

# SENATE BILL REPORT

## ESHB 1794

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As of March 20, 2009

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

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

**Sponsors:** House Committee on Judiciary (originally sponsored by Representative Moeller).

**Brief History:** Passed House: 3/03/09, 97-0.

**Committee Activity:** Human Services & Corrections: 3/20/09.

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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.

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. While the Legislature has considered modifications to the child support guidelines over the years, the last major, substantive change made to the existing child support schedule and related guidelines occurred in 1991.

In March of 2005, the Governor charged the Division of Child Support (DCS) with putting together a Child Support Guidelines Work Group (CSGWG) to examine a number of issues related to child support, including the adequacy of Washington's child support guidelines. That group came to several consensus recommendations, but did not reach consensus on all items. 2SHB 1009 in 2007 required the formation of another work group to complete the task of examining current laws, administrative rules, and practices regarding the calculation of child support. This legislation is a result of recommendations from that work group.

The child support schedule in Washington 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

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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 that parent's 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.

**Summary of Bill:** The economic table is amended to (1) start at a CMNI of \$1,000 and go up to \$12,000 of CMNI; and (2) be entirely presumptive.

Health Care Costs. Ordinary health care costs are no longer considered part of the basic support obligation amount in the economic table. The assumption that 5 percent of the basic support obligation amount is for ordinary health care costs is removed. Instead, 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. References to extraordinary health care costs are removed.

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 the parent's 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 basic 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**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: The child support statute is intensely personal for individuals and deals with our most precious commodity. The work group was, therefore, highly contentious. However, this bill represents the consensus items of the work group and represents the work of many volunteers over many hours. This is not a perfect bill and we didn't get everywhere we wanted to go. The work group reviewed 14 items tasked by the legislation and came to consensus on five of those. The bill in front of you is 100 percent the consensus of that group.

**Persons Testifying:** PRO: Representative Jim Moeller, prime sponsor; David Stillman, DSHS, Division of Child Support; Jason Doudt, Colleen Sachs, citizens.