

DRAFT REPORT OF THE CHILD SUPPORT SCHEDULE WORKGROUP

Background

Federal Requirements Regarding Child Support Schedules

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

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

Washington State's Child Support Schedule History¹

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

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

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

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

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

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

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

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

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

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

History of Child Support Schedule Reviews in Washington State

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

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

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

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

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

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

The Current Schedule Review under 2SHB 1009

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

Members of the Workgroup

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

The Speaker of the House of Representatives appointed:

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

The President of the Senate appointed:

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

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

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

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

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

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

⁷ *Ibid.*

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

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

Three noncustodial parents:

- Jason Doudt
- Alvin Hartley
- David Spring

Three custodial parents:

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

Overview of Process

Workgroup Meetings

The first meeting of the Child Support Schedule Workgroup was held September 21, 2007. The workgroup continued to meet on a monthly basis until the frequency of meetings was increased in the late summer of 2008, for a total of nineteen meetings. The final “working” meeting of the Workgroup was held December 4, 2008, and the Workgroup met on December 12, 2008 to review the final draft of this Report. The majority of the meetings were held either in the SeaTac Airport Conference Center or near the airport, to accommodate those Workgroup members who had to travel. There were meetings in Olympia during the legislative session. The meetings that included a public forum (see below) were held in Spokane, Vancouver and Seattle.

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

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

Public Participation

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

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

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

- Subcommittee meetings were held by conference call and members of the public were encouraged (on the web page and by listserv) to call in and listen to the discussions.
- As discussed below, all meetings except the September 2007 meeting were videotaped, and DCS made copies available, and the web page linked to video of the three most recent meetings.

“Continuation” of the 2005 Workgroup

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

Prioritization of Issues

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

Videotaping

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

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

Public Forums

From the beginning the workgroup was committed to having this process be an open process, including opportunities for public input. To help accomplish this goal, three public forums were organized and held. The workgroup voted to hold one forum in

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

Seattle and one in Spokane, in order to get input from members of the public in urban centers in both Eastern and Western Washington. The third public forum was held in Vancouver, to make sure that there was an opportunity for input from a more small-town constituency.

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

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

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

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

Subcommittees

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

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

¹² See the section on Videotaping, above.

- Presumptive Minimum Obligation and 45% Limit This subcommittee was chaired by Kris Amblad. Members were Angela Cuevas, Jason Doudt, Commissioner Rich Gallaher, Merrie Gough and David Spring. They also discussed issues around the need standard limitation.
- Residential Credit This subcommittee was chaired by David Spring. Members were Kris Amblad, Jason Doudt, Alvin Hartley, and Kathleen Schmidt.
- Economic Table Kathleen Schmidt and ALJ Robert Krabill co-chaired this subcommittee, which was the result of combining one subcommittee to discuss the basis of the economic table and another to discuss the extent of the table. Members were Kristie Dimak, Jason Doudt, Merrie Gough, Judge Christine Pomeroy and David Spring.
- Children from Other Relationships Kris Amblad chaired the subcommittee. Members were Kristie Dimak, Jason Doudt, Alvin Hartley, ALJ Robert Krabill and Michelle Maddox.
- Determination of Income This subcommittee was made up of Angela Cuevas, Alvin Hartley, Commissioner Rich Gallaher, Merrie Gough and ALJ Robert Krabill.

