

Subcommittee Final Report

Overview

The Self Support Reserve Subcommittee's mission was to evaluate the current Self Support Reserve and determine if it is sufficient to support a single person household and to determine what reasonable worksheet deductions are. The subcommittee chose to focus its efforts on these 3 areas:

1. Recommending a Self-Support Reserve calculation that reflects the actual cost to support a single person household and will adjust as easily as the cost of living adjusts.
2. What expenses should be considered as deductions on the worksheets and how can the deductions be added so the Division of Child Support can easily calculate and enforce them.
3. Consideration of a child support abatement framework, similar to that for incarcerated persons, to aid recovery for those with court-ordered behavioral health and substance use disorders.

Key Issues

Key issues regarding the Self Support Reserve:

1. The Federal Poverty Guidelines are developed using the Official Poverty Measure (OPM) which compares an individual's or family's gross income to the Poverty Threshold, which is based off of the cost of a minimum food diet for a household of 3 in 1963 and is then adjusted by family size, composition and age. The OPM is updated annually based on the Consumer Price Index. (Renwick, 2013)
2. There is no definition for what basic needs are, only poverty thresholds that are dollar amounts used to determine poverty status. (www.census.gov, 2023)

Key issues regarding worksheet deductions:

1. There is no definition of educational expenses in worksheets line 11 b. (www.courts.wa.gov, 2023)
2. The federal government counts maintenance payments as income to the payer, Washington counts maintenance payments as income to the payee. Should Washington's laws be updated to match the federal laws? (RCW 26.19.071 Standards for determination of income, n.d.) (Topic No. 452, Alimony and Separate Maintenance, n.d.)

Key issues regarding child support abatement:

1. Treatment for substance use disorders and mental health disorders should be considered as noncustodial parents are unable to work or their work hours are reduced in order to participate in treatment programs. Without treatment many struggle to find gainful employment and pay child support consistently. (Lauren Antelo and Annette Watters, 2019)

Findings and Recommendations

The subcommittee makes the following recommendations:

1. Increasing the Self Support Reserve from 125% of the Federal Poverty Level (FPL) to 180% of the FPL. The subcommittee considered the Asset Limited, Income Constrained, Employed (ALICE) model (United for ALICE, n.d.), Arizona's model which uses 80% of minimum wage and the Self Sufficiency Standard. The ALICE model represents households above the poverty threshold but with severely limited income. 80% of minimum wage is based off research done in Orange Co, California (Takayesu, 2011) showing noncustodial parents are less likely to pay child support when their Monthly Ordered Amount (MOA) exceeds 20% of their income. ESA Management Analytics and Performance Statistics (EMAPS) completed their own research (Daisuke Nagasi, 2022) around this and found the same to be true for noncustodial parents in Washington. They also found that a 10% increase in the ratio of monthly orders to wages translates to about a 0.4% drop in compliance. The Self Sufficiency Model (The Standard, n.d.) is determined to be the income you would need to meet your basic needs without any public or private help. The ALICE model would have monthly income at \$2,269, 80% of current minimum wage would be \$2,183 and the Self Sufficiency Model would be \$2,677. The group felt it would be an easier lift to adjust our current model than it would be to adopt a new model. Increasing the SSR to 180% would bring monthly income to \$2,187 which is close to the monthly income of the other models which better represents today's cost to support a single person household.
2. Amend RCW 26.19.071: Standards for determination of income as follows to include state insurance premiums actually paid as an expense to be deducted from gross income.

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

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered maintenance to the extent actually paid;
- (g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and
- (h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement;

(i) Other deductions mandated by law.

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

3. Amending RCW 26.19.011: Definitions as follows to include what is not included in the basic support obligation.

"Basic Support Obligation" means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed. Basic child support obligation does not include either mandatory educational expenses, childcare expenses or dental and healthcare expenses.

5. The subcommittee has reviewed current Washington and federal law regarding maintenance income. The subcommittee also reviewed data from the Division of Child Support showing 2% of its cases for the order review period, 8/2018 – 7/2022, have Divorce Decrees with child support and maintenance ordered. The subcommittee recommends not changing the law so maintenance income continues to be counted as income to the person who is actually receiving the maintenance payments.
6. Create a new RCW where noncustodial parents who are incapacitated can have their child support abated, define incapacitated in the RCW and modify the child support order to include abatement language for incapacitated individuals.

Definition of incapacitation:

Incapacitation is the inability to pay child support due to a parent's inability to work temporarily. Incapacitation includes court ordered treatment for a behavioral health disorder as defined in Chapter 71.05 or serious injury.

See RCW 71.05.020(7): Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder.

Child Support Order language:

16. Temporary reduction if incarcerated **or incapacitated** (abatement)

Important! Read Support Abatement Warnings at the end of this order.

