

State of Washington  
Joint Legislative Audit & Review Committee (JLARC)



# **Review of Child Support Guidelines**

## **Report 10-1**

January 5, 2010

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JLARC's non-partisan staff auditors, under the direction of the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other analyses assigned by the Legislature and the Committee.

The statutory authority for JLARC, established in Chapter 44.28 RCW, requires the Legislative Auditor to ensure that JLARC studies are conducted in accordance with Generally Accepted Government Auditing Standards, as applicable to the scope of the audit. This study was conducted in accordance with those applicable standards. Those standards require auditors to plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. The evidence obtained for this JLARC report provides a reasonable basis for the enclosed findings and conclusions, and any exceptions to the application of audit standards have been explicitly disclosed in the body of this report.

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**Committee Approval**

On January 5, 2010, this report was approved for distribution by the Joint Legislative Audit and Review Committee.

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Support  
Guidelines  
Report 10-1**

**January 5, 2010**



STATE OF WASHINGTON

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## REPORT SUMMARY

### What is Child Support?

Child support is a legally enforceable means for providing economic support for a child who does not live with both parents because:

- The child's married parents separate or divorce;
- The child's parents have never been married; or
- The child is in the custody of another such as foster care.

Child support may be awarded through the court system or through administrative proceedings with the Department of Social and Health Services (DSHS), Division of Child Support.

Since 1989, the federal government has required all states to have statewide guidelines governing the calculation of child support. Federal law also requires that the states review their guidelines every four years ("quadrennial review"). The review must consider economic data on the cost of raising children. States also must analyze child support case data for deviations from their guidelines to ensure that deviations are limited. Although the focus of these reviews is on the calculation of child support orders, the state must first make critical decisions about what goals those orders are meant to achieve. Failure to perform adequate reviews may result in the loss of certain federal funds.

### Why a JLARC Report?

In 2005, the federal government expressed concern regarding the completeness of Washington's reviews of its guidelines. In a 2007 response, Washington established in statute a process for its reviews to be conducted by workgroups (2SHB 1009). The first review under the statute was conducted in 2007, and the next review is scheduled for 2011. The law requires the 2011 and subsequent workgroups to consider this JLARC report.

The Legislature directed JLARC to:

- Review the efforts of the 2007 child support workgroup;
- Summarize research on the cost of raising children; and
- Analyze the current child support data collected by DSHS in order to review child support orders that deviate from the state's guideline.

### The 2007 Child Support Workgroup

The 2007 child support workgroup reached consensus on a number of the issues that the Legislature directed it to consider. In 2009, the Legislature enacted the recommendations from the workgroup with only minor changes (ESHB 1794).

The workgroup was not able to reach consensus on three key topics. A review of the research literature identified these same three topics as primary areas of concern to researchers and other states as well.

## **Review of Child Support Research Focuses on Three Key Topics**

This JLARC study summarizes the research on three key topics related to the cost of raising children and establishing child support amounts:

- 1) What method is used to estimate child-rearing costs?  
Research indicates there are three methods commonly used by states to estimate child-rearing costs although all have some accuracy limitations.
- 2) How does the residential schedule affect the support obligation?  
Washington treats the residential schedule as a reason for deviation while 35 states use a variety of approaches to incorporate guidance on this topic into their guidelines.
- 3) How does the existence of children from other relationships affect the support obligation?  
Similar to the above topic, over 30 states provide direction within their guidelines, while Washington treats children from other relationships as a reason for deviation.

As mentioned above, these are the same three key topics where Washington's 2007 workgroup was not able to reach consensus. The results from JLARC's summary of the literature may be beneficial as the Legislature and future workgroups work to resolve these issues.

## **Current Data Collection on Child Support Deviations is Inadequate**

Federal law requires states to review actual child support awards to determine the frequency of deviations from state guidelines. In Washington, state statute directs DSHS to collect information for this review from "child support order summary report forms." The data collected from these forms is inadequate for reaching valid conclusions about deviations from state guidelines or for conducting the federally required review of deviations. However, the actual court and DSHS administratively issued child support **orders** do contain all the information that would allow the state to conduct such reviews in the future. The two recommendations below are intended to shift data collection on deviations to these orders as more reliable sources.

### **Recommendation 1**

**The workgroups convened under RCW 26.19.05 should use data obtained directly from court and administrative orders to conduct the federally required quadrennial review.**

### **Recommendation 2**

**The Legislature should eliminate all statutory references to the Child Support Summary Order Report.**

# CHAPTER ONE – CHILD SUPPORT SYSTEM

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Payment of child support is established as a legal obligation either through the courts or through the Division of Child Support (DCS) of the Department of Social and Health Services. Court ordered child support results from proceedings such as divorce or paternity determinations. DCS establishes child support in cases where the state is providing public assistance for a child or upon request of either parent. In both court and DSHS administrative proceedings, the amount of child support is to be determined through guidelines that are set in state statute.

Child support is based on the concept that both parents are responsible for the financial support of a child even when the child does not live with both parents. Historically, judges across the country ordered child support based on criteria that varied by local courts. Since 1989, federal law has required statewide guidelines for child support. Each state has the authority to determine its own specific guidelines. States have used three primary models: Income Shares, Percentage of Obligor Income, or Melson, for their guidelines. These models are discussed in more detail in Appendix 3.

