributions were made for the two tax years preceding the earlier of the (i) tax year in which the parties separated with intent to live separate and apart or (ii) tax year in which the parties filed for dissolution)) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

~~(6) **Imputation of income.** ((The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census.))~~

In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as Employment Security Department data;

(c) Full-time earnings at Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, recently coming off public assistance, GAU, SSI, or disability, a recent release from incarceration, or high school;

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

26.19.075³

RCW 26.19.075

Standards for deviation from the standard calculation.

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:

(i) Income of a new spouse or new domestic partner if the parent who is married to the new spouse or in a partnership with a new domestic partner is asking for a deviation based on any other reason. Income of a new spouse or new domestic partner is not, by itself, a sufficient reason for deviation;

(ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;

(iii) Child support actually received from other relationships;

(iv) Gifts;

(v) Prizes;

³ See Issue 12 regarding overtime and income from second jobs.

(vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;

(vii) Extraordinary income of a child; ((or))

(viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning; or

(ix) Overtime or income from second jobs beyond 40 hours per week averaged over a 12 month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, and the court finds the income will cease when the party has paid off his or her debts.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

(i) Extraordinary debt not voluntarily incurred;

(ii) A significant disparity in the living costs of the parents due to conditions beyond their control;

(iii) Special needs of disabled children;

(iv) Special medical, educational, or psychological needs of the children; or

(v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

Comment [DS1]: This section would be deleted and replaced with a new section under the heading of "Adjustments".

(e) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set

forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

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;

(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.

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.

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.