If the person who owes support is incarcerated:

- The total monthly child support amount may be temporarily reduced to \$10 while the person who owes support is in jail, prison, or a correctional facility for at least six months (or serving a sentence of more than six months), and has no income or assets available to pay the support. RCW 11.130.255; RCW 26.09.135, .320; RCW 26.26B.030 Mandatory Form (07/2021) FL All Family 130 Child Support Order p. 10 of 18
- If reduced, the support amount will be \$10 a month.
- Beginning the fourth month after the person who owes support is released, support will be 50% of the original amount, or \$50 per child, whichever is more.
- One year after release, support will return to the original amount in section 10.
- Reinstatement of the support amount at 50% does not automatically apply, if a Petition to Modify Child Support Order is filed during the period of abatement.

[] The person who owes support qualifies for abatement **due to incarceration**. Monthly child support is temporarily reduced (abated) to \$10 and will be reinstated as described above.

If the person who owes support is incapacitated:

- The total monthly child support amount may be temporarily reduced to \$50 while the person who owes support is in treatment for a maximum of six months, and has no income or assets available to pay the support.
- If reduced, the support amount will be \$50 a month.
- Six months after treatment begins, support will return to the original amount in section 10.

[] The person who owes support qualifies for abatement due to incapacitation. Monthly child support is temporarily reduced (abated) to \$50 and will be reinstated as described above.

New RCW:

Child support—Procedures for abatement based on incapacitation—Rebuttable presumption of inability to pay—Reinstatement of support obligation.

- (1) When a child support order contains language providing for abatement based on incapacitation of the person required to pay child support, there is a rebuttable presumption that an incapacitated person is unable to pay the child support obligation. Unless the presumption is rebutted, the provisions of subsection (3) of this section apply.
- (2)(a) If the child support order does not contain language providing for abatement based on incapacitation of the person required to pay support, the department, the person required to pay support, the payee under the order, or the person entitled to receive support may commence an action in the appropriate forum to:
- (i) Modify the support order to contain abatement language; and
 - (ii) Abate the person's child support obligation due to current incapacitation for a maximum of six months.
- (b) In a proceeding brought under this subsection, there is a rebuttable presumption that an incapacitated person is unable to pay the child support obligation. The department, the payee under the order, or the person entitled to receive support, may rebut the presumption by demonstrating that the person required to pay support has possession of, or access to, income or assets available to provide support while incapacitated.
- (c) Unless the presumption is rebutted, the provisions of subsection (3) of this section apply.
- (3) If the court or administrative forum determines that abatement of support is appropriate:
- (a) The child support obligation under the order in front of the court will be abated to fifty dollars per month, without regard to the number of children covered by that order, while the person required to pay support is undergoing court-ordered treatment. Either the department, the payee under the order, or the person entitled to receive support may rebut the presumption by demonstrating the person required to pay support has possession of, or access to, income or assets available to provide support while incapacitated.
 - (b) If the incapacitated person's support obligation under the order is abated as provided in (a) of this subsection, the obligation will remain abated to fifty dollars per month through the last day of the six month after the abatement has been approved.
 - (c) After abatement, the support obligation of the person required to pay support under the order is automatically reinstated at one hundred percent of the support amount provided in the underlying order.
- (i) Upon a showing of good cause by a party that the circumstances of the case allow it, the court or administrative forum may add specific provisions to the order abating the child support obligation regarding when and how the abatement may terminate.
 - (ii) During the period of abatement, the department, the person required to pay support, the payee under the order, or the person entitled to receive support may commence an action to modify the child support order under RCW 26.09.170 or 74.20A.059.

- (d) If the incapacitated person's support obligation under the order has been abated as provided in (a) of this subsection and then has been reinstated under (c) of this subsection:
- (i) Either the department, the person required to pay support, the payee under the order, or the person entitled to receive support may file an action to modify or adjust the order in the appropriate forum, if:
- (A) The provisions of (c)(i) and (ii) of this subsection do not apply; and
- (B) The person required to pay support has completed treatment.
- (ii) An action to modify or adjust the order based on the completion of treatment of the person required to pay support may be filed even if there is no other change of circumstances.
- (4) The effective date of abatement of a child support obligation based on incapacitation to fifty dollars per month per order is the date on which the person required to pay support is approved for abatement by the court. However:
- (a) The person required to pay support is not entitled to a refund of any support collections or payments that were received by the department prior to the date on which the department is notified of the incapacitation; and
- (b) The department, the payee under the order, or the person entitled to receive support is not required to refund any support collections or payments that were received by the department prior to the date on which the department is notified of incapacitation.
- (5) Abatement of a child support obligation based on incapacitation of the person required to pay support does not constitute modification or adjustment of the order.
- (6) Abatement of a child support obligation based on incapacitation of the person required to pay support shall only be approved one time in a person's lifetime, regardless of whether their abatement lasted the full six months.

Citations

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