



# Calculating Child Support for Clients with Reduced Income

Moderate Means Program Family Law Series

# Today's Speaker

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Nancy Koptur

Department of Social and Health Services  
Policy Chief Assistant and Legislative Manager

Division of Child Support Headquarters

PO Box 9162 MS 45860

Olympia, WA 98507-9162

360-664-5065 1-800-457-6202

FAX 360-664-5342

[nkoptur@dshs.wa.gov](mailto:nkoptur@dshs.wa.gov) or [nancy.koptur@dshs.wa.gov](mailto:nancy.koptur@dshs.wa.gov)

# Goals for Today

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- ▶ **Child Support Basics**
- ▶ **Determining Income**
  - ▶ Public Assistance
  - ▶ Unemployment and underemployment
  - ▶ Self-employed parents
  - ▶ Imputation
- ▶ **Limitations & Deviations**
  - ▶ Self Support Reserve (SSR)
  - ▶ Limitations
  - ▶ Deviations
- ▶ **Where to find laws and rules and forms**

# Helpful Documents for Today

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- ▶ **Child Support Schedule Booklet**
  - ▶ July 22, 2011 version
- ▶ **Child Support Schedule Worksheets**
  - ▶ July 22, 2011 version
- ▶ **Declaration Regarding Public Assistance**
  - ▶ WPF DRPSCU 01.0600
  - ▶ Optional Use
- ▶ **Order of Child Support**
  - ▶ WPF DR 01.0500
  - ▶ June 20, 2010 version

You can download all of these documents at  
<http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=51>

# Disclaimers

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- ▶ I work for the DSHS Division of Child Support (DCS), and have done so for the past 22 years.
- ▶ I know a lot about the administrative process, and I know a bit about the court process, but I have not practiced in the superior court for over 22 years.
- ▶ I can tell you how DCS interprets the Washington State Child Support Schedule.
- ▶ I can tell you what the statutes say, and I can tell you what other lawyers tell me about what happens in court.
- ▶ I cannot tell the courts how to interpret the Washington State Child Support Schedule.
- ▶ I do not speak for DSHS or DCS and nothing I say should be interpreted as a statement of policy by the department.

# Audience Poll

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- ▶ How many of you have entered a child support order in court?
- ▶ How many of you have entered a child support order in tribal court?
- ▶ How many of you have participated in an administrative hearing to determine a child support obligation?
- ▶ How many of you last dealt with child support more than five years ago?
- ▶ How many of you have never ever dealt with child support orders?

# Child Support Basics

# Relevant Laws

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- ▶ Chapter 26.19 RCW – the Washington State Child Support Schedule
- ▶ What must be included in a child support order?
  - ▶ Mandatory forms RCW 26.09.006
  - ▶ Written findings of fact RCW 26.19.035
  - ▶ Worksheets RCW 26.19.035
  - ▶ Medical support provisions RCW 26.09.105
  - ▶ Required contents RCW 26.23.050

# RCW 26.23.050

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- ▶ What must be included in a child support order?
  - ▶ Address for payment
  - ▶ Wage withholding language
  - ▶ Income of parties
  - ▶ Sum certain support amount
  - ▶ Day/dates on which payment is due
  - ▶ Names & ages of dependent children
  - ▶ Address update requirement (also Conf Info form)
  - ▶ Medical support language & update requirement
  - ▶ Proof of insurance or else enforcement
  - ▶ License suspension language

# RCW 26.19.035 Standards for application of the child support schedule

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## WSCSS *shall be applied*:

- ▶ In every county of the state
- ▶ In all judicial and admin proceedings under Titles 26, 13 & 74
- ▶ In all proceedings in which child support is determined
  - ▶ *State ex rel. O'Brien v Cooperrider* – child support obligation is not limited by the amount of public assistance paid to the family
  - ▶ 76 Wn.App. 699, 887 P.2d 408 (Div 3, 1994)
- ▶ In setting temporary and permanent support
- ▶ In automatic modification provisions or decrees entered pursuant to RCW 26.09.100
- ▶ In proceedings for adult children who are dependent on their parents and for whom support is ordered per 26.09.100
- ▶ In the same manner by the court, presiding officers and reviewing officers

# RCW 26.19.035 Standards for application of the child support schedule

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## ▶ **There must be written findings of fact**

- ▶ An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation.
- ▶ The court shall enter written findings of fact in all cases ...

## ▶ **There must be worksheets**

- ▶ Worksheets shall be completed under penalty of perjury and filed in every proceeding in which child support is determined.
- ▶ The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the administrative office of the courts.