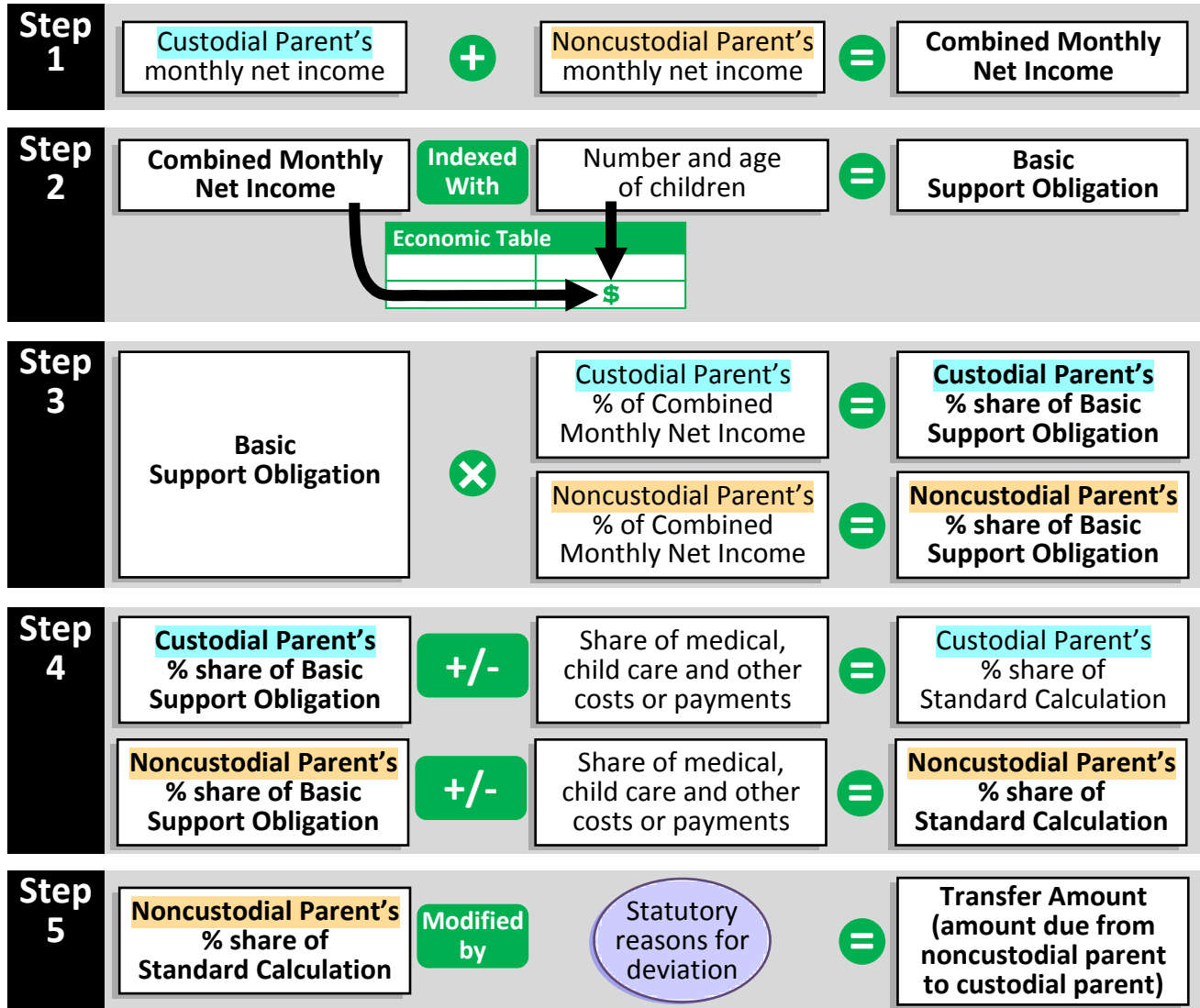
## **Washington uses the income of both parents to determine child support**

In establishing the state’s child support guidelines, the Washington Legislature declared that it intended, *“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.”* (RCW 26.19.001.) To implement this intent, Washington uses the “income shares” model for its guidelines. This model, with some variation, currently is employed in 38 states. Further discussion of this model and other models is contained in Appendix 3. Washington’s guidelines consist of the standards for determining income and expenses, the economic table which includes estimates of child rearing costs, and the worksheets and instructions for determining support obligations.

Washington’s approach contains five main steps. (1) The process starts with determining the combined net monthly income of the parents. (2) The economic table contained in RCW 26.19.020 sets forth a Basic Support Obligation for each child based on this combined income, the number of children in the family, and the ages of children. The amount for all of the children is totaled to reach the full Basic Support Obligation for the parents. (3) Each parent’s share of that obligation is determined by the parent’s proportionate share of the combined income. (4) The law provides for some adjustments to this amount for health care, child care, and special costs. (5) The court or administrative officer may deviate from the calculated amount only for reasons set forth in state statute and must provide a written basis for the deviation. The statute contains some limitations on the amount of obligation.

The final amount to be paid to the custodial parent, along with information providing the basis of that amount, is entered by the court or administrative officer in an order. The order is the official record of the support determination. This process is summarized in Exhibit A.

Exhibit A – Calculation of Child Support Amount



Note on Steps 4 and 5:

- 1) If the Noncustodial parent's net monthly income is less than 125% of the federal poverty guideline, the basic support obligation is set at \$50 per month per child unless doing so would be "unjust."
- 2) Neither parent's total support obligation for all biological or legal children may exceed 45% of that parent's net income without a showing of good cause.

Source: JLARC analysis of RCW 26.19, child support worksheets, and instructions.



# CHAPTER TWO – REVIEW OF EFFORTS OF 2007 CHILD SUPPORT SCHEDULE WORKGROUP

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In 2007, the Legislature directed DSHS to convene a workgroup to review child support laws, rules and practices (2SHB 1009). The statute provided that the workgroup should include legislators, the director of the DSHS Division of Child Support, representatives of the legal community, an economist, custodial and noncustodial parents, as well as others. Pursuant to the statute, the workgroup was to review 14 specified issues and to provide recommendations to the Legislature and the Governor by December 30, 2008. The workgroup published its final report in December 2008 containing a discussion of all 14 issues and recommendations on issues where agreement was achieved. The workgroup recognized that setting child support was not just a matter of settling on numbers, but rather first establishing guiding principles. A copy of the workgroup's final report may be found at <http://www.dshs.wa.gov/pdf/esa/dcs/finalreportofworkgroup.pdf>.

## **The workgroup reached consensus on nine issues**

The workgroup was able to reach consensus on nine of the issues the Legislature directed it to consider and proposed statutory changes where necessary to implement its recommendations. During the 2009 Legislative Session, the Legislature adopted the workgroup's proposals with only minor changes (ESHB 1794). These nine issues and the related recommendations can be found in Appendix 4.

## **The workgroup did not reach consensus on remaining issues**

One issue related to the impact of children's ages on child support obligations. The workgroup reached consensus that the current approach of distinguishing between two age groups in the economic table should be eliminated. However, the workgroup could not agree on how to implement a one-age approach. This issue was not one of the workgroup's top issues nor did it arise as an issue of major concern in our literature review, so it is not discussed further in this report.

As part of its early deliberations, the workgroup designated the remaining unresolved issues as the most important issues for the workgroup. The issues upon which the workgroup was not able to reach consensus can be summarized into three key topics:

- What method is used to estimate child-rearing costs?
- How does the residential schedule affect the support obligation?
- How does the existence of children from other relationships affect the support obligation?

Washington's child support workgroup is not alone in having difficulty resolving these three issues. These three issues arose repeatedly in JLARC's review of the literature as complex issues of concern to many states. The research on these issues is summarized in Chapter 3.



# CHAPTER THREE – JLARC REVIEW OF CHILD SUPPORT RESEARCH FOCUSES ON THREE KEY TOPICS

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As part of this study, the Legislature directed JLARC to review research regarding the cost of raising children. Federal regulations require the state to consider economic data on the cost of raising children as part of its quadrennial review. In analyzing the literature, JLARC identified three primary topics of current concern. These topics are:

1. What method to use to estimate child-rearing costs;
2. How the residential schedule should affect the support obligation; and
3. How the existence of children from other relationships should affect the support obligation.

These three topics coincide with the issues on which the 2007 workgroup could not reach consensus. As directed by the study mandate, this chapter lays out the discussions found in articles, studies, and other resources regarding these topics.

## **Topic #1: What method is used to estimate child-rearing costs?**

### ***Estimating Child-Rearing Costs Is Important, But Difficult***

The numbers contained in most states' economic tables for determining the basic child support obligations are based on estimates of child-rearing costs.

