

WASHINGTON STATE CHILD SUPPORT SCHEDULE COMMISSION

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FINAL REPORT
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Following the publications of this report in November 1987, the Commission received many comments and suggestions. Some of these changed the Commission's position on an issue or pointed out the need to clarify a statement. These changes have been incorporated into the body of the Report and are identified by an asterisk (*) in the margin.

Chapter VII in this Report now contains the standards and economic table which were adopted by the 1988 Legislature in SHB 1465 and the improved version of the worksheets and instructions.

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REPORT TO THE LEGISLATURE

NOVEMBER 1, 1987

* Revised on May 1, 1988

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CHAPTER I

SUMMARY OF MAJOR RECOMMENDATIONS

The Child Support Schedule Commission recommends that the state enact legislation to establish a child support schedule. The schedule and the enabling law should include the following components:

1. The schedule should be applied in every county of the state.
2. The schedule should set support based upon the combined income of both parents and the cost of raising children.
3. The schedule should account for the different spending patterns of families based upon the ages of children through the use of two categories, ages 0-11 and 12-18.
4. The basic support responsibility for each parent should be based upon that parent's share of the total family income. special costs should be determined and similarly shared by the parents.
5. Although support orders should be based upon the schedule, deviations should be permitted. Deviations should be justified in writing and supported by evidence.
6. Changing family circumstances, household wealth, post-majority support issues, special needs of disabled children, and tax planning are some of the bases that justify deviation from the support schedule.
7. Income should be imputed to a parent who is voluntarily underemployed or voluntarily unemployed.
8. When support orders are updated, the schedule should be applied to redetermine support. In addition to the reasons set forth under present law, the parents should be allowed to request a support modification three years after the entry of the prior order without showing a substantial change in circumstances.
9. In modification cases, creation of a new family may be considered only after the requirements for a modification have been shown.
10. The Commission should be retained on a limited basis to periodically review and recommend to the legislature changes to the child support schedule.

CHAPTER II

THE COMMISSION, ITS ORIGIN, AND ITS TASK

2.1 ORIGIN

On May 18, 1987, Governor Booth Gardner signed SHB 418 creating the Washington State Child Support Schedule Commission (Laws of 1987, Ch. 440). The Commission was created in response to a growing concern that the current guidelines used by the various counties were inadequate. Among the concerns were the economic basis of the guidelines, the failure to address economic differences which may exist among counties, and the perceived disparity in the amount of support orders among cases with similar situations.

The Commission's membership was outlined by the enabling law. Three of the members were designated appointments, representing the Chair (to be the Secretary of the Department of Social and Health Services or designee), the Attorney General's Office (the Attorney General or designee), and the Office of the Administrator for the Courts (the Administrator or designee). The remaining seven members to be appointed by the Governor were nominated by various groups, including the Washington State Superior Court Judges Association, the Washington State Bar Association, Evergreen Legal Services, and various parents' groups. The support staff was provided by the Department of Social and Health Services, Office of Support Enforcement. The Commission's membership includes an economist and people from several areas of the state with varied backgrounds, representing the different interests and experience of those persons involved in the determination of child support obligations.

2.2 TASK

The task of the Commission was to study and report on various questions set forth in the legislation and propose a child support schedule to the legislature by November 1, 1987. The goal was to recommend a child support schedule that was comprehensive and could be applied statewide, yet would allow for flexibility to deal with individual circumstances. The Commission sought to develop a schedule that apportions the costs of raising children as equitably as possible among those who are legally responsible, and that minimizes the economic impact on children of separated parents, so far as was practical. The schedule itself would be comprised of standards for setting support, instructions, worksheets, and an economic table from which support obligations could be determined. It would meet the needs of the public to be predictable and would be simple to use. The Commission provided an opportunity for the different interest groups to work together to educate each other and the affected communities, as well as, open lines of communication between them.

The Commission was directed specifically by the legislature to propose a child support schedule after studying the following factors:

1. Updated economic data;
2. Family spending and the costs of raising children;

3. Adjustments based upon the child's age level;
4. The basic needs of children;
5. Family size;
6. The parents' combined income;
7. Differing costs of living throughout the state; and
8. Provisions for health care coverage and child care payments.

The Commission was directed to establish standards for applying the child support schedule, to be based primarily on income.