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

Recommendations

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

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

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

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

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Issues to be Considered by the Workgroup¹³

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

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

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

Workgroup Recommendations on Each Issue

Issue 1:

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

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

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

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

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

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

- A majority of the workgroup felt that all children for whom the noncustodial parent had a legal obligation should be considered. Individuals supporting this position expressed that (a) this was the way to be fair to all children; (b) because all of the noncustodial parent’s children were legally entitled to support from the noncustodial parent, they all should be considered when determining financial support for any one of them; and (c) including later born children reflected the practice in intact families where the birth of later born children would typically result in a reduction in resources available to the first-born child.
- A minority of the workgroup felt that later born children should not be considered in modifying support for the first family. The first family has an economic interest in the stability of the support order and has no voice in the decision by the noncustodial parent to have additional children in subsequent relationships. The custodial parent of a child from a subsequent relationship enters into the relationship knowing of the existence and financial obligation toward the children of the first relationship. Unlike the earlier relationship, the later relationship

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formed and produced children in the context of the noncustodial parent's obligations to another family. ▼

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- A majority of the Workgroup members felt that the children of both the noncustodial parent and of the custodial parent be considered when looking at children from other relationships. (Did we really decide this? Because, I don't remember.)

- Those supporting inclusion of the children of both the parents felt that the noncustodial parent and the custodial parent should be treated “equally” by any consideration of children from other relationships.

- Those who supported including all children did not decide how the parents' other children should be counted:

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- If the Custodial Parent and the Noncustodial Parent have between them two children not in common in addition to the child whose support is being set, then the three-child rate should be used (Not from the subcommittee report. Not discussed. Leave out.)

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- If the noncustodial parent has one other child and the custodial parent has two, then the custodial parent's child should each count as half of a child so that the three child rate is used in this case as well. (Not from the subcommittee report. Not discussed at crunch time. Leave out.)

- There was one suggestion that we determine the amount of children to be used in deciding what size family column in the economic table by adding the number of children of both parents and then dividing by two. (Discussed with some affirmation, not voted on.)

- Those who supported including only the children of the noncustodial parent took the perspective of the payor. A noncustodial parent looks at all his or her children as belonging to the same family. In an intact family, he or she would support them as members of a family with the same number of children; therefore, only the noncustodial parent's total children should be considered in setting support for a new child.

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- One member suggested that any support paid for prior-born children be deducted from the noncustodial parent's income before determining the monthly net income amount on which to set support for the later born children.

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- The subcommittee regarding children from other relationships reviewed the recommendations of the 2005 workgroup. After study and discussion the subcommittee produced a report containing the following majority recommendation:

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

- 1) Children for whom the noncustodial parent has a support ordered obligation;
- 2) Biological children;
- 3) Adopted children;
- 4) Children of the noncustodial parent's current marriage¹⁴ residing with the noncustodial parent a majority of the time; and/or
- 5) Children for whom the noncustodial parent can prove by bank records or cancelled checks that he or she is paying reasonable child support.¹⁵
- 6) Step-children are not to be included in the formula.

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Application of the Whole Family Formula alone may not serve as the basis for a substantial change in circumstances for a modification of a child support order.

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

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

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

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

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

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

A majority of the Workgroup supported use of the Whole Family Formula. As described above, the majority of members felt that all children of both parents should be considered when setting support. (Really? I heard many say they wanted both considered, but not a majority.) Objections to use of the Whole Family Formula centered on the fact that the formula does not consider additional children of the custodial parent, but instead focuses only on the children of the noncustodial parent.

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Issue 2:

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

The Workgroup recommends that:

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

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

- Especially using a table basis formula that does not level off around \$12,000 CMNI, the economic table would have to be extended past \$12,000 to set child support obligations for the highest income families.¹⁷

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Issue 3:

Whether the economic table should start at one hundred twenty-five percent of the federal poverty guidelines, and move upward in one hundred dollar increments

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

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

Issue 4:

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

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

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

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

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

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

²⁰ See discussion below at Issue 6.

Issue 5:

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

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

The Workgroup recommends that child care costs and ordinary health care costs should not be included in the economic table, but should be allocated between the parents based on each parent’s proportionate share of the combined income. [See also Issue 9, regarding extraordinary health care costs.]