#### ***Getting the amount right is important***

Children in single-parent households without child support are at an increased risk of being in poverty. Providing adequate financial resources for children is the central purpose of child support. Appropriate allocation of economic responsibility among the receiving parent, paying parent and the state is necessary in order for the system to accomplish its purpose. Achieving the proper balance depends on the quality of the child cost estimates used in the guidelines.

- If the child support guideline amount for support is too low, the child may not receive adequate support and thus be at risk of being in poverty. Additionally, the state may assume a disproportionate share of responsibility for children's needs through public assistance.
- If the child support guideline amount for support is too high, compliance decreases and the child receives little or no support, again resulting in an additional risk of poverty or burden on the state.

#### ***Getting the amount right is difficult***

For purposes of determining child support obligations, costs of raising children are estimated by analyzing expenditures. Economists use different methods to arrive at estimates of expenditures and thus of child-rearing costs. Economists and other participants in the child support system, however, have not reached consensus on which economic method should be used. Moreover, the research indicates that the current approaches are limited because no economic methodology now exists to accurately distinguish expenditures for the child from those for other members of the family.

### ***States Consider Three Primary Methods to Estimate Child-Rearing Costs***

The main theories for estimating child-rearing costs have been around in some form for over 20 years. Throughout that time, numbers have been updated and some aspects of the methodologies have changed.

- Two methods use an **indirect approach** to determining costs by comparing expenditures between couples with, and without, children.
- The third approach, formulated by the United States Department of Agriculture (USDA), estimates child rearing costs by considering **directly** the expenditures made by families in various categories.
- All three models use data from the Consumer Expenditures Surveys (CES) conducted annually by the Bureau of Labor Statistics in the United States Department of Labor using actual expenditures for certain categories of items.

Of the 38 states which use the income shares model for their guidelines, 33 of them use one of the above methods for calculating the child-rearing expenses to be used in the guidelines.

### ***Indirect Methods Rely on Comparing Expenditures of Different Families***

The two indirect methods are referred to as the Engel method and the Rothbarth method. Both use the difference in total expenditures between two equally “well-off” families, one with children and one without, as the measure of the “cost” of the child. These methods recognize that determining whether the two families are equally “well-off” cannot be observed directly, so there is a need for a measure to determine whether the families are equivalent. The methods differ, however, on what that measure should be.

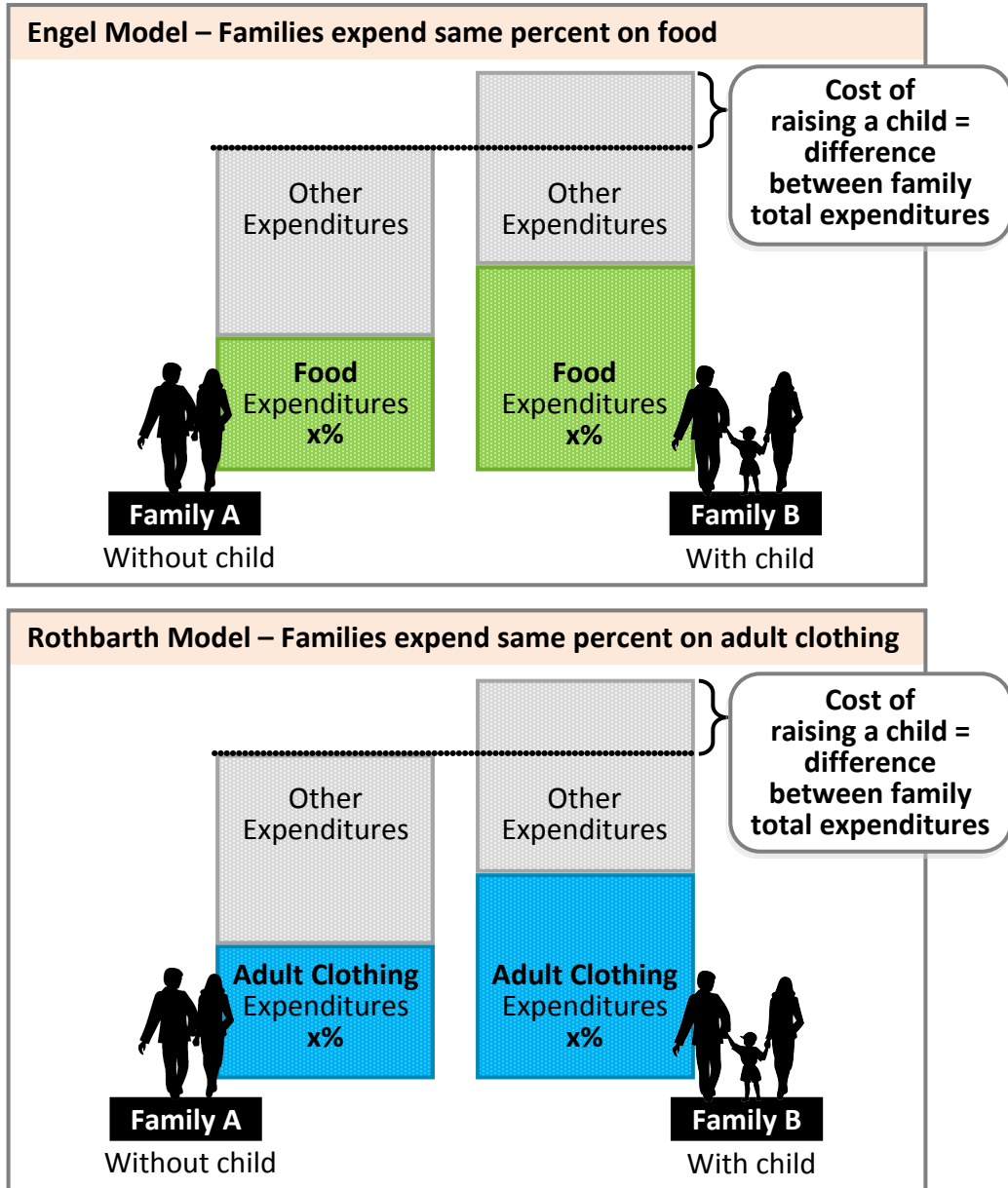
#### **Engel Model**

To determine “equivalency,” the Engel method uses expenditures on food as its measure. This method assumes that if two families spend an equal percentage of their total expenditures on food, the families are economically equally well off. The difference between the total expenditures of the families represents the child-rearing costs. As of January 2009, seven states use some variation of this method.

**Rothbarth Model**

To determine “equivalency,” the Rothbarth method uses expenditures on adult goods, most recently limited to adult clothing, as its measure. This method assumes that if two families spend an equal percentage of their total expenditures on adult clothing, the families are economically equally well off. Similar to Engel, the difference between the total expenditures of the families represents the child-rearing costs. As of January 2009, 27 states use some version of this method, including Washington, which uses a 1991 version. Exhibit B below illustrates these two theories.