# RCW 26.19.035 Standards for application of the child support schedule

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- ▶ **The court must review the worksheets and order**
  - ▶ The court shall review the worksheets and the order setting support for the adequacy of the reasons set forth for any deviation or denial of any request for deviation and for the adequacy of the amount of support ordered.
  - ▶ Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered.
  - ▶ Worksheets shall be attached to the decree or order or if filed separately shall be initialed or signed by the judge and filed with the order.

# RCW 26.19.071

## Determining Gross Income

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- ▶ All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent.
- ▶ Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation.
- ▶ Except as specifically excluded in subsection RCW 26.19.071(4), monthly gross income *shall include income from **any** source.*

# Relevant Case Law

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- ▶ *Maples v Maples*, 78 Wash.App. 696, 899 P.2d 1 (1995)
- ▶ *Rose v Rose*, 481 U.S. 619, 95 L.Ed 2d 599, 107 S.Ct. 2029 (1987)
- ▶ *Dortch v Straka*, 59 Wash.App. 773, 801 P.2d 125 (Div 1, 1990)
- ▶ *Marriage of Stenshoel*, 72 Wn.App. 800, 866 P.2d 635 (1993)

## *Maples v Maples*, 78 Wash.App. 696, 899 P.2d 1 (1995)

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- ▶ Where children are receiving dependent benefits from social security due to the support obligor's disability, the amount of those benefits must be added to the obligor's other income to arrive at the proper net income figure for the father. The court reasoned that, since the obligor received a dollar for dollar credit against his obligation for the payment to the children of those dependent benefits (pursuant to **RCW 26.18.190**) it was appropriate to treat them as having been received by the father as income - otherwise how could he have been considered to have paid it?
- ▶ However, failure of the court to explicitly include this "income" in the child support calculation will not, by itself, preclude the obligor receiving the statutory credit for the payments. *Marriage of Briscoe*, 134 Wash.2d 344, 949 P.2d 1388 (1998).

*Rose v Rose*, 481 U.S. 619, 95 L.Ed 2d 599, 107 S.Ct. 2029 (1987)

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- ▶ Although **38 USC section 3101** forbids garnishment or assignment of a veteran's disability pension for any reason, including support, this does not mean that it is not income for the purposes of calculating the amount of the veteran's support obligation. The U.S. Supreme Court ruled that such a pension must be considered as income to the veteran when a support order is established. This case was recognized and followed in this state in the case of *In Re Marriage of Corriea*, 47 Wn.App. 421, 735 P.2d 691 (1987).

*Dortch v Straka*, 59 Wash.App. 773, 801  
P.2d 125 (Div 1, 1990)

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- ▶ A cost of living allowance received by a parent who resides in a high cost area (Alaska) must be included in his gross income for the purpose of calculating his support. However, the court may also grant a parent a deviation due to higher than normal living expenses. In addition, long distance transportation expenses must be allocated between the two parents and that such allocation is not discretionary but rather a part of the standard calculation of support.

*Marriage of Stenshoel*, 72 Wn.App. 800, 866 P.2d 635 (1993)

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- ▶ In dealing with income from a business a court is justified in estimating that income based upon what was drawn from it by the parties during the marriage. However, the party who retains the business can still be called upon to account for retained earnings. This case also discusses deductions from that income for business expenses.

# RCW 26.19.071(4)

## Determining Gross Income

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- ▶ The following income and resources shall be *disclosed* but *shall not be included* in gross income:
  - ▶ Income of a new spouse or new domestic partner
  - ▶ Income of other adults in the household
  - ▶ Child support received from other relationships
  - ▶ Gifts and prizes
  - ▶ Public Assistance Alphabet Soup: TANF, SSI, ABD, PWA
  - ▶ Food benefits (they're not food stamps anymore!)
  - ▶ Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

# RCW 26.19.071(6)

## Determining Net Income

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- ▶ The following expenses shall be **disclosed and deducted** from gross monthly income to calculate net monthly income:
  - ▶ Federal and state income taxes
  - ▶ FICA deductions
  - ▶ Mandatory pension plan payments
  - ▶ Mandatory union or professional dues
  - ▶ Worker's Comp premiums
  - ▶ Court-ordered maintenance *if actually paid*
  - ▶ Up to \$5,000 in voluntary retirement contributions *paid*
  - ▶ Normal business expenses and self-employment taxes for self-employed persons [*Stenshoel* applies here, too]

# RCW 26.19.071(6)

## Imputation of Income

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- ▶ The court **shall** impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed.
  - ▶ Based upon that parent's work history, education, health, and age, or any other relevant factors
  - ▶ No imputation if parent is *gainfully employed* on a full-time basis (unless under-employed to decrease child support liability)
  - ▶ No imputation if parent is unemployable.
  - ▶ No imputation if parent's under- or un- employment is due to court-ordered reunification efforts

