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To: The Child Support Work Group, DCS/OSE

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This document is a brief examination of the issues that the Washington Civil Rights Council and The Other Parent have with the 2008 Child Support Work Group's (CSWG) conclusions and recommendations.

Representatives from these two organizations attended meetings from inception of this group through December 2008 to participate to the level we were allowed.

This document also suggests areas of study and outlines policy issues that were either ignored or discussed without conclusion or recognition by the CSWG.

While we may not wholeheartedly agree with many of the conclusions of the workgroup, the following bullets are where we have the largest issues. We will articulate our position, discuss our reasoning and research and suggest alternative conclusions.

Workgroup consensus issues we do not concur with:

- The Economic Table and extending the economic table

The $12000 Presumptive Combined Net Income Cap. Suggesting that a cap on income in the table be raised is unfounded. The costs of raising a child —food, clothing, shelter, and a hug — not only do not increase as income increases but in fact the costs decrease as a percentage of income. The fact that CPs can completely live off child support without having to work themselves to support the same children is prima facie evidence that child support is too high.

The recommended child support amounts are excessive and are therefore not in children's best interests.

The child support amounts recommended by the workgroup are generally excessive, without a coherent rationale or justification. Even the economist in the group admits that he can't tell you the "right" number. The guidelines should only require payments sufficient for both parents to equitably meet the important needs of their children. Above

those levels of support, additional, excessive child support orders impair the payors parenting and thus have adverse consequences for children that far outweigh the benefits.

The recipient is not held to any legally enforceable standard of performance other than the avoidance of gross neglect or abuse of the child. The guidelines should indicate the amount of the total child support which the recipient is expected to spend on behalf of the child, and include make a statement about the kinds of expenses which the recipient is expected to cover.

The several suggested guidelines were not formulated using the actual costs of raising a child as required by federal law, and are thus "arbitrary and capricious."

Additionally, since these numbers are arbitrary, it is impossible for them to withstand legal challenges since they in direct violation of federal law and federal guidelines. They have the effect of rendering large pieces of Washington Legislation in jeopardy of being found unconstitutional and moot.

Children of Higher Income Families

Higher income cases lead to child support orders which are too high in some cases. If there were a compelling state interest in supporting children at that level, why are not married parents at these levels of income required by law to spend similar amounts on their children? Child support for higher income families should be capped at a reasonable level and exceeded only by showing special needs of the child or by agreement of the parties.

Of the parents who spoke at the community hearings, only one custodial parent complained that the ordered support amount was inadequate. That individual had an income herself of over $100,000.00 annually. The rest of her story is not borne out by public records. The main complaint of the few custodial parents was that they were not receiving the ordered support which is the larger area of interest the state should endeavor to understand.

One parent stated he was paying support for one child, and receiving less than what he was paying for that one child for two children that are in his custody. His statement was that even though his custodial kids got half the support he paid for one, he was unable to spend all that money on the children he had. Many noncustodial parents and others who testified complained about the drastic impact of unreasonable child support orders on the noncustodial parents, their families, and the children, some of whom could not visit because the noncustodial parent could not afford to transport them or feed them.

Child support caps—other states have, by policy, carefully decided that the state's legitimate interest is in assuring a basic standard for children and not going beyond that. Capping income considered and capping child support, such as Nevada has, at $800 per

child, *inclusive* of health insurance and childcare, is realistic and prudent. It also provides a balance between the state's legitimate interest in protecting kids' and parents' legitimate interest in raising them in their chosen lifestyle. It allows them to teach the rewards of work and the hazards of the dole.

- Health care costs and child care costs (5% in table)

Perhaps the biggest concern expressed at the town hall meetings was that this system foments additional dissent, driving a wedge between parent and child as well as undermines parental cooperation. The transfer payment must be an inclusive amount certain with no "ups," no "extras," and no chance for chicanery. Any order that allows for a percentage of discretionary variables, or allows one party to pick the service provider while the other is forced to pay for it, is a sure prescription for dissent and an additional burden for the agency who attempts to govern these orders. All orders must be for a dollar amount certain and be inclusive. If the proposed CP is burdened by the very responsibilities they have requested and accepted, then, lacking good cause, the custody should switch to the parent who can properly raise the child on that amount certain.

We would suggest that the parent burdened with providing insurance with paying the majority of the uncovered amounts and for child care have the authority to arrange for treatment and providers, to maximize the benefit of insurance they are required to carry. Also, they should not be forced into a larger tax bill by paying childcare to any other than the provider, thereby being able to take advantage of the tax code and the use of a Flexible Spending Account to fund the health and childcare expenses.

