

# SENATE BILL REPORT

## SB 6399

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As of January 27, 2010

**Title:** An act relating to the calculation of child support.

**Brief Description:** Concerning the calculation of child support.

**Sponsors:** Senator Regala.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 1/22/10.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Shani Bauer (786-7468)

**Background:** Federal law requires child support obligations to be calculated pursuant to a set of child support guidelines or formula established by the state. The formula must result in the calculation of an appropriate amount of support in the majority of cases and must be reviewed at least once every four years to ensure that its application results in the determination of appropriate child support amounts. As part of the review, the state must take into consideration economic data on the cost of raising children and analyze case data on the application of the guidelines.

The formula for computing child support and the related economic table of child support amounts is found in Washington law and must be updated by the Legislature. In 2007 the Legislature required forming a work group to examine current laws, administrative rules, and practices regarding the calculation of child support. The work group came to several consensus recommendations which were adopted into law in the 2009 Legislative Session. A majority of the work group supported various recommendations but could not come to final consensus.

Economic Table. Washington's economic table for child support has not been updated since the early 1990s. As a result of federal concerns, in 2005 the Division of Child Support contracted for an economic analysis of Washington's child support schedule and conducted a work group to recommend changes to the guidelines. Although the analysis of Policy Studies, Inc. recommended an updated economic table, the work group could not come to consensus on this issue. After taking another look at the table, in 2007, the work group came to several recommendations.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

*Extend the upper end of the economic table.* The economic table contains recommended basic child support amounts corresponding to the combined monthly net income of both parents. The upper end of the economic table was increased to \$12,000 (an average income of \$6,000 per parent) in the 2009 Legislative Session consistent with the consensus recommendation of the work group. When combined monthly incomes exceed the upper end of the table, the court may exceed the presumptive amount of child support upon written findings of fact. A majority of the members recommended extending the table to \$15,000 and many members recommended the scale be extended to \$20,000.

*The economic table should not distinguish between age groups.* Currently, the economic table contains different basic child support amounts depending on whether the child is between 0-11 years old or 12-18. The group unanimously agreed that the table should be collapsed. However, the group could not come to consensus on how this should be accomplished.

*The economic table should be updated to reflect current economic data.* Three separate models were identified as providing a model for updating the economic table. First, an average of the Betston-Englebert and Betson Rothbarth scales, two of the leading models used by states in formulating economic scales; second, the Betson-Rothbarth scale as adjusted by an economist on the work group; and third, an adjusted table formulated by another member of the work group representing the Administrative Law Judges.

The Joint Legislative Audit & Review Committee (JLARC) recently published a preliminary Review of the Child Support Guidelines. The report contains a thorough explanation of the different child support models and can be found at: <http://www.leg.wa.gov/JLARC/AuditAndStudyReports/2010/Documents/ChildSupportGuidelinesProposedFinal.pdf>

Adjustments to Support. The current guidelines allow the fact-finder to deviate from the presumptive amount of support calculated through the guidelines based on several factors. Under federal law, the state is required to assess the frequency of deviations used to ensure the guidelines address a majority of circumstances.

The work group discussed two factors that tend to require deviation from support on a frequent basis: (1) the residential time of the children spent with the other parent; and (2) other children supported by the parent.

*All children supported by the noncustodial parent should be considered in the support order.* The work group unanimously agreed that children born prior to the birth of the children for whom support is being calculated should be considered in the child support calculation. A majority of the work group believed that all children for whom the parent owed a duty to support should be considered.

*The guidelines should include a formula for a residential credit based on the amount of time the child spends with the noncustodial parent.* The credit should not be granted if the adjustment would result in insufficient funds for the household receiving support. The work group reached consensus that a credit should be given, but could not come to consensus on how a formula should be applied. A majority of the work group recommended the credit be

applied using a cross-credit with a 1.5 multiplier. The group had no majority recommendation as to what percentage of time should be required before the formula would apply, although a threshold of 33 percent received the most votes.

*Child support formula when the parents each have custody of a child to the relationship.* The current work group did not address this issue in their recommendations, however, since 1995 fact-finders have used a formula set out in caselaw known as the Arvey formula.