# RCW 26.19.071(6)

## Imputation of Income

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- ▶ In the absence of records of a parent's actual earnings, the court shall impute income to a parent
- ▶ What do we mean by **actual earnings**??
  - ▶ Exactly what the parent is making, no matter how many hours per week?
  - ▶ Parent's current hourly wage blown up to full time of 40 hours per week?
  - ▶ Parent's current hourly wage blown up to full time of less than 40 hours per week, depending on industry standard?
  - ▶ Parent's current hourly wage time actual hours worked and then filling up to 40 hours per week at minimum wage?

# RCW 26.19.071(6)

## Imputation of Income

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- ▶ **Priority of Imputation:**
  - ▶ 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
  - ▶ Full-time earnings at minimum wage, if:
    - ▶ Recent history of minimum wage
    - ▶ Recent history of public assistance, SSI, disability
    - ▶ Recent release from prison
    - ▶ In high school (or, at DCS, recent graduate)
  - ▶ Median net monthly income table

# Relevant Case Law

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- ▶ *Sacco v Sacco*, 114 Wn.2d 1, 784 P.2d 1266 (1990)
- ▶ *Marriage of Pollard*, 99 Wn.App. 48, 991 P.2d 1201 (Div 3, 2000)
- ▶ *Marriage of Brokopp*, 78 Wn.App. 441, 898 P.2d 849 (Div 2, 1995)
- ▶ *Marriage of Blickenstaff*, 71 Wn.App. 489, 859 P.2d 646 (Div 2, 1990)
- ▶ *Marriage of Peterson*, 80 Wn.App. 148, 906 P.2d 1009 (Div 1, 1995)
- ▶ *Marriage of Didier*, 134 Wn.App. 490 (Div 2, 2006)
- ▶ *Dewberry v. George*, 115 Wn.App. 351; 62 P.3d 525 (Div 1, 2003)
- ▶ *Marriage of Dodd*, 12 Wn.App. 638, 86 P.3d 801, (March 16, 2004)

*Sacco v Sacco*, 114 Wn.2d 1, 784 P.2d 1266  
(1990)

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- ▶ The court must ensure that a complete support schedule worksheet has been done to support any order. Uncertainty as to the amount to impute to a parent does not excuse the failure to have adequate findings of fact.

# VOLUNTARY UNEMPLOYMENT

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- ▶ *Marriage of Pollard*, 99 Wn.App. 48, 991 P.2d 1201 (Div 3, 2000). Staying home to be a homemaker is not “full time employment with income of \$0.” Imputation of income is required in this situation as a parent is voluntarily unemployed in this case, and the tribunal cannot escape its duty to impute income by contorted language.
- ▶ *Marriage of Brokopp*, 78 Wn.App. 441, 898 P.2d 849 (Div 2, 1995). The court is required to impute income to a parent who is voluntarily unemployed.

*Marriage of Blickenstaff*, 71 Wn.App. 489,  
859 P.2d 646 (Div 2, 1990)

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- ▶ Incarceration in prison is not voluntary unemployment, unless one can show that the prisoner intentionally sought prison for the purpose of avoiding child support. A prisoner is "unemployable" and therefore income may not be imputed to him.
- ▶ However, if the prisoner has some other source of income from which to discharge the obligation or has some asset that could be liquidated for that purpose, the court will not excuse the prisoner from the duty to pay child support.

*Marriage of Peterson*, 80 Wn.App. 148, 906 P.2d 1009 (Div 1, 1995)

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- ▶ A parent who has full time employment which pays wages is *not* unemployed. A finding of underemployment requires a comparison with that person's past earnings history such as will justify a finding of an intent to reduce income from what it could have been. However, this does not extend to requiring a person to earn the highest level possible in his profession, or even to earn the median net income figure for a man of his age.

## *Marriage of Didier*, 134 Wn.App. 490 (Div 2, 2006)

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- ▶ A vow of poverty which precludes gainful employment does not mean that a court can not impute income to the parent. Nor does declaring that “I am not a member of your body politic” exempt a defendant from the requirements of the discovery rules. The court can impute median net income to the parent as a proper remedy for his refusal to provide necessary financial documents once the court determines that the parent is capable of working.

*Dewberry v. George*, 115 Wn.App. 351; 62 P.3d 525 (Div 1, 2003)

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- ▶ Where a party chooses to work at part time jobs in a new field after successfully demonstrating a past ability to earn more in his old field, it is not abuse of discretion for the tribunal to impute earnings to him at his old salary- even if his two part time jobs "add up" to 40 hours per week.