- Retirement contributions

While we salute the minimal recognition of self-funded retirement which most working Americans now have, we are concerned about the artificially low limits imposed on this exemption. The Congress was kind enough to allow for this, and the benefit should be equal to both parents. Both parents should be allowed to deduct from income considered for child support the maximum allowed by law and the employer. At a minimum, it should be the amount that an employer matches.

There is no benefit to children to impoverish one parent during their youth, only to call on that child to subsidize that parent in their old age.

- Income considerations and income from overtime and second jobs and tax benefits.

While we salute the workgroup for their new understanding of the nature of overtime and second jobs and the uncertainty of the continuance of those funds, there is still lacking consideration of all the income available to both parents. Specifically needed to be included in the amount of income are tax benefits that accrue to only the custodial parent such as:

- Head of household status
- Dependent care deductions (even when the noncustodial parent is ordered to pay for day care in the support order, only the custodial parent can deduct this expense).
- Child Tax Credits
- Earned income credits
- Tax-free income in the form of child support (the noncustodial parent must pay taxes on this money)

And other income considerations such as:

- The assumption that only the custodial parent spends money on the child(ren)
- The assumption that the noncustodial parent incurs no expense for raising the child (no presents, no food, no transportation costs, no need to keep a larger home for their visits)
- The studies used by the workgroup only looked at intact families, and made no consideration for the realities of existence for separated families.

- Residential credits threshold (more litigation) and long distance parents

We salute the workgroup for recognizing a need for residential credits. While some proposals are gratuitous and would allow saying, “There, you have them now” even though few would qualify, we submit that if, indeed, your table numbers are the true cost of raising children, and that that cost should be shared according to income of the parties, then certainly those expenses incurred by each party should similarly be shared. In other words, a 100% credit for any time spent with the lower time parent. Equity demands it.

To suggest the repeal of the rules of economics, as we often try to do in the child support business by suggesting the child will suffer in this schema is disingenuous. Children suffer in divorce, or by not having two parents actively part of their life, period. No

financial machinations will ameliorate that. A valuable lesson in life is to be learned by them, and they should not be cheated out of that lesson.

This credit should be reflective of the residential schedule in the parenting plan; with adjustments should the schedule be voluntarily not taken. For parents who are distance parents, a suitable amount reflective of the cost of moving the child between homes should be added to that credit and shared equally between parents. Alternatively the entire burden may be placed on the parent that moved the child away.

The recent Washington State Court of Appeals Decision in "In Re The Marriage Of: Bryan F. Krieger, Res. And Marilyn L. Walker, App." We remand for the trial court to recalculate support to ensure that it maintains the children's standard of living at a level commensurate with that of both parents and is equitably apportioned between them. The recommendation by this committee fails to recognize the time, and in many instances, equal time, for any type of credit. This seems to counter not only common sense, but actual court rulings that state the child support should maintain the children's standard of living at a level commensurate with that of both parents.

Current Washington State Law and the recommendations of this committee fail to set this standard which should be in the best interest of the children.

- Income shares model

The CSWG report used economic data that is totally inappropriate for use in these tables, as it was a supposed demonstration of intact family spending, rather than the spending two separate households. The data included two studies that were significantly divergent in result, so that there could be no confidence in the tables that the data drove out.

The resulting tables still included beauty salon and health club expenses of the custodial parent (CP) yet ignored the advantatgeous effects of income taxes and tax benefits to the same CP. It also presumed that parents did not share common household goods with their children, such as sofas, televisions, or automobile transportation. It inappropriately assumed that noncustodial parents (NCPs) spent zero dollars on their children outside of child support, even though the absolute minimal, which has become the average visitation order, calls for the children to be with the NCP about 17% of the time. The fact that a custodial parent must provide housing for him or herself and additional space for a child is only an incremental cost increase was not considered. Similarly, the fact that a NCP must provide additional living space beyond his or her basic needs to provide a suitable living arrangement for visitation was entirely ignored by the tables as well.

A benchmark of the costs of raising children is the amount paid by the state to foster parents for the support of foster children. The basic maintenance payment plus clothing, birthday and holiday allowances for a young foster child amounts to about $115 per week.