Exhibit B – Indirect Methods for Calculating Child-Rearing Costs

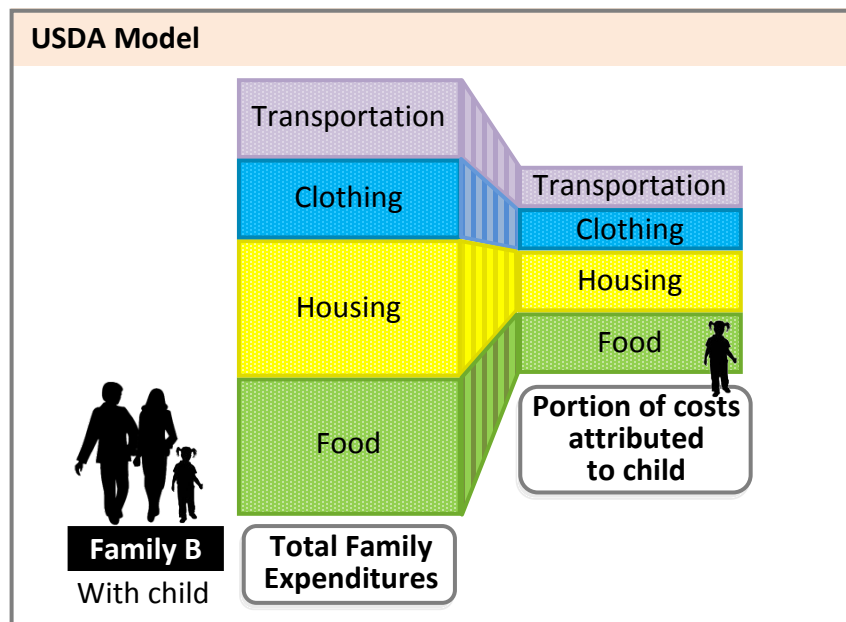


Source: JLARC analysis.

**Direct Expenditure Model Relies on Tabulating the Expenditures of Families**

Rather than inferring cost from total expenditure differences, the direct expenditure model formulated by the USDA looks to actual expenditures by families in each budget category that are attributable to children in the family. Some budget categories are child-specific, such as children’s clothing, and thus the amount expended is attributed entirely to the child. Other categories, such as transportation, food, and housing, are distributed to individual household members using research methods specific to each category. The USDA provides estimates for five different regions of the country (Urban Northeast, Urban West, Urban Midwest, Urban South, and Rural). Exhibit C illustrates this approach.

Exhibit C – Direct Method for Calculating Child-Rearing Costs



Source: JLARC analysis of *Expenditures on Children by Families, 2008* USDA.

The USDA has been publishing reports on expenditures on children since 1960. Researchers have criticized the USDA calculations based on the approach to calculating housing costs and the age of the data used to calculate other costs. In the 2008 report, the USDA modified the methodology and updated the source data. Exhibit D summarizes these changes.

Exhibit D – Recent Changes in USDA Methodology

	<b>USDA 2007 Based on:</b>	<b>USDA 2008 Based on:</b>
<b>Food</b>	1994 USDA food plan	2008 USDA food plan
<b>Transportation</b>	1990-94 US Department of Transportation Study	2008 US Department of Transportation Study
<b>Housing</b>	Attributed to children using per capita approach	Attributed to children using cost of extra bedroom approach

Source: JLARC analysis of 2007 and 2008 USDA Expenditures on Children reports.

In 2007, Minnesota began using a variation of the USDA approach based on a report from its guidelines review task force. In both 2005 and 2009, the Ohio Child Support Guidelines Advisory Council recommended the use of the USDA approach. Such a change in Ohio requires legislative approval which has not yet occurred. Both of these states were relying on past versions of the USDA method as opposed to the most recent. Both states recommended some variation from the prior USDA model to address the per capita housing issue.

**All three methods have limitations**

**Indirect (Engel & Rothbarth)**

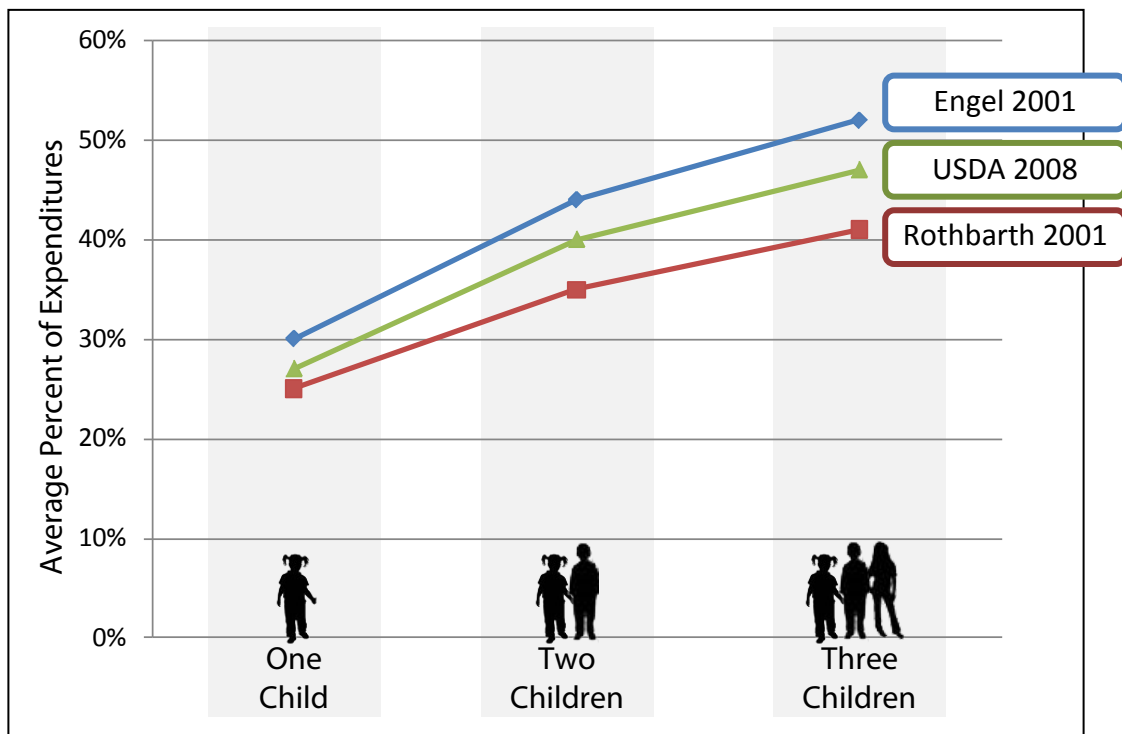
These methods do not allow the examination of particular expense categories (e.g., food, clothing, and housing). Also, researchers have stated that the methods for determining “equally well-off” contain bias:

- Engel – This method **overstates costs** as the percentage of food consumed by children is usually greater than the percentage of non-food items (children are “food intensive”).
- Rothbarth – This method **understates costs** as it assumes that couples retain the same spending habits after they have a child as before.

**Direct (USDA)**

As noted above, the USDA’s approach to calculating housing costs has been criticized. The 2008 USDA report appears to address this concern by implementing an alternative method of attributing housing expense, but no published articles have commented on this recent change. As illustrated by Exhibit E below, the USDA estimates range between the higher Engel estimates and the lower Rothbarth estimates.