*Marriage of Dodd*, 12 Wn.App. 638, 86 P.3d 801, (March 16, 2004)

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- ▶ Imputation of income based upon the median net income chart is appropriate when the court finds that the party is actively concealing his income and there exists no practical way of accurately estimating the earnings.

# Approximate Median Net Monthly Income

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<u>MALE</u>	<u>age</u>	<u>FEMALE</u>
\$1,832	15-24	\$1,632
\$2,804	25-34	\$2,446
\$3,448	35-44	\$2,693
\$3,569	45-54	\$2,714
\$3,735	55-64	\$2,814
\$4,084	65 +	\$2,960

- ▶ U.S. Census Bureau, Current Population Survey, 2009 Annual Social and Economic Supplement, Table PINC-01. Selected Characteristics of People 15 Years Old and Over by Total Money Income in 2008, Work Experience in 2008, Race, Hispanic Origin, and Sex, Worked Full Time, Year Round. [Net income has been determined by subtracting FICA (7.65 percent) and the tax liability for a single person (one withholding allowance).]

Now that we've determined the net monthly income, what next?

# Limitations

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- ▶ **RCW 26.19.065**
- ▶ **Standards for establishing **lower** and upper limits on child support amounts.**
  - ▶ Limit at forty-five percent of a parent's net income
  - ▶ Presumptive minimum support obligation
  - ▶ Income above twelve thousand dollars

# Presumptive Minimum Support Obligation

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## Reason I – Parent with monthly net income below the self-support reserve (SSR)

- ▶ When a parent's monthly net income is below one hundred twenty-five percent of the federal poverty guideline, a support order of **not less than fifty dollars per child per month** shall be entered unless the obligor parent establishes that it would be unjust to do so in that particular case.
- ▶ When to deviate below the presumptive minimum?
  - ▶ Consider BIOTC and
  - ▶ Circumstances of each parent.

# Presumptive Minimum Support Obligation, cont'd

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- ▶ Circumstances of each parent include:
  - ▶ insufficient funds in the custodial parent's household to meet the basic needs of the child
  - ▶ comparative hardship to the affected households
  - ▶ assets or liabilities
  - ▶ earning capacity

# Presumptive Minimum Support Obligation, cont'd

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## Reason 2 – Support obligation reduces NCP's net income below the SSR

- ▶ The basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce ... except for the presumptive minimum payment of fifty dollars per child per month or when it would be unjust to apply the self-support reserve limitation after considering the BIOTC and the circumstances of each parent.
- ▶ Same circumstances as in Reason 1
- ▶ Monthly substantiation of income is not required.

# Income above twelve thousand dollars

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*Not really an issue for us today!*

- ▶ Economic table is presumptive for CMNI up to and including \$12,000
- ▶ For CMNI over \$12,000, the court may exceed the presumptive amount for CMNI of \$12,000 upon written findings of fact

# Completing Worksheets: Manually or With an Automated Program?

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- ▶ DCS uses our in-house calculator called SSGen
- ▶ If you use a commercial program, you should be able to explain *why* you get the results you get
  - ▶ Make sure you use an “approved worksheet” and provide appropriate findings of fact
  - ▶ Remember *In re Marriage of Choate*, 143 Wn.App. 235, 177 P.3d 175 (Div. 2 2008), with the “unofficial electronically generated worksheet”
    - ▶ Trial court attached worksheet which “mechanically allocates” the parent’s obligations
    - ▶ Remanded because trial court failed to make findings and consider circs of both households

# When Net Income is ZERO

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- ▶ Is it ever appropriate to use ZERO as the monthly net income amount?
  - ▶ Is there a reason not to impute?
  - ▶ Is the income “not included in gross income”?
- ▶ If one parent has ZERO income, what is that parent’s proportional share of income?
- ▶ If both parents have ZERO income, what is each parent’s proportional share of income?

# Deviation below the Presumptive Minimum Support Obligation

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- ▶ If you deviate below PMSO, how low do you go?
  - ▶ Zero support order
    - ▶ DCS does this – *NR v. Soliz*, unpublished opinion
    - ▶ Superior court may do it – see *In re Marriage of Gilbert*, 88 Wn.App. 362, 945 P.2d 238 (Div I, 1997). Applies the rule set forth in the unpublished Soliz decision (which applied only to administrative hearings) to superior court: the presumptive minimum obligation is a *rebuttable* presumption
    - ▶ RCW 26.19.065(2) amended in 1998 (SB 6581, C 163, §1)
    - ▶ Not all courts comfortable with zero orders
      - Most stuck with \$25 per month per child PMSO
      - With \$50 PMPC PMSO, zero orders appear more popular
  - ▶ Somewhere in between?