- 45% of net income

While recognizing some cap is appropriate, this report still makes no provision for a financially sound and reasonably quick and certain way to sync multiple orders for multiple children in a timely manner. 90+% of child support cases in arrears make less than $10,000 in income annually. Orders must be reasonable to be paid timely. When adding daycare and medical on top of the 45% limitation, even for one child, one quickly exceeds the maximum amount garnishable which is de facto proof that the orders are too high. This makes instant deadbeats, even when support is paid to the extent possible. With 90% of modifications denied, even when supported by the tables, because judges ignore the law and do whatever they want. Typically this means ignoring the living needs of the NCP's issuing unsustainable child support amounts. There must be sanity brought to this issue. One way is to set an absolute cap on support and extras. Another way could be to automatically reduce multiple orders, including child care and medical, to a combined 45% of net income.

WHAT WE NEED TO DO

Broad policy issues need to be debated by the legislature, which are beyond the scope of the committee. Among them is are we running a private welfare system given the fact this is “family support” per David Stillman, Director of the Division of Child Support, and if we are, then shouldn’t we call it that? Should we revisit the statutory definition of child support and rein it back to what it says, which is food, clothing and shelter, given that the definition has ballooned due to so-called “case law” to include items and amenities far beyond the intent of the legislation? Should we mandate shared parenting, given no clearly disqualifying reasons, and stop or change the schema on all transfer payments? If we believe that health insurance is so important, should we not mandate it for ALL children, not just those from broken homes? If not, then should we not have a standardized program with shared costs, so that there is no advantage to game the system?

The current state of the law regarding divorce and custody of minor children is in fact implemented in a fashion that leads to constitutionally-prohibited violations of the rights of both children and parents within the United States in the aggregate.

The current code:

Removes children from a parent's direct care and control which is guaranteed as a liberty interest by the United States Supreme Court.

Impermissibly denies children the right to the direct care, custody, and love of their natural parents in most cases without a finding of predicate harm.

Impermissibly denies parents the right to make decisions about expenditures that further the interests of their children and transfers that control to another through the enactment and enforcement of the current "child support" laws within the several states.

Operates in a manner that is biased against men as a gender in violation of the Constitutional requirement for equal protection under the law.

Impermissibly violates a citizen's right to due process by assuming that allegations of criminal conduct such as physical and sexual abuse are proven prior to trial, and exacts punishment for alleged offenses which have not been proven.

Impermissibly violates citizens’ rights to due process of law by assigning increased obligations and oversight to divorced parties which do not exist for married parties or those who adopt children in an unmarried state, in the care and raising of this nation's children.

Current policy defies research that documents children are less likely to do well in single-parent, mother-headed homes. Such children are more likely to have serious psychological problems, drop out of school, become involved in serious felonies before the age of 18, give birth out of wedlock, run away from home and quit school prior to graduation. All of these problems have been directly tied to the incidence of family breakup. Further, it is a documented fact that women initiate nearly 75% of divorces, and that as many as 7 out of 10 are initiated against the expressed desires of their husbands.

As such it is the duty of the several state legislators and Congress to discourage the destruction of families in the first place and, where such a result cannot be avoided, attempt to mitigate the damage to our children to the fullest extent possible.

To meet our duty of responsibility under the law for all parties with regards to the children of this nation we therefore must:

Recognize that the current custody decisions handed down by the legal system do not grant custody - they remove custody from one or both parents. Since this results in the denial of one or both of the parents' civil rights and the civil rights of the children involved, such adjudication is only permissible where criminal standards of proof can be cited. It is legally impermissible under the Constitution to remove an individual's civil rights without prior adjudication that a violation of the law has first taken place.

Remove the financial incentives that currently exist for initiation of divorce. Should our courts be allowed to receive direct funding from Washington State Division of Child Support specifically for the setting of child support amounts?

Should Washington State continue to be involved in current Title IV programs that require Washington State follow all federal guidelines, even when they are not in the best interest of Washington State's children, and in many cases are in direct conflict with the desire of Washington State Citizens as testified to over and over by the public at each and every committee hearing.

Remove the ability of either parent to be ejected from their home and their children's lives for any period of time without clear and convincing proof that this removal of a parent's rights is necessary to protect the children involved.

Require couples contemplating marriage to have a full understanding of the consequences of divorce, including the consequences for any children they may produce.

Seek to reduce conflict post-divorce by requiring divorcing couples to truly act in the best interest of their children. In short, this means removing the ability of one parent to effectively render the other a "visitor" or "uncle" to their children for either personal or financial reasons.

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