

# Minutes

Child Support Schedule Workgroup  
Friday, May 19, 2023 9:00am - 3:00pm

Green River College  
12401 SE 320th St, Auburn, WA 98092  
Salish Hall Room 254

Meeting also available on Teams Webinar | [Miro Board](#)

## Attendance

<b>Members appearing on Teams</b>	Tami Chavez, Kimberley Loges, Kathleen O'Shea-Senecal, Joy Moore, Jennifer Turner, Kaha Arte, Senator Matt Boehnke, Bernardene Charley, Terry Price
<b>Members appearing in person</b>	Janelle Wilson, Sharon Redmond, James Clark, Amy Roark, Raymond Allen, Carol Ann Slater, Tui Shelton, Anneliese Vance-Sherman
<b>Members not appearing</b>	Senator Claire Wilson
<b>Division of Child Support Staff</b>	Josselyn Green, Rachelle Jennings, Rachel Tumbleson, Brady Horenstein, Lucas Camacho, Janina Oestreich, Ian Hall, Jake Hughes
<b>Public Attendees</b>	Gordon Bock, Susanne

## Agenda Details

### 1. Welcome

- a. Agenda Review
- b. Icebreaker – What's your favorite way to beat the heat?

### 2. April 28th Meeting Summary

- a. Public Forum Dates and Location
  - July 26<sup>th</sup>, 12:00pm tentatively at WSU Everett
  - July 27<sup>th</sup>, 6:00pm tentatively at Spokane Falls Community College
  - Final info will be added to calendar online and in email
  - Agreed to hold another meeting on August 18<sup>th</sup> to build consensus for final recommendations
  - Hold August 24<sup>th</sup> for a tentative virtual meeting in case there is a sticking point or something to review. May not be necessary if we achieve consensus before then.
- b. Communications
  - The DCS Communications team put together draft text for a flyer for the forums.
    1. Includes QR code linking to CSSW materials page
    2. Might require more plain speech to explain some terminology
    3. Should clarify that the forums are for custodial and noncustodial parents alike as well as parent advocates and caregivers.
    4. A PDF version will be available once the final draft is completed for members to distribute.
    5. DCS staff will look into if childcare can be provided, though it's hard to predict how many children will need to be cared for.
    6. Needs to be specific about what we are asking people to do.

### 3. Subcommittee Report Out: Reviewing the Residential Schedule Credit

- a. This subcommittee analyzed [the 2015 workgroup’s recommendations](#) on this topic and agreed with them, with one exception.

Similarities	Differences
<ul style="list-style-type: none"> <li>• The Residential Schedule Deviation should be updated to reflect current trends in parenting plans and residential schedules and that it should be deviation instead of an adjustment, with overnights being used as the unit of measurement.</li> <li>• There should be no threshold to get credit for overnights.</li> <li>• The process to obtain the deviation should be made available in both the court and administrative processes.</li> <li>• DCS should be able to apply the deviation upon party agreement. Disagreements can be handled by an Administrative Law Judge (ALJ) who can apply it based on Findings of Fact.</li> <li>• The process should be available regardless of whether or not the parties have a parenting plan.</li> <li>• The deviation should not be granted if it would provide insufficient resources to the CP or if the children receive TANF.</li> <li>• There should be enforceable remedies if parent receiving the deviation does not spend that time with the children. This group recommends making a modification to RCW 26.09.075 to qualify a deviation from the residential split as a significant change in circumstances to justify a modification.</li> <li>• The Plotnick formula should be used apply the deviation to the BSO and should be made easy to understand for unrepresented parties. (See page 27 on the <a href="#">2015 Workgroup’s Report</a> for more details about the Plotnick formula.)</li> <li>• Contempt should be an avenue for enforcement if the deviation is used to dodge child support. This group believes this should be a matter of policy.</li> </ul>	<ul style="list-style-type: none"> <li>• 8 hours should be considered equivalent to overnights to address parents who spend time with their children during the day.</li> <li>• In calculating the residential schedule, there should be a specific formula expressed as a table, based on overnights or 8 hours.</li> <li>• Support orders should contain standard language to warn what might happen if the residential schedule isn’t followed.</li> </ul>

a. Discussion

- Should there be a percentage threshold as to what constitutes a violation of the schedule? The 2015 group set no thresholds, leaving such matters to be resolved case by case.
  1. Using a percentage threshold will help to avoid loopholes.