# Relevant Case Law

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- ▶ *Marriage of Casey*, 88 Wn.App. 662, 967 P.2d 982 (Div 2, 1997) A significant disparity in living costs can be grounds for deviating to \$0, or even setting support for the secondary residential parent to cover a long visitation.

# Economic Table

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The Economic Table provides an individual support amount *for each child* covered by the order

- ▶ Find the combined monthly net income amount closest to the amount entered on **line 4** of Worksheet.
  - ▶ Round **up** when the combined monthly net income falls halfway between the two amounts in the left-hand column.
- ▶ Use the family size for the number of children for whom child support is being determined.
  - ▶ Do not include children from other relationships – YET.
- ▶ Circle the two numbers in the columns listed below the family size that are across from the net income.
  - ▶ Column A shows BSO for up to age 11.
  - ▶ Column B shows BSO for 12 years of age or older.

## Now you've got each parent's BSO ...

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- ▶ Parent's Basic Support Obligation is the BSO you got from the Economic Table multiplied by that parent's proportional share of income.
- ▶ Line 7: BSO w/o considering low income limitations
- ▶ Line 8: Calculating low income limitations
  - ▶ Self-Support Reserve (125% FPL) now \$1,164
  - ▶ 8a: CMNI less than \$1,000? If so, both parents \$50 pmpc
  - ▶ 8b: One parent MNI less than SSR? If so, \$50 pmpc
  - ▶ 8c: MNI > SSR? Line 3 minus SSR = income available for support. If line 8c < line 7, then use that amount or \$50pmpc
- ▶ Line 9: BSO after calculating low income limitations

# Part III: Health Care, Day Care, and Special Child Rearing Expenses

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- ▶ **RCW 26.09.105(15):** “When a parent is providing health insurance coverage at the time the order is entered, **the premium shall be included in the worksheets** for the calculation of child support under chapter 26.19 RCW.”
- ▶ Daycare and child care:
  - ▶ Must I use actual amounts paid?
  - ▶ Averages? Estimates? Guesses?
- ▶ Use only those amounts attributable to the children covered by the order

## Part III of the Worksheet: Health Care, Day Care, and Special Child Rearing Expenses

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- ▶ Should we put all expenses in this Part, or deal with them outside of the Worksheet?
  - ▶ Proportional shares
  - ▶ Sum certain amount included in the transfer payment?
  - ▶ What's the diff?
- ▶ Including certain amounts in this Part can lead to an *undifferentiated support amount*, which impacts DCS enforcement/collection of support, per WAC 388-14A-4800
- ▶ Paragraph 3.15 of ORS – “Payment for Expenses not included in the Transfer Payment”

# Differentiated or Undifferentiated – An Aside Worth Pursuing

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## WAC 388-14A-4800 through 388-14A-4830

- ▶ To determine whether a support order is differentiated or undifferentiated, DCS reviews the information contained in the support order, and, if necessary to interpret the intent of the order, may consider the worksheets associated with the order
  - ▶ When the order may justifiably be divided into per child amounts for each child, DCS calls it a “differentiated support order.”
  - ▶ When the order does not contain enough information in either the order or the worksheets to justify dividing the monthly amount into per child amounts for each child, DCS calls it an “undifferentiated support order.”
- ▶ Consider – as each child “drops off the order,” what amount will DCS enforce?

# Line 17: Standard Calculation

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- ▶ Standard Calculation = BSO after application of low-income limitations and after application of obligations/credits for Part III expenses
- ▶ Standard Calculation *sometimes* = Transfer Payment

## BUT FIRST ...

- ▶ Do we need to apply the 45% Limitation?
- ▶ Any reasons for deviations?
  - ▶ Up?
  - ▶ Down?
  - ▶ Any downside of asking for deviations?