2.3 THE PROCESS

The Commission held its first meeting on July 17, 1987. The Commission met at least twice a month in various areas of the state. Public hearings were conducted, ten before the Commission was convened and four thereafter. Transcripts of all the public hearings were prepared so that they would be available for study by the Commissioners. Commission meetings followed the process of identifying the issues and problems, analyzing and discussing those issues, and reaching a consensus to resolve all issues. Between each meeting, assignments were given to all members to be reported on at the next meeting. Many of the assignments consisted of preparing a written discussion of the issues identified by the members, with development of alternatives and recommendations.

For the most part, the Commission relied on its members for information and education. Additional input was obtained from the general public through the fourteen hearings and by distribution to all Commissioners of all letters sent to any individual member. Numerous publications in the field were reviewed, as were support schedules enacted in other states and counties. A number of speakers with expertise in the area of child support and related fields were invited to the meetings. The Commission was not reluctant to consult with any resource available to aid its progress.

This report and the proposed child support schedule are the result of this entire process. The recommendations address specific processes to provide the best solution to the complex process of setting child support. In some areas recommendations are provided to address other problems associated with the child support field. The objective was to propose a schedule which would establish an adequate level of support for children in a manner that will be equitable to the parents. This schedule would be available for use in all the contexts in which child support may be determined.

2.4 COMMISSIONER BIOGRAPHIES

Stephen Gaddis was designated by the Secretary of the Department of Social and Health Services, Jule M. Sugarman, to chair the Commission. Commissioner Gaddis has served as a Superior Court Commissioner in King County since 1981, including three years as Family Law Commissioner. He was elected in 1986 to chair the Washington State Bar Association Family Law Section, and in 1987 to be Vice President of the Association of Family and Conciliation Courts. Commissioner Gaddis is an adjunct professor of dispute

resolution at the University of Puget Sound School of Law, and has authored articles on Child Advocacy, Mediation of Family Disputes, and Judicial Means of Reducing Domestic Violence.

Michael Curtis was designated to the Commission by Mary Campbell McQueen, the State Administrator for the Courts. Mr. Curtis has been employed by the Office of the Administrator for the Courts as a juvenile and family court specialist since August 1985. He served on the Governor's Executive Task Force On Support Enforcement in 1986 and coauthored SHB 413, which created a simplified process to modify child support orders. Mr. Curtis is married and has two children who are twelve and seven years old.

Helen Donigan was nominated to the Commission by the Washington State Bar Association. Ms. Donigan is a professor of law at Gonzaga University School of Law, Spokane, Washington, where she has taught family law since 1979. She has been an executive board member of the Washington State Bar Association Family Law Section since 1981, and was a member of the steering committee and facilitator for the Washington State Legislative Conference on the economics of child support, paternity and custody in 1983-84. Professor Donigan has authored numerous articles in the area of family law and is a consulting editor and contributing author to the Washington State Bar Association Family Law Deskbook, to be published in 1988.

Joy Henley was nominated to the Commission by Mothers Without Custody. Ms. Henley has an Associate of Arts Degree, with honors, in Social Service. She is a member of the national Mothers Without Custody organization and participates in public and group speaking for non-custodial parents' rights. She wrote an article regarding the social stigma of being a non-custodial mother that appeared in the national newsletter of Mothers Without Custody.

Robert Hoyden was nominated to the Commission by Kids in Divorce Situations (K.I.D.S.). Mr. Hoyden is a Seattle-based businessman and one of the primary organizers of K.I.D.S., a politically active group interested in promoting legislation pertaining to children. Mr. Hoyden has senior standing toward a B.A. degree in English, and plans to continue his education at Seattle University. He has encouraged communication from non-custodial parents, whom he represents on the Commission. Mr. Hoyden is a non-custodial parent of a child living in New York.

Daniel Radin, designated to the Commission by Attorney General Kenneth O. Eikenberry, has been an assistant attorney general since 1980. Mr. Radin provides legal advice to the Office of Support Enforcement (OSE) and acts as litigation coordinator for support enforcement matters for the Attorney General's Office. He is chairperson of the Seattle King County Bar Association Family Law Section, and has been an executive board member of the Washington State Bar Association Family Law Section since 1983. Mr. Radin is a contributing author and serves on the editorial board for the Washington State Bar Association Family Law Deskbook. He is a frequent lecturer and author on support enforcement matters.