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

Issue 6:

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

The Workgroup recommends that:

- The Economic Table should have monthly income starting at \$1,000 per month and go up in \$100 increments
- Should be based on net, not gross, income
- Do away with column A and B
- There should be no advisory part of table, it should ~~all~~ **be** presumptive
- The table able should **extend** beyond \$5,000; at least to \$12,000²¹
- Income shares model – child support divided between parents according to their income

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

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Options identified (in no particular order):

1. The Betson-Engel table from the 2005 Workgroup Report²²
2. The average of the Betson-Engel and Betson-Rothbarth tables, with extensions based on numbers provided by Jane Venohr to the 2005 Workgroup²³
3. The Betson-Rothbarth table from the 2005 Workgroup Report²⁴

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

²² We will provide citations for how to look this up.

²³ We will provide citations for how to look this up.

²⁴ We will provide citations for how to look this up.

4. The Betson-Rothbarth table with adjustments made to even out the curve²⁵
5. The Best Fit Curve, also known as the Krabill Table, after ALJ Krabill²⁶
6. The current table, adopting all of the other consensus recommendations of the Workgroup²⁷
7. The McCaleb Table²⁸
8. Acknowledgement that the Workgroup lacked sufficient knowledge to pick a table and therefore opts to leave it up to the Legislature²⁹
9. A cost-shares model³⁰
10. The average of all available options.³¹

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

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

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

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

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

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

²⁵ We will provide citations for how to look this up.

²⁶ We will provide citations for how to look this up.

²⁷ We will provide citations for how to look this up.

²⁸ We will provide citations for how to look this up.

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

³⁰ We will provide citations for how to look this up.

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

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

Issues identified in the discussion included concerns that:

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

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Issue 7:

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

The Workgroup recommends that the self-support reserve should be tied to the federal poverty guidelines³² and not be based on the need standard as is currently done.

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

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

The Workgroup recommends that Worksheets and instructions should provide a website location³³ to find information about the federal poverty level. The worksheets and instructions should provide direction about how to go from an annualized federal poverty level to 125% of a month's worth of the federal poverty level.

³² See footnote 17 above.

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

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

- The minority suggested that the following language, if added to RCW 26.19.065(2)(b) would alleviate their concerns:
“ . . .when it would be unjust or inappropriate to apply the self support reserve limitation after considering the best interests of the child and the circumstances of each parent.”
- The workgroup member representing the Family Law Executive Committee (FLEC) indicated that it was the position of FLEC that the self support reserve should apply to both parents.

Issue 8:

How to treat imputation of income for purposes of calculating the child support obligation, including whether minimum wage should be imputed in the absence of adequate information regarding income

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

Issue 9:

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

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

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

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

³⁴ See Appendix V for proposed language.

basic child support obligation results in confusion for the parties, and can both over-serve and under-serve the custodial household.

Issue 10:

Whether the amount of the presumptive minimum order should be adjusted

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

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

Issue 11:

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

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

The Workgroup recommends that RCW 26.19.071(5)(g) be revised regarding voluntary retirement contributions.³⁶

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

Issue 12:

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

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

- The Workgroup felt that when there were second jobs or overtime, that a base amount of 40 hours per week would be included in income, but that under certain circumstances, income over 40 hours per week could be excluded.
 - The Workgroup felt that the income over 40 hours could be excluded as long as overtime or a second job was worked to provide for the needs of the current family, to retire past relationship debts or to retire child support debt, and the court found that the income would cease when the debt had been paid off.

³⁵ See Appendix V for the draft statutory language.

³⁶ See Appendix V for the draft statutory language.

³⁷ See Appendix V for the draft statutory language.

- The Workgroup recommended that if the person working overtime or second job asked for a deviation for any other reason, the court should consider the extra income as another basis for deviation. This would mean a revision of RCW 26.19.075.³⁸

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Issue 13:

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

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

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

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

- Whether each of the noncustodial parent's children should be entitled to an equivalent share of the 45% of net income which is available for child support. The majority favored splitting 45% of the noncustodial parent's net income, on a per-child basis, not on a per-case basis. The main concern was that different orders for the same noncustodial parent should not each encumber 45% of the NCP's income, which could result in a noncustodial parent with three families being obligated for support in the amount of 135% of monthly income.