# Additions to the Standard Calculation

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- ▶ "Basic child 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.
- ▶ "Standard calculation" means the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation.
- ▶ When you have the "adjusted" calculation, then you add on the parent's proportionate share of expenses

# What is included in the transfer payment?

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- ▶ "Support transfer payment" means the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the standard calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support transfer payment" does not mean the additional amount or credit.
  - ▶ Transfer payment is a sum certain.
  - ▶ Expenses may be stated as sum certain (and therefore part of transfer payment) –OR–
  - ▶ Expenses may be stated as a percentage of costs (and therefore not part of transfer payment)

# Self-Support Reserve

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- ▶ The basic support obligation of the parent making the transfer payment, **excluding health care, day care, and special child-rearing expenses**, shall not reduce his or her net income below the self-support reserve of one hundred twenty-five percent of the federal poverty level, except for the presumptive minimum payment of fifty dollars per child per month
- ▶ NOTE: parent's proportionate share of expenses may mean that the monthly obligation reduces the parent's net income below the SSR
- ▶ NEW as of 2009 (ESHB 1794, Chapter 84, Laws of 2009)

# Expenses for the Child(ren)

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▶ RCW 26.19.080

(2) Health care costs are *not included* in the economic table. Monthly health care costs shall be shared by the parents in the same proportion as the basic child support obligation. [amended in 2009 by §5 of ESHB 1794]

(3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are *not included* in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation.

# Beyond Low Income Limitations

## 45 Percent Limitation RCW 26.19.065

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- ▶ Neither parent's child support obligation owed for all his or her biological or legal children may exceed forty-five percent of net income except for good cause shown.
  - ▶ 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 forty-five percent limitation, the court must consider whether it would be unjust to apply the limitation after considering the best interests of the child and the circumstances of each parent
  - ▶ Good cause: substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families

# 45 Percent Limitation, cont'd

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- ▶ When determining whether to apply the 45% limitation, the court must consider whether it would be unjust after considering the “best interests of the child and the circumstances of each parent” –
  - ▶ Such circumstances include, but are not limited to:
    - ▶ leaving insufficient funds in the custodial parent's household to meet the basic needs of the child
    - ▶ comparative hardship to the affected households
    - ▶ assets or liabilities
    - ▶ any involuntary limits on either parent's earning capacity including incarceration, disabilities, or incapacity.

# How does the 45% Limitation work?

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- ▶ What kind of proceeding, administrative or court (does it matter)?
- ▶ What the heck is **a pro rata share**?
- ▶ What is good cause to exceed 45%?
- ▶ How many families are we talking about:
  - ▶ One family?
    - ▶ Low income NCP
    - ▶ Big family
  - ▶ Multiple families?
- ▶ Once you get the basic support obligation, time to add on proportionate share of expenses

# How does DCS calculate the 45% Limitation?

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- ▶ The 45% limitation is considered *every time* we calculate support, even if NCP has only one family.
- ▶ DCS applies the 45% limitation only to the calculation of the NCP's support obligation
- ▶ Do a worksheet for CP, NCP and children for whom support is being determined
- ▶ Calculate 45% of NCP's net monthly income
  - ▶ If NCP has only one family, compare the amount on line 9 of the Worksheet to this amount
  - ▶ If line 9 > 45%, the limitation applies
  - ▶ If line 9 < 45%, use line 9
- ▶ Document on line 22 of the Worksheet

# How does DCS calculate the 45% Limitation if the NCP has other kids?

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- ▶ Do a worksheet for CP, NCP and children for whom support is being determined
- ▶ Calculate 45% of NCP's net monthly income
  - ▶ Divide that number by the number of children for whom NCP has a legal support obligation (see children from other relationships to determine who gets counted and who does not) to get the “per child share”
  - ▶ Multiply the “per child share” by the number of children in this case to get the “45% support amount”

And then ...

# How does DCS calculate the 45% Limitation if the NCP has other kids?

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- ▶ Compare the “45% support amount” to line 9 of the worksheet
  - ▶ If line 9 > 45%, the limitation applies
  - ▶ If line 9 < 45%, use line 9
- ▶ Do a Whole Family Formula computation
  - ▶ Do a secondary worksheet using the appropriate family size
  - ▶ What is the “WFF support amount” for these kids?
- ▶ Compare the “45% support amount” to the “WFF support amount”
  - ▶ Use the smaller amount
  - ▶ Document on line 22 of the Worksheet

# Is DCS' calculation based on the 45% Limitation the final answer?

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- ▶ Heck no!
- ▶ DCS administrative support establishment notice is like a “show cause” order – CP, NCP or both have the opportunity to present evidence to show why DCS calculations are wrong and why ALJ should find different facts and why the ALJ should set support differently

# Deviations

# RCW 26.19.075

## Standards for deviation

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- ▶ Reasons for deviation from the standard calculation include but are not limited to the following:
  - ▶ Sources of income and tax planning
  - ▶ Nonrecurring income
  - ▶ Debt and high expenses
  - ▶ Residential schedule
  - ▶ Children from other relationships

This explains why you have to provide all that information  
in Part VIII of the Worksheet!