Exhibit E – The 2008 Version of the USDA Approach Yields Estimates Between Those of the Two Indirect Approaches



Source: Expenditures on Children by Families, USDA, 2008.

### ***General concerns with all three methods***

These three methods rely on data from expenditures in two-adult households. Commentators have raised the concern that, on average, there is less income to be devoted to children’s expenses in one-adult households, so all approaches result in too high of a calculation. In response, supporters of these methods contend there is insufficient data regarding expenditure in one-adult households upon which to draw conclusions. In addition, researchers have noted that the intent of child support guidelines is to provide children with a level of support in excess of poverty levels, and that the data for one-adult families include a high number of families with incomes below the poverty level.

### **Topic #2: How the residential schedule should affect the support obligation**

Most state guidelines were established in the early 1990s based on the assumption that the child predominately resides with one parent. The common visitation schedules in place at that time included the child residing with the noncustodial parent every other weekend and for two weeks in the summer. This schedule resulted in the child spending approximately 20 percent of the time with the noncustodial parent. Through the years, increased visitation (or “residential time” as it is now referred to in Washington) has become much more common.

These changes in parenting arrangements are likely to raise the total child-rearing costs as both parents must provide separate living space and transportation for the child. The issue is how to address these costs in setting child support obligations. Additionally, if the child spends more time with the noncustodial parent, then that parent is absorbing more of the daily child-rearing expenses and states may wish to provide an adjustment to the obligation to be paid to the other parent to reflect these costs.

Most states incorporate residential schedules directly into their support guideline calculations. However, a minority of states, including Washington, treat the residential time issue as a basis for deviation from their guidelines. Federal law directs that deviations from state guidelines are to be minimized. Guidelines are intended to provide predictability and consistency, which may not occur when the courts and administrative officers are not provided with guidance on adjusting support obligations for residential time.



### ***States have taken a variety of approaches to residential time***

Many other states have revised their guidelines to add some type of criteria for addressing the residential time issue. The purpose of these residential time adjustments is to account for the expenditures of each parent when the child is in that parent’s custody. By incorporating these criteria into their guidelines, these states avoid having residential time adjustments counted as deviations. Currently, 35 states address some portion of this issue in their guidelines.

In determining what approach to use, states must consider certain fundamental issues:

- For the approach to be successful, it must maintain a sufficient level of economic support for the primary household while providing an adjustment for the other parent.
- The approach should not lead to increased conflict between the parents by encouraging one to seek additional residential time in order to decrease the support obligation. Important to this goal is avoiding the “cliff effect” where a small change in residential time creates a large change in the support order.
- How the approach addresses the adjustment of child support orders if the planned residential time does not occur.

In implementing an approach, the states must also resolve other issues such as:

- Whether, and at what point, to have a threshold of residential time which must be exceeded before an adjustment to child support is provided. The most commonly used thresholds are 30 and 35 percent of time with the noncustodial parent.
- How to count residential time. Some states use overnight stays while a few looked to actual hours spent with the child.
- The mechanism for determining residential time. Many states require a court order or an approved parenting plan delineating the respective amount of parenting time for each parent before allowing for a support obligation adjustment.

Exhibit F sets forth the major approaches used by states which incorporate guidance for residential time into their guidelines.

Exhibit F – Other States’ Approaches to Considering Residential Time in Their Guidelines

**Cross-credit (19 states)**

- The total guideline amount is determined based on the assumption of full custody by one parent. Most states (15) multiply this amount by 1.5 to recognize the additional costs of maintaining two households.
- The new obligation amount is allocated to each parent based on that parent’s share of the total income.
- Each parent’s obligation is multiplied by the percentage of time spent with the other parent. The parent with the greater obligation receives a credit for the amount of the other parent’s obligation in determining the final amount to be paid.
- The multiplier tends to reduce the “cliff effect” where a small increase in time leads to a large change in the support amount.

**Per diem adjustment (10 states)**

- The total guideline amount is determined based on the assumption of full custody by one parent. This amount is divided by 365 days to achieve a daily amount of the obligation.
- The daily amount is multiplied by the number of overnights above a standard visitation.
- The total is applied as an adjustment to the obligation amount.
- This approach avoids any “cliff effect.”

**Transferable Costs adjustment (4 states)**

- Provides for a residential credit based on different types of costs: variable (e.g., food); fixed, duplicated (e.g., housing); and fixed, non-duplicated (e.g., child’s clothing).
- At a low level of residential time, an adjustment would be allowed only for variable costs but as residential time increases both variable and fixed costs would be considered.
- This approach may decrease the “cliff effect” as adjustments are more gradual.

**Other Approaches (2 states)**

- Two states incorporate a formula directly into the base support calculation.

Source: 2009 New Hampshire Child Support Guidelines Review and Recommendations; State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations, 2006.

***Washington treats residential time as a reason for deviation***

Washington leaves child support adjustments, based on residential time, to the discretion of the court or administrative officer. The 2007 workgroup considered this topic and provided recommendations on some of the fundamental issues discussed above:

- The residential schedule should affect the amount of support obligation.
- A reduction in the child support obligation should not be granted for residential time if the adjustment would result in insufficient funds for the custodial parent to meet the basic needs of the child, or if the child is receiving TANF (Temporary Assistance for Needy Families).
- A formula should be used to determine the effect of residential time.

The 2007 workgroup, however, could not agree on:

- Whether to use a multiplier to account for the costs of two households;
- Whether there should be a threshold and how to address the “cliff effect;”
- The contents of the formula to be used; or
- How to accommodate for changes in or non-compliance with the residential schedules or relocation of a parent.

### ***Recent changes in marriage dissolution laws may increase the use of residential time***

In 2007, the Legislature passed a bill making revisions to the laws governing marriage dissolutions (2SSB 5470). Prior to the passage of this bill, the law presumed that it was not in the best interest of the child to frequently alternate between residences. As a result of the 2007 revisions, this presumption was eliminated and the court now may allow such alternation if it is in the best interest of the child. The law also directs the Administrative Office of the Courts (AOC) to gather information and report on the use of residential time. AOC has published two such reports. This information may be of assistance to future workgroups considering whether, and how, to address residential time in the guidelines.

### **Topic #3: How the existence of children from other relationships should affect the support obligation**

Similar to the situation with residential time, many states’ guidelines did not contemplate the effect on support orders for children a parent has with another partner (“additional dependents”). Many states have since adopted guideline provisions addressing this topic. Washington continues to treat the existence of additional dependents as a reason for deviation, rather than including this topic in the guidelines.

### ***Most states allow for a deduction from income for other children***

As of 2005, the guidelines of over 30 states contain some type of required adjustment for additional dependents. Other states, such as Washington, leave this issue to the discretion of the court or administrative officer. There are a variety of ways states have addressed additional dependents in their guidelines:

- Some states allow both parents to deduct existing child support orders from income while others allow deductions only for the noncustodial parent.
- Some states provide for a credit against the present support obligation rather than treating prior support orders as a deduction from income.
- Many states allow consideration of child support that is actually paid for other children not residing with the noncustodial parent, even if no support order exists. A few states allow a deduction from income for such amounts, but the majority of states that consider the payments treat them as a reason for deviation from the support amounts rather than as part of the calculation.