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³⁸ See Appendix V for the draft statutory language.

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

⁴⁰ See draft revision to RCW 26.19.065 is in Appendix V.

- A majority of the workgroup members agreed with the idea that the 45% limitation should apply to all of the NCP's children but expressed reservations about how such a rule could be applied. Two proposals were suggested:

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- When setting support the court sets support for the children in front of it. If the presumptive amount of support causes the total support owed by the non-custodial parent to exceed 45% of the NCP's net income the court may reduce the support award, but not lower than the children's pro-rata share of 45% of net income. It is the obligation of the NCP to initiate modification actions regarding the support for other children in order to reduce the NCP's support obligation to 45%. (I thought the majority favored this solution.)
- The court sets support for the children in front of it considering any presumptive adjustment for other children for children from other relationships. This figure is then tested against the 45% limitation and additional deviations are taken if appropriate. (No one argued for this. It is similar to the status quo.)
- While the Workgroup recognized that the 45% limitation can in reality only be applied to the order currently before the court (other orders may be from other states, for instance, and the Washington court may not have jurisdiction over all of the involved parties), the members could not reach consensus on what the effect on the other orders might be.
- Whether the fact that the 45% limitation is applied in one case should automatically qualify the NCP's other orders for modification (in other words, is the fact that one order applies the 45% limitation a "substantial change of circumstances" such that other orders now qualify for modification regardless of when they were entered), or whether the 45% limitation should only be considered when the other order meets the statutory requirements for modification.
- Whether the good cause ground of "larger families" should be expanded to provide not only for one family with multiple children but for one NCP who has children with several different custodial parents ("multiple families"). (Not discussed. I had assumed "larger families" included families composed entirely of mutual half-siblings.)

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Issue 14:

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

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

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

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

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

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

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

1. A cross-credit with a 1.5 multiplier⁴¹
2. A straight cross-credit with no multiplier
3. A per-day calculation with no multiplier
4. A formula with a variable multiplier

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

- Should there be a threshold before the credit is allowed? Several members felt that any threshold could lead to a cliff effect, and could lead to increased litigation over the parenting plan to make sure that the threshold was met. Those who wanted a threshold supported different thresholds.⁴²
 - Some members argued for no threshold at all, and wanted a residential credit even if the noncustodial parent had the child only one day each year.
 - Some members pointed out that with most formulas, the residential credit is minimal until you get to 20% of the year.

⁴¹ See Appendix VI for a description of the three formulas.

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

- Some members felt that there should be a “significant investment in parenting responsibility” and argued for a 30 to 35% threshold.
- There were conflicting opinions as to how many noncustodial parents actually have more than 20% of time with their children. Some argued that the trend in the courts is going toward more time with the noncustodial parent.
- After the discussion, the Chair polled the group regarding a suggested threshold:
 - 3 members thought there should be no threshold
 - 1 member thought the threshold should be 70 nights
 - 2 members thought the threshold should be 100 overnights
 - 6 members thought the threshold should be 120 overnights

* There is consensus that the threshold should not exceed 120 overnights.

● Should there be a multiplier used?

- Those arguing for a multiplier indicated that shared parenting results in increased costs to both households; even though income does not increase, the percentage of income each parent spends on the child increases.
- Those arguing for no multiplier indicated that since the income of the parties does not rise, there is no increase in the amount either parent can spend on the child.
- The variable multiplier was proposed by the economist, Dr. Betson, who argued that there should be recognition of the fact that some expenses are fixed and others are variable, and that the impact on the households varies with the amount of time spent with each parent. Ultimately, this proposal was rejected by the Workgroup because the members felt it was too complicated. (I understand it; I just don't like it.)

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

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