2. Should not have to wait too long (such as 6 months) in order to be able to apply for contempt.
  3. Having no threshold would likely to lead to harassment via litigation.
  4. Too low of a threshold would overtax the courts.
  5. 10% threshold would be easy to calculate.
    - a. What happens if NCPs game the system and stay at 9% less than the schedule consistently?
      - i. Could be addressed via modification.
  6. Restrict parents who have previously violated parenting plans from getting the credit?
- What is the specific time period of noncompliance before redoing the administrative or court process?
  - Should there be a lookback period for parties to receive credit for missed residential time? For NCPs who don't adhere to plan, can we retroactively modify the order?
    1. Retroactive modifications not allowed in WA, so the group would need to work around that.
    2. Using the abatement statute, this language can be included prospectively in the original order.
- b. Disagreements
- A parenting plan should be required for the deviation.
    1. This largely removes the administrative process from being an option when seeking a residential schedule deviation within an order, as the Administrative Law Judge can't address custody. Changing that rule would require significant changes in state statute.
    2. Would a temporary parenting plan be sufficient? Permanent ones could take significant lengths of time.
  - Disagreement over the 8 hour stipulation. Counting hours might overcomplicate matters.
  - Can DCS enter parenting plans administratively if we ask legislation or does that violate a federal rule? A lot of these parties don't start court cases.
    1. Parenting plans are outside of the purview of assessing child support.
  - The current proposal would depend on statements from the parties, which may be insufficient evidence to create a deviation.
    1. Office of Administrative Hearings tries to mirror the court process and would ask for affidavits. Parties would be testifying under oath. The group does not recommend instituting the credit on a default.
    2. This could be a finding of fact in order based on statements that could be modified in court.
  - How many people misuse/misstate information? How do you establish credibility based off a worksheet?
    1. Office of Administrative Hearings judges are trained adjudicators, and the parties are placed under oath. Findings of Fact based on parties' testimony is legitimate and affirmed by Superior Courts.

## **Break**

### **4. Subcommittee Report Out: Addressing the Self Support Reserve & Adding Worksheet Deductions**

- c. Exploring different calculation approaches

- Arizona uses 80% of full-time monthly minimum wage earnings. This is based on a study out of California that found that orders that charge more than 20% of the NCP's income result in lower adherence.
  - Alternatively, we could recommend a 2 tier approach – 150% of federal poverty level for the most populous counties (over 500,000).
- d. Should we set the Self Support Reserve based on county? Currently it is the same statewide. Should there be a presumption that it's more expensive to live in specific counties?
- This risks creating forum shopping, or introducing an incentive to take jobs in certain locations to game the system. Rural counties might cost less, but they spend more on gas because things are further apart.
    1. The group largely agrees with this sentiment. Not sure if this feasible with a community as transient as ours. The benefit of having one throughout the state exceeds the potential benefits of making the change.
  - Could the group look into using [United Way's ALICE threshold?](#) Addresses people slightly above the poverty threshold with tight finances.
    1. Preferable to use a marker that's predictable.
- e. Worksheet Deductions
1. Adding Family and Medical Leave Act (FMLA)
    - a. The group recommends editing RCW 26.19.071 (5)(i) to account for state insurance premiums for FMLA actually paid and specifies that items deducted from gross income under that subsection shall not be a reason to deviate from the standard calculation.
  - Recommending amending RCW (incarceration abatement) to include court mandated substance abuse treatment.
    1. Treatment is not usually long term. What is the threshold?
      - a. 6 months of combined inpatient/outpatient.
    2. This is modeled after abatement, so support would similarly go down to \$10/month while they are in treatment.
    3. Exceptions allowed for well-off NCPs who have other sources of income.
    4. Are the procedural protections the same as incarceration? For court-ordered treatment, the subcommittee might want to think how to place inside that statute. That statute requires us sending a notice of abatement, and people can request hearing if they think it's not appropriate.
      - a. Alternatively, could create a parallel statute.
    5. What happened to adding spousal maintenance?
      - a. Waiting on data on how many cases have maintenance attached.
- f. Definitions for Basic Support Obligation (BSO)
- Clarify what educational expenses BSO does not include so separate line items can be created under line 11 in the worksheets.