Katharine Ramsey was nominated by the National Organization for Women-Spokane Chapter. Ms. Ramsey is a single parent of two children and has completed her Masters degree in social work at Eastern Washington University as a re-entry student. She has worked in child abuse prevention and parent

education programs as well as participated in Changepoint, a program designed to support women in transition. In addition, Ms. Ramsey served at the YWCA with the Women and Youth Services Program and its public policy committee.

Sidney Splawn was nominated by Evergreen Legal Services and endorsed by Spokane Legal Services. Ms. Splawn is the directing attorney of the Evergreen Legal Services Office in Longview, Washington. She graduated from the University of Washington in 1973 and received her Law Degree in 1976 from Northwestern School of Law in Portland, Oregon. Ms. Splawn served as a consultant, assistant administrator and researcher for several social service agencies in Portland until 1980. She started legal practice as a public defender in Seattle, then worked as an assistant attorney general in the Seattle office representing the Department of Children and Family Services in juvenile matters and OSE. She worked for the Spokane Legal Services prior to assuming her current position.

Anthony P. Wartnik was nominated by the Washington State Association of Superior Court Judges. Judge Wartnik is married and has a son and daughter. He obtained his Bachelor of Arts and Law degrees from the University of Washington, maintained a general law practice from 1963 to January 1971, served as a Bellevue District Court Judge from 1971 to April 1980, and has served as a judge with the King County Superior Court from 1980 to the present. He has been a member and chair of the King County Superior Court's Family Law Department and Family Law/Mental Illness Committee and since 1981 has been a member of the Family Law Committee of the Washington State Association of Superior Court Judges. Judge Wartnik was active in the creation, implementation and subsequent revisions of the Association of Superior Court Judges Uniform Child Support Guidelines.

Peter H. Nickerson is a professor of economics in the Albers School of Business at Seattle University. He received his doctorate degree in economics from the University of Washington in 1984. His research interests include unemployment, poverty, and child care issues.

CHAPTER III

CHILD SUPPORT DETERMINATION PRINCIPLES

3.1 BACKGROUND

The courts in Washington dissolve 26,000 marriages each year. Children are involved in 14,000 of those marriages. In addition, of the approximately 69,000 children born each year in this state, more than 11,000 children are born out of wedlock (Governor's Executive Task Force on Support Enforcement, page 5, September 1986). For all of these children a support obligation should be established and a fair amount of support determined.

In 1982 the Washington State Association of Superior Court Judges approved the Uniform Child Support Guidelines (hereinafter "ASCJ Guidelines"). A major purpose of the ASCJ Guidelines was to "promote settlement of child support disputes by providing flexible and realistic measures of predictability regarding judicial standards for child support determinations". The principles were stated as:

The overriding principle of these guidelines is to maximize the attention paid by the parties and the court to the rights of the children with respect to support. The guidelines recognize the equal duty of both parents to contribute to the support of their children in proportion to their respective incomes. . . (ASCJ Guidelines, page 1).

Under the ASCJ Guidelines, the support to be paid by the noncustodial parent is that fraction of the scheduled amount in the proportion that the parent's income bears to the total income of both parents. Thus, the ASCJ Guidelines recognize that the "needs" of a child are generally determined by the income level of the parents; and the ability of each parent to contribute to support is recognized as proportional to their contribution to that income level (Uniform Child Support Guidelines, page 1, rev. 8/29/84). There is no requirement that a judge or the parties consider the Guidelines, and they are advisory in nature.

Federal law now requires each state, which operates a support program with federal funds, to establish guidelines for child support determinations (42 U.S.C. 667). The superior court in each judicial district in Washington was required to adopt a child support schedule by August 1, 1987 (Laws of 1987, Ch. 440, Sec 3). Although most of the counties in Washington have adopted the ASCJ Guidelines, a number of counties have promulgated their own schedules.

A recent federal study compared Washington's Uniform Guidelines against four other basic types of support guidelines. When considering five fact patterns, the Washington guideline provided the lowest amount of support in two cases, and the second lowest amount of support in two other cases [Williams, Development of Guidelines for Child Support Orders: Final Report, page II-112, March 1987 (hereafter Development of Guidelines)].