# RCW 26.19.075

## Standards for deviation

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- ▶ The presumptive amount of support shall be determined according to the child support schedule.
- ▶ All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section.
- ▶ Unless **specific reasons for deviation** are set forth in the written findings of fact and are **supported by the evidence**, the court shall order each parent to pay the amount of support determined by using the standard calculation

# RCW 26.19.075

## Standards for deviation

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- ▶ The court **shall enter findings that specify reasons** for any deviation or any denial of a party's request for any deviation from the standard calculation
- ▶ The court shall not consider reasons for deviation **until** the court determines the standard calculation for each parent.
- ▶ When reasons exist for deviation, the court shall **exercise discretion** in considering the extent to which the factors would affect the support obligation.
- ▶ Agreement of the parties is **not by itself adequate reason** for any deviations from the standard calculation.

# Children From Other Relationships

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- ▶ Everybody's favorite deviation
  - ▶ Children From Other Relationships
  - ▶ “Children Not Before the Court”
- ▶ What method should I use to calculate my deviation?
  - ▶ Whole Family Formula
  - ▶ Blended Family Formula
  - ▶ Others
- ▶ Where in the WSCSS do I find the Whole Family Formula?

# The Whole Family Formula – the DCS Method, but not “the law”

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- ▶ First, determine the Basic Support Obligation (BSO) after calculating low income limitations through line 9 of the Worksheet, using only those children for whom the child support obligation is being determined.
- ▶ Then, using a *separate* worksheet, calculate a secondary BSO based on the total number of NCP’s **biological and legal children** through line 9 of the worksheet to get NCP’s BSO for the children on the case after applying the low income limitations.
  - ▶ Subtract BSO #2 from BSO #1 to get the amount of the deviation.
  - ▶ Now add on NCP’s proportionate share of medical support and expenses.

# Which children get counted for WFF?

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- ▶ DCS counts NCP's children as follows:
  - ▶ Children for whom support is being considered
  - ▶ Children for whom NCP has a legal support obligation:
    - ▶ NCP biological children if parentage is presumed, acknowledged, or adjudicated
    - ▶ NCP adopted children
- ▶ DCS does **not** count these children:
  - ▶ NCP's biological children for whom no legal support obligation exists
  - ▶ NCP's stepchildren, even in the NCP's household
  - ▶ CP's children from other relationships
- ▶ Your results may differ

# Does it matter if NCP is current in other support obligations?

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- ▶ It depends ...
  - ▶ ORS 3.7 says deviation granted because of “Child support *actually paid* ... for other child(ren) from other relationships”
  - ▶ DCS figures that if there’s an order, we’ll get NCP eventually, so we don’t care if NCP is paying

# Does it matter how much NCP's other child support orders are?

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- ▶ Nope.
- ▶ Whole Family Formula only looks at size of family, it does not look at support obligations for other children.
- ▶ *In re Marriage of Bell*, 101 Wn.App. 366, 4 P.3d 849 (Div I, 2000), provides that subtracting other support obligations from net income “contravenes the purpose of the child support statute and was an abuse of discretion.” 101 Wn.App. 366, 371.

# Deviation Based on Child's Residential Schedule

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- ▶ RCW 26.19.075(1)(d):
- ▶ The court may deviate from the standard calculation if the child spends a **significant amount of time** with the parent who is obligated to make a support transfer payment. **No deviation if** the deviation **will result in insufficient funds** in the CP's household to meet the basic needs of the child or if the **child is receiving TANF**.
- ▶ When determining the **amount of the deviation**, the court shall consider evidence concerning the **increased expenses** to NCP resulting from the time spent with NCP and shall consider the **decreased expenses, if any**, to the CP resulting from the time the child spends with the NCP.

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**So, how do we  
calculate the  
residential schedule  
deviation?**

## Statutory guidance ...

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- ▶ “When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.”

RCW 26.19.075(1)(d)

# Document the reason for deviation

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- ▶ **ORS Section 3.7 (and maybe 3.8):**
  - ▶ “The child support amount ordered in paragraph 3.5 deviates from the standard calculation for the following reasons ...”
  - ▶ **DON'T FORGET:** “The factual basis for these reasons is as follows ...”
- ▶ **Line 22 of the WSCSS Worksheet is an excellent place to put all of the supporting information for an administrative child support order**

# Income of someone else in the household

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- ▶ The court may grant a deviation based on **income of a new spouse or domestic partner** if the parent who is married to the new spouse or in a partnership with a new domestic partner is asking for a deviation based on any other reason – the income of the new spouse or domestic partner is not, by itself, a sufficient reason for deviation.
- ▶ The court may grant a deviation based on **income of other adults in the household** if the parent who resides in that household is asking for a deviation based on any other reason – the income of other adults in the household is not, by itself, a sufficient reason to deviate.