- Several states also consider the support needs of other children actually living with the noncustodial parent. The typical method for determining this amount is to determine what the support obligation would be for the child under the guidelines and subtract that amount from the noncustodial parent’s income. Some states recognize that a portion of the residential child’s needs are provided by another adult in the household and thus reduce the amount of the adjustment.
- States are not uniform in whether they distinguish between the treatment of support obligations for other children based on birth order. Some states do not distinguish between other children regarding whether they were born before, or after, the child for whom support is being ordered. A few states preclude consideration of “subsequent born” children in calculating child support amounts.

***Washington treats children from other relationships as a reason for deviation***

For purposes of court proceedings, Washington treats additional dependents as a basis for deviation. Washington requires that the court consider resources of the other parent of the child in determining whether to allow a deviation for subsequent child. The court also must consider whether such an adjustment would create an economic hardship for the custodial parent.

On the administrative side however, since 1993, DSHS has used a formula to address the issue of other children in calculating orders. While still a deviation, the formula provides guidance on how the existence of the other children affects the support amount.

The formula used by DSHS is known as the “Whole Family Formula.” This approach determines the total number of children the noncustodial parent is legally obligated to support. That number of children is used to determine the basic support amount from the economic table for children currently seeking support. For purposes of the formula, it does not matter whether the other children were “prior born” or “subsequent born.” Although courts are not required to use the formula since it is not established in state law, some courts do apply it in determining deviations for children from other relationships.

While the 2007 workgroup agreed that at a minimum “prior born” children should be considered, the workgroup was unable to reach consensus on the remaining issues necessary to provide a standard approach, including whether the Whole Family Formula should be used in all cases, both administrative and court.

# CHAPTER FOUR – CURRENT DATA COLLECTION ON CHILD SUPPORT DEVIATIONS IS INADEQUATE

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As part of the federally mandated quadrennial review, states are required to review child support award data to determine the frequency of deviations from the states' guidelines. The federal regulations provide that the "state's review of the guidelines [is] to ensure that deviations from the guidelines are limited." Some states with recurrent areas of deviations, such as with residential time or children of other relationships, have incorporated these areas into their guidelines so they are no longer considered as deviations in the federal review.

In 1990, the Washington Legislature directed the Administrative Office of the Courts (AOC) to develop a child support order summary report form. The purpose of this form was to gather information necessary to determine deviations. The 2005 Child Support Schedule Review workgroup found that the forms were not being completed correctly. Additionally, since the forms were held at the county level, the 2005 workgroup concluded it was difficult to retrieve the information for a statewide review. The 2005 workgroup recommended changes to the order summary report form.

As a result of this recommendation, the Legislature, in 2007, amended the statute relating to order summary report forms. The law now requires AOC to develop a form that includes all data that DSHS has determined necessary to perform the quadrennial review. The location of the form was moved to the front of the documents necessary for determination of child support. The courts are required to forward the completed summary order report forms to DSHS. DSHS must store and maintain the order summary report information and prepare a report at least every four years. Although the statute addressed only those cases handled by the courts, DSHS also completes these forms for orders entered through its administrative process as well. DSHS began collecting data from order summary reports for court cases in October 2007, and for DSHS administrative cases in January 2009.

## **Data gathered from the order summary report forms is unusable for deviation reviews**

Also part of the 2007 legislation, the Legislature directed JLARC to review and analyze the data DSHS collected from the order summary report forms. JLARC found that the information received from these forms for both court and DSHS administrative proceedings is incomplete and may not be accurate. While the reasons for the unreliability differ between the court and administrative proceedings, both sets of data are unusable for purposes of conducting JLARC's review and the quadrennial review mandated by the federal government.

As discussed in Chapter 3, Washington treats two of the main topics of this report, residential schedule and children from other relationships, as deviations from the guidelines. Because of the lack of reliable data, JLARC was unable to determine the frequency of deviations based on these two factors.

### ***Data from Court Order Summary Report Forms***

The data from court decisions contain inconsistent entries and also are missing key data elements. For example, over half the records showing a deviation amount do not contain an identified reason for deviation; 41 percent of the records were blank, and 13 percent selected “Does Not Apply,” which only should be selected if there is no deviation.

From the review, JLARC also found other problems with using data from the order summary report forms:

- The law requires that the parties to the action, rather than court officials, fill out the order summary report forms. The parties may not understand what data belongs in each field of the form.
- The parties may fill out the order summary report **before** the order is final, and thus the information may not match what the court ordered.
- The order summary report forms are not always filed with the court, and thus may not be transmitted to DSHS.
- The deviation categories set forth on the order summary report form do not match the deviation reasons listed in statute.

### ***Data from DSHS Administrative Order Summary Report Forms***

The main problem with DSHS administrative data was the high rate of missing records. DSHS informed JLARC that it had issued 11,451 administrative orders from January to July 2009. The order summary report data DSHS provided to JLARC contains 1,470 administrative records for that same time period. Thus, 87 percent of the administrative orders do not have report summary data entered into the DSHS database. DSHS staff informed JLARC that the missing records are due to a combination of programming and data entry errors. Because we did not have a sufficient number of order summary report forms to review, we were unable to make any determination regarding the accuracy of this information or the frequency or nature of DSHS administrative deviations.

### ***Court and DSHS orders provide a more reliable data source for future analysis of deviations***

The actual court and DSHS administrative orders are a more reliable source of information than the order summary report forms. Unlike the summary order report forms which are filled out by the parties, the orders are issued by the judge or DSHS administrative officer and considered the official record of the support obligation. The orders also represent the final determination and take into account any changes which may have occurred during the proceedings. Court orders are always filed with the county clerk’s office and DSHS informed us that such orders are forwarded to the agency in compliance with federal law. DSHS also retains all of its administrative orders. The orders contain all information necessary to conduct the deviation review. However, these orders currently are not compiled into a centralized database to allow calculation of deviation rates.

Many states including Oregon, Minnesota, Delaware, and California use court and administrative orders as the source of their data for conducting quadrennial review.

The following recommendations recognize that the current data collection method of using order summary report forms does not yield sufficient accurate data to perform the deviation reviews required by state and federal law. The Department of Social and Health Services already possesses the actual child support orders which provide a more accurate source of data for the reviews.

**Recommendation 1**

**In support of the 2011 workgroup convened under RCW 26.19.025, the Department of Social and Health Services should use data from child support orders to analyze the application of, and deviation from, the child support guidelines as required by federal law.**

<b>Legislation Required:</b>	No
<b>Fiscal Impact:</b>	JLARC assumes that this can be completed within existing resources.
<b>Implementation Date:</b>	Before the convening of the workgroup in 2011.

**Recommendation 2**

**The Legislature should amend current law to:**

- 1. Specify that the Department of Social and Health Services should use data from the child support court and administrative orders, rather than from order summary report forms, to prepare the report required every four years under RCW 26.18.210;**
- 2. Specify that, beginning in 2011, workgroups convened under RCW 26.19.025 should use this report based on data collected from child support orders in the workgroups' reviews of deviations; and**
- 3. Eliminate any remaining statutory references to order summary report forms.**

<b>Legislation Required:</b>	Yes
<b>Fiscal Impact:</b>	Not Applicable.
<b>Implementation Date:</b>	During the 2010 Session, in order to provide clarification for the workgroup to use the data collected from child support orders in their 2011 reviews of deviations.