Limitations on Amount of Child Support Ordered. *Child support owed for all of the parent's biological or legal children should not exceed 45 percent of net income except for good cause.* The work group reached consensus on this issue, but could not reach consensus on how this should be applied. The 45 percent limitation, as applied to all of the obligated parent's income was adopted in the 2009 Legislative Session. As adopted, each child is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court. Before determining whether to apply the 45 percent limitation, the court must consider whether it would be unjust to apply the limitation after considering the best interest of the child or children and the circumstances of each parent.

*The self-support reserve should be set at 125 percent of the federal poverty guidelines.* The basic support obligation of a parent, excluding expenses such as child care, health care and special child rearing expenses, may not reduce a parent's income below 125 percent of the federal poverty level. This recommendation was adopted in the 2009 Legislative Session.

**Summary of Bill:** The statewide child support schedule is updated to reflect an average of the Betson-Rothbarth and Betson-Engel estimates of the costs of raising a child and extends to combined monthly net incomes of \$20,000.

Definitions are added. Adjustment is defined separately from deviation as the application of the child support guidelines that results in a child support obligation that is more or less than the standard calculation. Self-support reserve is defined as 125 percent of the federal poverty guidelines for one person published annually in the federal register by the United States Department of Health and Human Services.

Neither parent's current child support obligation owed for all the biological children, including the basic child support obligation and the parent's proportionate share of other court-ordered child support obligations, such as day care and health care expenses, may exceed 45 percent of net income.

The residential schedule of the children, and children from other relationships, are removed from consideration as deviations. If there is a written parenting plan or court order that the child spend 33 percent of the time in a calendar year with the obligated parent, the court must make an adjustment using the cross-credit method after application of a 1.5 multiplier. The court may not adjust the calculation if the adjustment results in insufficient funds to the household receiving support. If the obligated parent fails to exercise parenting time in excess of 33 percent in any six-month period, the parent receiving support may move to remove the adjustment from the child support calculation.

If a current written parenting plan or court order provides for split residential placement of the children, the court must apply the Arvey formula.

When the obligated parent before the court has children from other relationships for whom the parent owes a duty of support, the court must use a formula which takes into account the other children of the parent to adjust the child support obligation. Adjustments must be based on a consideration of the total circumstances of both households.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 2010.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: We appreciate the changes in HB 1794 last session, but that bill did not address the collapse of the two tables into one category, the extension of the table up to \$20,000 or the use of deviations to address other children of the parties or residential time. In extending the table to \$12,000 the child support amounts were extrapolated based on the rest of the table. Research states that this is improper. Extension of the table should be based on current economic data on the cost of raising children. Averaging the models for the economic table is a fair way of addressing the fact that one is considered to be high and one is considered to be low.

Deviations are more appropriately considered as adjustments to support with some guidelines. Courts have broad discretion in treating other children of the parent as deviations, so you get a wide variety of approaches and little consistency. This bill provides an approach to address children from other relationships, and when a child spends a significant amount of time with the obligated parent.

CON: HB 1794 last year was based on the consensus recommendations of the workgroup and just went into effect this last October. This bill represents the non-consensus items of the workgroup and undermines the provisions of HB 1794. The workgroup recognized clearly identified flaws in the data sets used in the models for creating these two tables. These tables result in substantially higher child support amounts. In our current recession, families are battered by unemployment. Use of these tables will result in greater litigation and will make obtaining child support more contentious. Children will eventually pay the price of additional legal fees. Parents want less litigious child support proceedings, not more.

Successful child support collection requires orders that consider the obligated parent's ability to pay as well as the needs of the child. The proposed schedule moves too far away from considering the obligated parent's ability to pay. The bill will also likely result in increased modification requests, resulting in increased costs and workloads for DCS.

**Persons Testifying:** PRO: Kathleen Schmidt, Family Law Section, Washington State Bar Association.

CON: Colleen Sachs, Custodial Parent Member, 2007 Child Support Workgroup;

**Persons Signed In, Unable to Testify, & Submitted Written Testimony:** CON: Katie Nelson, WA Federation of State Employees.