# Deviation Granted or Not? Deviation Requested or Not?

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- ▶ Paragraph 3.7 of ORS provides a nonexclusive list of reasons for deviating from the standard calculation
  - ▶ Agreement of the parties is not enough!
  - ▶ It's not enough to just provide the reason, you must also provide the facts supporting the reason.
- ▶ Paragraph 3.8 of ORS explains why a request for deviation was denied
  - ▶ N/A – deviation was ordered
  - ▶ N/A – no deviation requested
  - ▶ Deviation denied because
    - ▶ No good reason
    - ▶ Other

# Deviations: Pros and Cons

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- ▶ Deviations let the court tailor the support obligation to the specific situation of the parties in each particular case
- ▶ A parent may show that strict application of the guidelines would be unjust or inappropriate in his/her particular case

But ...

- ▶ There's no way to predict what the deviation amount will be because there's no formula set out in statute

# DCS State Plan Considerations and Deviations

# State Plan Under Title IV-D of the Social Security Act

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- ▶ Federal law requires:
  - ▶ One statewide set of guidelines
  - ▶ Rebuttable presumption that amount determined under guidelines is the correct amount: Predictability & Uniformity
  - ▶ Criteria to rebut the presumptive amount: Flexibility
  - ▶ Written findings to support and justify deviations: Accountability

# Quadrennial Review of Guidelines

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- ▶ **45 CFR 302.56(e) and (h):**
  - ▶ The State must review, and revise, if appropriate, the guidelines ... at least once every four years to ensure that their application results in the determination of appropriate child support award amounts
  - ▶ As part of the quadrennial review, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.
- ▶ **RCW 26.19.025: The Child Support Schedule Workgroup**
  - ▶ <http://www.dshs.wa.gov/dcs/Resources/workgroup.asp>
  - ▶ Next Workgroup in 2015

# Special Considerations

# Dueling Limitations – Or, Can I Stack Limitations and Deviations?

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- ▶ What happens when there's more than one reason not to use the standard calculation?
  - ▶ Self Support Reserve
  - ▶ 45% limitation
  - ▶ Whole Family Formula
  - ▶ And so on ...

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## RCW 26.19.075(4)

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- ▶ “When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.”

# At an administrative hearing, the ALJ can consider:

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- ▶ Deductions to be used in determining net monthly income
- ▶ Whether income from OT or 2<sup>nd</sup> job should be included
- ▶ When to impute income and how
- ▶ Whether to apply the self-support reserve
- ▶ Whether to deviate from presumptive minimum support obligation
- ▶ Whether good cause exists not to apply the 45% limitation
- ▶ Whether to deviate for children from other relationships
- ▶ Whether to deviate based on residential schedule
- ▶ Any other fact about either parent's particular situation that makes the noncustodial parent more or less able to provide child support than other people with similar income and number of children, or that makes the custodial parent require more or less child support than other people with similar income and number of children.

Where Can I Find ...

# Resources

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- ▶ Washington State Child Support Schedule, Chapter 26.19 RCW <http://apps.leg.wa.gov/rcw/default.aspx?cite=26.19>
- ▶ All Domestic Relations Court Forms <http://www.courts.wa.gov/forms/?fa=forms.static&staticID=14#DomRelations>
- ▶ Court Forms for Child Support <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=51>
- ▶ Online Resources
  - ▶ [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org)
  - ▶ [www.advocateresourcecenter.org](http://www.advocateresourcecenter.org)

# Information about DCS

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- ▶ DCS internet site:

[www.childsupportonline.wa.gov](http://www.childsupportonline.wa.gov) or  
<http://www.dshs.wa.gov/dcs/>

- ▶ DCS Publications:

<http://www.dshs.wa.gov/publications/library.shtml#esa>

- ▶ Application for DCS services:

<http://www.dshs.wa.gov/dcs/services/default.asp#s3>

- ▶ DCS Forms:

<http://www.dshs.wa.gov/dcs/Resources/Forms.asp>

- ▶ Online Child Support Calculator:

<https://fortress.wa.gov/dshs/csips/ssgen>

# Questions?

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Nancy Koptur

Department of Social and Health Services  
Policy Chief Assistant and Legislative Manager

Division of Child Support Headquarters

PO Box 9162 MS 45860

Olympia, WA 98507-9162

360-664-5065 1-800-457-6202

FAX 360-664-5342

[nkoptur@dshs.wa.gov](mailto:nkoptur@dshs.wa.gov) or [nancy.koptur@dshs.wa.gov](mailto:nancy.koptur@dshs.wa.gov)