# APPENDIX 1 – SCOPE AND OBJECTIVES

## CHILD SUPPORT GUIDELINES REVIEW

### SCOPE AND OBJECTIVES

JULY 31, 2009



STATE OF WASHINGTON  
JOINT LEGISLATIVE AUDIT  
AND REVIEW COMMITTEE

#### STUDY TEAM

Stacia Hollar  
Sylvia Gil

#### PROJECT SUPERVISOR

Keenan Konopaski

#### LEGISLATIVE AUDITOR

Ruta Fanning

Joint Legislative Audit &  
Review Committee  
1300 Quince St SE  
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#### Website:

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e-mail: [neff.barbara@leg.wa.gov](mailto:neff.barbara@leg.wa.gov)

## Why a JLARC Study of Child Support Guidelines?

Child support is based on the concept that both parents are responsible for the financial support of a child even when the child does not live with both parents. Payment of child support is established as a legal obligation either through the courts or through the Department of Social and Health Services (“DSHS.”)

Court ordered child support results from proceedings such as divorce or paternity determinations. DSHS imposes child support in cases where the state is providing public assistance for a child. In either case, the amount of child support is to be determined through guidelines that are set in state statute.

In 2007, the Legislature directed DSHS to establish a work group to review and make recommendations to the Legislature regarding the child support guidelines (2SHB 1009). The Legislature also directed the Joint Legislative Audit and Review Committee (JLARC) to review the recommendations of the workgroup and to inventory relevant research and data regarding the costs of raising children. JLARC was further directed to compare actual child support orders with the amounts in the guidelines, utilizing data collected by DSHS.

## Federal Law Requires States to Adopt Statewide Guidelines

Historically, judges across the country ordered child support based on criteria that varied by local courts. In 1988, federal legislation was passed that required statewide guidelines for child support. Each state has the authority to determine its own specific guidelines. The federal legislation provides that orders for child support may deviate from the guidelines only for reasons set forth in state law.

## States Must Review Guidelines Every Four Years

The 1988 federal law also requires each state to review and, if appropriate, revise its child support guidelines every four years. Federal regulations require each state to consider economic data on the cost of raising children and the application of, and deviations from, the state’s guidelines. Failure to perform an adequate review may result in the loss of certain federal funds.

In 2005, the federal Health and Human Services Department warned Washington State that it might be out of compliance with the four-year review requirement. In response, the state formed workgroups to conduct the review first through a 2005 executive order and then in 2007 through

legislation. The law directed the 2007 workgroup to review specific issues and provide recommendations to the Legislature and the Governor regarding the guidelines. The legislation also required the continued formation of workgroups every four years to comply with the federal review.

The 2007 workgroup provided its report and recommendations to the Legislature and the Governor in 2008. In response, the 2009 Legislature adopted changes to the guidelines.

### Study Scope

JLARC will review the report of the 2007 workgroup for compliance with the statutory mandate. In addition, JLARC will research recognized types of economic methods available for setting state child support guidelines. Finally, JLARC will review the current child support data collected across the state by DSHS.

### Study Objectives

The study will include answers to the following questions:

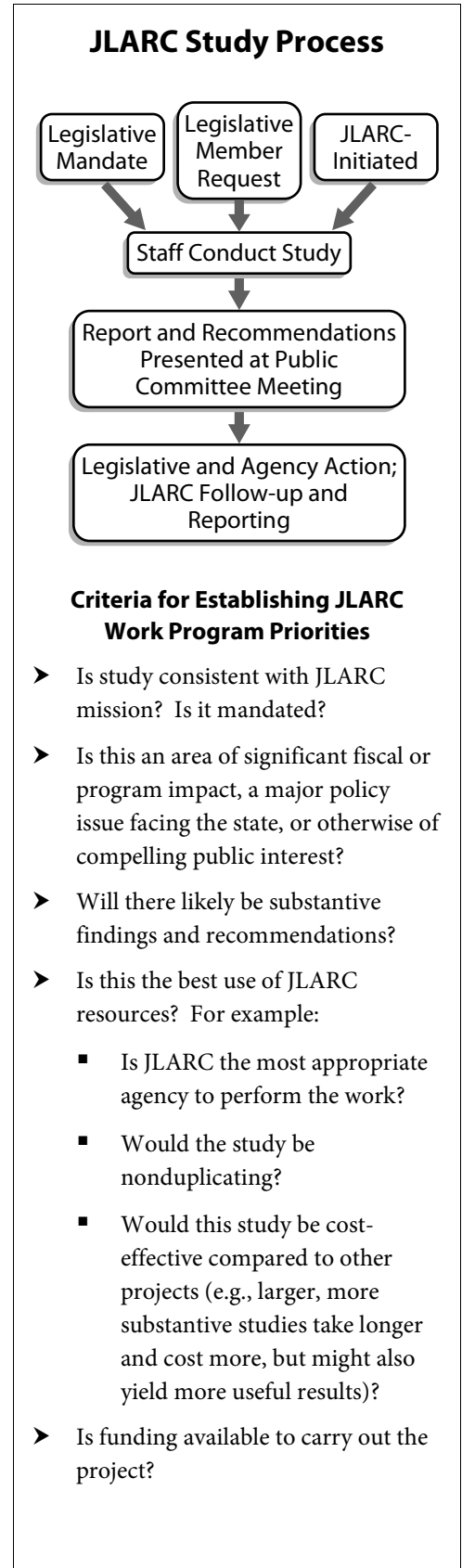
- 1) Did the 2007 workgroup review the specific issues contained in 2SHB 1009? What recommendations resulted from the review?
- 2) To what extent were the recommendations of the 2007 child support workgroup implemented?
- 3) Based on available research, what approaches exist to calculate the cost of child rearing? How does the method utilized in the current Washington guidelines compare with these approaches?
- 4) Based on the information collected by the Division of Child Support since 2007, how have support orders deviated from the state’s child support guidelines?

### Timeframe for the Study

Staff will present the preliminary report in December 2009 and the final report in January 2010.

### JLARC Staff Contact for the Study

Stacia Hollar      (360) 786-5191      hollar.stacia@leg.wa.gov  
 Sylvia Gil          (360) 786-5179      gil.sylvia@leg.wa.gov



## APPENDIX 2 – AGENCY RESPONSES

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- Department of Social and Health Services
- Office of Financial Management





STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Post Office Box 45010, Olympia WA 98504-5010

RECEIVED

DEC 11 2009

JLARC

December 8, 2009

Ruta Fanning  
Legislative Auditor  
Joint Legislative Audit & Review Committee  
PO Box 40910  
Olympia, WA 98504

Dear Ms. Fanning:

This letter is the formal response of the Department of Social and Health Services (DSHS) to the Preliminary Report entitled "Review of Child Support Guidelines," which was provided to DSHS on Monday, November 23, 2009. As requested, we will first discuss the agency's position regarding the recommendations, and then we will provide some additional comments relating to the contents of the report itself.