## 5. Subcommittee Report Out: Changes to the Economic Table

- a. Creating an entirely new model for the table is out of scope.
- b. Idea is to increase the presumptive minimum threshold and expand the table to \$50,000 combined net monthly income.
- c. Clarified language regarding rounding.
- d. The expanded table accounts for three parent worksheets.
- e. [Support Table Analysis and Models](#)

- The above worksheet combines work from two subcommittees.
- Why does the table have support going down with the more money you make?
  1. The subcommittee will discuss this further.
- f. It's possible to have 3 or more obligors.
  - Yes, as of Jan 2023. This came out of the 2018 legislative session where they allowed more people to hold parental rights, so all parties would have obligations.
  - This would affect the residential schedule credit if you have more than 2 people involved.

**6. Transition to Breakout Room / Lunch**

**7. Subgroup Meetings & Working Lunch**

- a. [Residential Credit](#)
- b. [Self-Support Reserve](#)
- c. [Economic Table](#)

**Break**

**8. Subcommittee Report Out: Reviewing Residential Credit**

- a. A parenting plan should not be required in order to pursue a residential schedule deviation

Arguments against	Counterarguments
<ul style="list-style-type: none"> <li>• Domestic Violence (DV) may prevent a parent from participating because they can't safely explain their residential schedule. The court process is required to guarantee safety. DV survivors have more resources on the court side than on the administrative side.</li> <li>• Limited English Proficiency (LEP) clients also have more resources in the judiciary.</li> </ul>	<ul style="list-style-type: none"> <li>• A DV survivor can only get a restrictive parenting plan if they advocate for themselves, whether it's done administratively or through the judiciary.</li> <li>• The Office of Administrative Hearings has phone hearings to protect DV victims.</li> <li>• The Office of Administrative Hearings has similar resources as the judiciary for LEP parties.</li> <li>• Low-income parties might not be able to afford the court process.</li> <li>• While it is indeed important to protect DV survivors and address LEP parties, the majority of people this would benefit don't fall into those categories.</li> <li>• The recommendation wouldn't stop parties from going through the court if they'd prefer to do so.</li> </ul>

- If a parenting plan is required, this recommendation would be totally taken out of the administrative arena.
- Why does this have to be unanimous?
  1. Lack of consensus does not omit the recommendation from the report. It identifies recommendations that reached consensus and ones that didn't. Consensus typically makes the ideas more workable by legislature.
- g. Should there be a threshold for noncompliance? Pattern?
  - All members agree there should be a threshold.
- h. Should the threshold be a 10% or greater deviation over 3 months?
  1. 20% was suggested as an alternative to prevent excessive court action.

a. The group agreed that 20% is a preferable figure.

- Over 3 months

1. The group agreed that 3 months should be the minimal time required to pursue such action.

- Discussed if this should come with changes to RCW 26.09.260 (modification policy) in order to prevent issues

**9. Subcommittee Report Out: Addressing the Self-Support Reserve & Adding Worksheet Deductions**

a. Tabled due to time.

**10. Subcommittee Report Out: Changes to the Economic Table**

a. Tabled due to time.

**11. Public Comment**

a. No public comment.

**12. Wrap Up and Closing**

a. The group agreed to schedule a virtual follow-up meeting to finish the report outs that we were unable to get to today.

- Meeting to be held June 6<sup>th</sup> 4:00pm-5:00pm

b. Next in-person meeting at Green River Community College on June 23<sup>rd</sup> at 9:00am.