

# HOUSE BILL REPORT

## HB 1794

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to calculating child support.

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

**Sponsors:** Representative Moeller.

**Brief History:**

**Committee Activity:**

Judiciary: 2/12/09, 2/19/09 [DPS].

**Brief Summary of Substitute Bill**

- Changes the child support economic table by: (1) removing the presumed 5 percent of ordinary health care costs from the basic support amount; (2) starting the table at \$1,000 of combined monthly net income with a \$50 presumptive minimum amount of basic support; and (3) expanding the table to \$12,000 of combined monthly net income.
- Allows income from overtime and second jobs to be excluded from calculating gross monthly income if certain conditions are met and allows a parent to deduct up to \$5,000 of voluntary retirement contributions under certain circumstances.
- Makes other changes to the child support laws regarding imputing income and limitations on the amount of support ordered.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Trudes Tango (786-7384)

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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.*

## **Background:**

A parent's child support obligation is determined by reference to a child support schedule. The schedule includes standards, work sheets, and an economic table that establishes a presumptive amount of child support based on the combined monthly net income (CMNI) of both parents.

To calculate net income, each parent fills out work sheets identifying his or her sources of income and deductions from that income. Once the CMNI is determined, the total monthly support obligation is established by reference to the economic table.

The specific amounts in the table are based on the number of children in the family and their age. This amount is referred to as the "basic child support obligation." The basic child support obligation is allocated between the parents based on each parent's share of the CMNI.

After the court determines the basic support obligation, the court considers additional expenses, such as day care, and allocates those expenses based on the parent's share of the basic support obligation. After the court determines that presumptive amount (called the "standard calculation"), the court may consider any reasons to deviate from the standard calculation.

The economic table is presumptive for a CMNI up to and including \$5,000. The table goes up to a CMNI of \$7,000. The amounts in the table are advisory and not presumptive when CMNI is between \$5,000 and \$7,000.

### Health Care Costs.

Ordinary health care expenses are included in the economic table. The table assumes that 5 percent of the monthly amount due is spent on ordinary health care. Monthly health care expenses that exceed 5 percent of the support obligation are considered extraordinary and are allocated between the parties according to their proportionate share of the support obligation.

### Determination of Income.

All income and resources of each parent's household must be disclosed and considered by the court when determining the child support obligation. Overtime, income from second jobs, and bonuses are considered in the calculation of gross income.

Some expenses may be deducted from gross income. Up to \$2,000 per year in voluntary pension payments may be deducted if: (1) they are actually made; and (2) the parent made the contributions for the two tax years preceding the earlier of the tax year in which the parties separated or filed for divorce.

### Imputation of Income.

The court will impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. In the absence of information to the contrary, a parent's imputed

income will be based on the median income of year-round full-time workers as derived from reports from the U.S. Census Bureau.

#### Limitations on Amount of Child Support Ordered.

There is an upper limit and a lower limit to the amount of child support that can be ordered.

*Limitation of 45 percent of parent's net income:* Neither parent's total child support obligation may exceed 45 percent of the parent's net income except for good cause shown. Good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, and special medical needs.

*Presumptive minimum support obligation:* When the parents' CMNI is less than \$600, a support order of not less than \$25 per child per month will be entered for each parent unless the obligor parent establishes that it would be unjust or inappropriate to do so.

*Self-support reserve amount:* A parent's support obligation must not reduce his or her net income below the "need standard" for one person as established by the DSHS, except for the presumptive minimum payment of \$25. The DSHS establishes need standards for the purposes of implementing public assistance programs. The need standard may vary by geographical areas, program, and family size.

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#### **Summary of Substitute Bill:**

A child support table is created that is based on amounts in the existing table, but that: (1) starts at a CMNI of \$1,000 and goes up to \$12,000 of CMNI; (2) removes the presumed 5 percent of ordinary health care costs from the basic support amount; and (3) is made entirely presumptive, rather than advisory, for a CMNI that exceeds \$5,000.

#### Health Care Costs.

Ordinary health care costs that were included in the basic support amount are removed. This is reflected in the child support table by lowering the basic support amounts by 5 percent. References to extraordinary health care costs are removed. All health care costs must be shared by the parents in the same proportion as the basic support obligation. Health care costs include, but are not limited to, medical, dental, orthodontia, vision, chiropractic, mental health treatment, and prescription medications, and other similar costs for care and treatment.