Several articles have been published criticizing the economic basis and assumptions of the ASCJ Guidelines. These include: Ordell, Lawrie & Brown, Child Support Guidelines: A Giant Step Backward? Seattle-King County Bar Bulletin, May 1985; Terrell & Poynter, "Child Support as a Percent of After-Tax Income: A Note on the Washington State Uniform Child Support Guidelines (1985)", July 1986 (unpublished); Kelley, "Child-Support Schedules: Exploring Unchartered Territory", Seattle Times, April 24, 1987. The Governor's Task Force on Support Enforcement examined the ASCJ Guidelines and recommended that a statewide child support schedule be established. Their recommendation included the use of gross income and a schedule that would be followed unless certain exceptional situations defined by the enabling statute were established (Final Report, pages 30-32, September 1986).

Legislation was introduced in the House during the 1986-87 legislative session to create a statewide child support schedule. The bill, SHB 418, was subsequently amended to create the Child Support Schedule Commission to consider and make recommendations on the matter.

3.2 PURPOSES OF SCHEDULE

The establishment of a statewide child support schedule will serve a number of important purposes:

1. Provide a uniform, consistent and objective method for determining child support obligations in all proceedings;
2. Reinforce the principle that parenthood entails continuing economic responsibility, and allocate that responsibility equitably between the parents;
3. Protect children from the adverse economic consequences of family break-up or nonformation;
4. Enable parents, attorneys and judges to predict child support amounts and reduce the adversarial nature of the proceedings;
5. Provide a standard for reviewing the adequacy of existing orders and settlement agreements; and
6. Reduce the number of children living below poverty level by establishing adequate child support orders.

To ensure that the schedule would be consistent with these purposes, the Commission adopted a set of policy principles to guide its work.

3.3 PRINCIPLES GOVERNING CREATION OF SCHEDULE

The Commission agreed upon the following principles to guide the resolution of the issues identified above. These principles are as follows:

1. Both parents share legal responsibility for support of their children. The economic responsibility should be divided in proportion to their available income.
2. The subsistence needs of each parent should be taken into account in setting child support, but in virtually no event should the child support obligation be set at zero.
3. Child support must cover a child's basic needs as a first priority, but, to the extent either parent enjoys a higher than subsistence level standard of living, the child is entitled to share the benefit of that improved standard.
4. Each child of a given parent has an equal right to share in that parents' income, subject to factors such as age of the child, income of each parent, income of current spouses, and the presence of other dependents.
5. Each child is entitled to determination of support without respect to the marital status of the parents at the time of the child's birth. Consequently, any guidelines should be equally applicable to determining child support related to paternity determinations, separations and divorces.
6. Application of a guideline should be sexually non-discriminatory. Specifically, it should be applied without regard to the gender of the custodial parent.
7. A guideline should not create extraneous negative effects on the major life decisions of either parent. In particular, the guideline should avoid creating economic disincentives for remarriage or labor force participation.
8. A guideline should encourage the involvement of both parents in the child's upbringing. It should take into account the financial support provided directly by parents in shared physical custody or extended visitation arrangements, recognizing that even a 50% sharing of physical custody does not necessarily obviate the child support obligation. (Williams, Development of Guidelines, page II-67).

CHAPTER IV

IDENTIFICATION AND DISCUSSION OF ISSUES

The Commission first reviewed literature in the field and support schedules established in other states. An initial decision was made that the Commission would not simply update the present ASCJ Guidelines, but would choose the approach best suited to the task of setting child support. Since the Commission was starting the process from the beginning, its first task in creating a child support schedule was to identify the issues. After much discussion and refinement, almost fifty issues were identified. The issues were divided into separate areas as follows: (1) economic questions; (2) construction and content of schedule; (3) application of the schedule; (4) areas of discretion; and (5) issues requiring legislation.

4.1 ECONOMIC ISSUES

The construction of a child support schedule necessitates the integration of a large amount of economic theory and economic data. This section contains the theoretical explanations for adopting certain approaches. The next section describes how these ideas were actually applied to the construction and content of the proposed schedule.

4.1.1 Alternative Models for Child Support Schedules

Four types of child support schedule models have been developed in the United States. They are 1) Cost Sharing, 2) Income Equalization, 3) Income Sharing and 4) a hybrid Income Sharing-Cost Sharing model. Only the last two are in use as the basis for either support guidelines or mandatory schedules at this time.