**Recommendation 1 – Concur**

The primary recommendation is that the workgroups convened under RCW 26.19.05 should use data obtained directly from court and administrative orders to conduct the federally required quadrennial review, instead of the current statutorily-prescribed process of using data collected from the Child Support Order Summary Report. DSHS concurs with this recommendation as it was further refined during discussions between JLARC and the DSHS Economic Services Administration in late November.

The Division of Child Support (DCS) has evaluating whether the current level of FTEs (looking at time and salary, not necessarily at job class) expended at the "macro level" on data entry of information contained in the Child Support Order Summary Report and the Worksheets could be redeployed to pull an appropriate sample size of support orders, perform the data extraction, and perform the necessary analysis within existing resources. Of course, before DCS could perform the review according to Recommendation 1, the legislature would need to implement Recommendation 2 by changing the statutory requirements for the quadrennial support schedule review.

A preliminary review of the recommendation indicates that during SFY06 through SFY09 there were approximately 80,000 administrative orders and 65,000 court orders entered. If we take random samples of the orders, we would need about 385 orders from each of the two populations to reach a 95% confidence level with marginal error within 5% (i.e., 385 administrative orders and 385 court orders). The careful review of the orders in these samples can be used to determine the percentage of orders which contain deviations from the child support guidelines during the four year period as well as the reasons for deviation.

DSHS Response to "Review of Child Support Guidelines"  
December 8, 2009  
Page 2 of 2

**Recommendation 2 – Concur**

As discussed above under Recommendation 1, DSHS concurs with this recommendation and cannot implement Recommendation 1 without the necessary legislative changes suggested in Recommendation 2.

Thank you once again for the opportunity to review the Preliminary Report. We look forward to the rest of this process and the January committee hearing. We have appreciated the courtesy and professionalism of your staff throughout the review.

Sincerely,

  
Susan N. Dreyfus  
Secretary

cc: Tracy Guerin  
Troy Hutson



STATE OF WASHINGTON  
OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

December 18, 2009

**TO:** Ruta Fanning, Legislative Auditor  
Joint Legislative Audit and Review Committee

**FROM:** Victor A. Moore  
Director

A handwritten signature in blue ink, appearing to read "V.A. Moore".

**SUBJECT: PRELIMINARY REPORT – REVIEW OF CHILD SUPPORT GUIDELINES**

Thank you for the opportunity to review JLARC’s preliminary report on Review of Child Support Guidelines. Here is our response to the recommendations in the report.

Recommendation	Agency Position	Comments
1. The workgroups convened under RCW 26.19.05 should use data obtained directly from court and administrative orders to conduct the federally required quadrennial review.	Concur	
2. The Legislature should eliminate all statutory references to the Child Support Summary Order Report.	Concur	

We look forward to your final report. If you have questions, please call Sandi Triggs at (360) 902-0553.

cc: Carole Holland, Senior Budget Assistant, Office of Financial Management  
Sandi Triggs, Budget Assistant, Office of Financial Management  
Alexis Oliver, Executive Policy Advisor, Office of the Governor





# APPENDIX 3 – PRIMARY MODELS FOR CHILD SUPPORT GUIDELINES

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While federal law, in 1989, directed all states to adopt mandatory statewide guidelines, it did not specify the content of the guidelines. All states currently use a variation of one of the three guidelines models set forth below. These models determine how the amount of child-rearing expenses estimated under the methods described in Chapter 3 is to be allocated to the parents.

## **Income Shares**

This model currently is used by 38 states including Washington. The defining feature of this model is that it considers the income of both parents in determining the child support amount. The Income Shares model intends that there should be no economic detriment to the child from the parents' separation. Accordingly, the child is to benefit from the same level of expenditures as if the parents still lived together. This model was developed through a federal study authorized to assist states in adopting guidelines in 1989 and was based on the Washington Uniform Child Support Guidelines developed by Washington's court system in 1984.

## **Percentage of Obligor Income**

Currently in use in some form in nine states, this model considers only the noncustodial parent's income in determining the amount of the support obligation. The support obligation is set as a specified percentage of the noncustodial parent's income. This method was developed prior to 1989 by the state of Wisconsin and was originally intended for use in recouping payments in public assistance cases. Its use has been expanded to include all child support situations within those states that employ it.

## **Melson Formula**

This method, which is used in three states, combines some features of the first two models. The model begins the support determination by reserving to the noncustodial parent an amount for that parent's own support. From the remaining income, a fixed percentage of the noncustodial parent's income is designated as support for the child meant to meet only the basic needs of the child. Finally, to the extent income is still available from the noncustodial parent, an additional percentage is designated as support to allow the child to participate in the standard of living of the parent. This final step is intended to address the income shares method of providing that a child should receive the same level of support as if the parents remained together.



# APPENDIX 4 – CONSENSUS ISSUES AND RECOMMENDATIONS IMPLEMENTED BY ESHB 1794 (2009)

As discussed in Chapter 2, the 2007 workgroup reached consensus on nine of the 14 issues which the law required the workgroup to review. The workgroup, in their final report to the Legislature, proposed statutory language to implement the recommendations. The Legislature, in the 2009 Session, adopted the proposed language with minor changes. The exhibit below set forth the issues and agreed upon recommendations that were implemented by ESHB 1794.

## Whether the Economic Table should include combined income greater than \$5000

### Recommendations

- The entire economic table should be presumptive with no advisory numbers and extend to at least a combined monthly net income of \$1200.

## Whether the Economic Table should start at 125% of the federal poverty guideline and move upward in \$100 increments

### Recommendations

- The table should start at \$1000 which is slightly less than the current value of 125% of the federal poverty guideline.

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

### Recommendations

- The term "health care costs" should replace "medical costs."
- Childcare and health care costs should not be included in the table, but should be allocated proportionately the parents based the combined income.
- The current approach of considering that 5% of health care costs is included in the table should be eliminated so that all health care costs are treated separately.

## Whether the self support reserve should be tie to federal poverty guidelines

### Recommendations

- The self reserve should be set at 125% of the federal poverty guideline.

## 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

### Recommendations

- The workgroup provided proposed statutory language providing guidance on imputation.

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

### Recommendations

- The distinction between ordinary and extraordinary expenses should be abolished and all should be treated as discussed above with ordinary health care costs.

## Whether the amount of the presumptive minimum should be adjusted

### Recommendations

- The presumptive minimum should increase to \$50 per month per child and the statute should be amended to explain the circumstances for deviating below the presumptive minimum.

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

**Recommendations**

- Net income should be retained, but changes were recommended to what is included in net income.

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

**Recommendations**

- The statutory language the workgroup suggested was adopted with slight modification.
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# APPENDIX 5 – SELECTED BIBLIOGRAPHY FOR CHAPTER THREE – JLARC REVIEW OF CHILD SUPPORT RESEARCH FOCUSES ON THREE KEY TOPICS

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## Residential Time

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