#### Limitations on Amount of Child Support Ordered.

*Limitation of 45 percent of parent's net income:* Language is added to specify that the child support obligation owed for *all of his or her biological or legal children* (rather than "total" support) may not exceed 45 percent of net income except for good cause. 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. Such consideration includes whether application of the limitation would leave insufficient funds in the custodial parent's household to meet the basic needs of the child or children, and whether there is any involuntary limits on either parent's earning capacity, including incarceration, disabilities, or incapacity.

*Presumptive minimum support obligation:* The table starts at a CMNI of \$1,000 with a presumptive minimum amount of basic support of \$50.

*Self-support reserve amount:* The support obligation cannot reduce the parent's income below 125 percent of the federal poverty guideline, rather than the need standard established by the DSHS. The self-support reserve applies to the noncustodial parent unless it would be unjust to apply it after considering the child's best interest and the circumstances of each parent.

#### Determining Income: Overtime, Second Jobs, and Retirement Contributions.

The court must consider income from self-employment, rent, royalties, contracts, and businesses when the court determines the child support obligation of each parent. Overtime and income from second jobs are excluded from gross income if the overtime or second job was worked to provide for a current family's need, to retire past relationship debts, or to retire child support debt. The court must find that the income will cease when the party has paid off his or her debts. However, if the person with the overtime or second job income asks for a deviation from the support obligation for any reason, the court will consider that person's overtime or second job income.

The parties may deduct up to \$5,000 of retirement contributions per year from their gross monthly income if there is a pattern of contributions during the one-year period preceding the action establishing child support, unless the contributions were made for the purposes of reducing child support.

#### Imputing Income When a Parent is Unemployed or Underemployed.

Before looking to information from the U.S. Census Bureau to determine what income to impute, the court must impute a parent's income based on the following, in order of priority:

- full-time earnings at the current rate of pay;
- full-time earnings at the historical rate of pay;
- full-time earnings at a past rate of pay where information is incomplete or sporadic; and
- full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is coming off of public assistance or other programs, has recently been released from incarceration, or is a high school student.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill: (1) adds to the list of income that must be considered by the court (rent, royalties, contracts, certain business income); (2) creates a non-exclusive list of costs that are

considered health care costs (medical, dental, vision, chiropractic, mental health treatment, and prescriptions); (3) delays the effective date of the act to October 1, 2009; and (4) makes a grammatical correction.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on October 1, 2009..

**Staff Summary of Public Testimony:**

(In support) The bill is a result of the work group that has been meeting for years. Various groups, such as the Washington State Bar Association (WSBA), custodial and noncustodial parents, and judges, were represented on the work group. The bill is not perfect, but it is an attempt to implement consensus items reached by the work group. Although extrapolation of the current economic table was not discussed or agreed upon by the work group, the extrapolation is necessary to give meaning to some of the issues that had consensus from the work group. The 45 percent limitation on a parent's income is not currently being applied rationally.

(With concerns) Any table would be inadequate because there is never enough money to raise children. The original table never accounted for two separate households. A bill needs to address residential credit for noncustodial parents. This is an issue that parents litigate frequently, and the law should not ignore the fact that there is an increase in the number of shared parenting plans. Parents should be allowed to deduct more than \$5,000 for retirement pensions if that pension is the sole source of that parent's retirement. Raising the table to a CMNI of \$12,000 could lead to abuse of the table. If obligations are set higher there will be an increase in litigation and demands for more shared parenting arrangements. Noncustodial parents spend money on their children when the children are with the noncustodial parent, but those expenditures are not considered by the court. Courts should enforce visitation orders as well as the child support orders. The public does not want the economic table raised; they want consistent application of the table. The economic table is expressed as a percentage of the parent's income, and since there has not been an increase in that percentage, the table should not be raised.

(Opposed) The work group did not reach consensus on the economic table. The Family Law Section of the WSBA is working on a major overhaul of the child support schedule. The current table is inadequate and based on data from the late 1980's. It is not a reflection of what it currently costs to raise children. There is a lot of controversy over what it costs to raise children.

Child support laws are intrusive to families. Through child support laws, the state mandates how parents should spend their money, but the state would never do that to intact families. Parents should be free to make their own decisions, whether their families are intact or not. There is no flexibility in the child support laws.

**Persons Testifying:** (In support) Representative Moeller, prime sponsor; David Stillman, Department of Social and Human Services; Jason Doudt; and Greg Howe.

(With concerns) Lisa Scott, Taking Action Against Bias in the System; Mark Mahnkey, Washington Civil Rights Council; and David Spring.

(Opposed) Kathleen Schmidt, Washington State Bar Association.

**Persons Signed In To Testify But Not Testifying:** None.