The Cost Sharing Model is the simplest of the four. Though it is not used as the basis of any schedule in the United States, it has often been used where no guidelines were available or where child support has been implicitly included in the overall family maintenance at divorce. The model suggests that the costs of raising children be calculated and that the custodial parent be assured of having funds to cover those costs. The types of costs included are food, shelter, medical, clothing and school expenses. When suggested as the basis of a child support schedule, the cost amounts are those that would maintain children at a relatively low standard of living above poverty level. A schedule based on the Cost Sharing Model would not consider the overall incomes of the parents. The major assumption of this model is that parents are only responsible for some minimum standard of living for their offspring.

Income Equalization, often referred to as the Cassety Model, represents the other extreme in child support schedule construction. Under this theory, the incomes of the separated parents are combined and then disbursed in such a way that the standards of living in both households are identical. Not considered in any way are the costs of raising children (except to the extent that their presence affects the household standard of living), the absolute level of incomes of the parents or the relative amounts of total

parental income contributed by each parent. No jurisdiction has adopted the Income Equalization Model as the basis for a child support schedule.

At least 18 states have adopted or are considering adoption of child support schedules that are based on the Income Sharing Model or on a hybridization of the Income Sharing model with the Cost Sharing Model. The model suggests first that parental income be totaled. Next the percentage of that total income that would have been spent on the children, had the family remained intact, is calculated and allocated to child support. Finally each parent pays the percentage of child support that would correspond to their relative share (percentage) of the combined total income. The actual flow of child support payments will then depend on the amount of time the child spends with each parent. The model becomes hybridized with the Cost Sharing Model when certain costs (daycare for instance) are shared explicitly, again in proportion to each parents' share of the combined income. The rationale for this is that some costs are very high in separated families relative to intact families and that some costs are not fully represented in the economic table for determining basic support levels.

The popularity of the latter two approaches stems from two factors: first, the economic effect of a separation on the children will be minimized; and second, though the children's residential arrangement might affect the flow of child support payments between the parents, it has little bearing on the total amount of child support available to the children.

A brief example of these might be helpful. Assume that the combined income of the parents was \$50,000, with the father earning \$20,000 (40%) and the mother earning \$30,000 (60%). Also suppose that had the family remained intact, \$2000 per month would have been spent on the children. The father's share of the \$2,000 would be forty percent, or \$800. The mother's share would be sixty percent, or \$1,200. If the children reside solely with the father, his household would receive a payment of \$1,200 from the mother. If they reside solely with the mother, the father would pay \$800 to her household. The children in either case receive the same \$2,000, which is what they would have had spent on them had their parents remained together.

It should be noted that the Income Shares Model does not provide a complete remedy for the potential loss in the standard of living for children of separated parents. Although total expenditures for the children may remain the same, total costs will necessarily increase when families separate. These increases can be explicitly tied to some duplication in living expenses (two residences instead of one), and to additional costs incurred because of single parenting (increased childcare and transportation costs).

4.1.2 The Choice of a Model

In choosing a basis for a child support schedule, the Cost Sharing and Income Equalization Models were rejected because they potentially provided only a minimum standard of living for children, or in the case of income equalization, could have led to gross inequities in the parental responsibility. In particular, the Cost Sharing Model was rejected as the basis for the proposed child support schedule because it is founded on the premise that parents are only responsible for the subsistence costs of raising their children. The Income Equalization Model was rejected because current law

allows the court to attempt to equalize the parents' living standards by an award of spousal maintenance as a supplement to child support in appropriate cases.

The proposed schedule uses a hybrid Income and Cost Sharing Model similar to the one described in the previous section. It was chosen over the alternatives because of its neutrality regarding residential placement and because it is more equitable in regard to the parents' support obligation, while still providing economic protection for children.

4.1.3 Expenditures on Children and the Income Sharing Model

Because the model used to construct the schedule in this report is an Income Shares Model, the proportion of total parental income that is to be used as the basis for a schedule is extremely important. An estimate of how much families with similar incomes spend on their children is required. This information would allow the computation of the average proportion (percentage) of income spent on children by families in different income classes. That figure then becomes the basis for the child support economic table.

Data on family expenditures is unavailable for the State of Washington alone. Furthermore, it is prohibitively costly to collect a reliable data set for the state. The federal government, however, has updated and revised the 1972-73 Consumer Expenditures Survey (CES) to 1986. This revision has included adjustments for cost of living changes, real income changes and demographic change. It is regarded as the most reliable survey of its type now available and has been used by both the federal government and other states as the basis for child support schedules. While it is plausible that the spending patterns in Washington might differ from spending patterns in the country as a whole, there is no evidence to support that. For these reasons the CES data has been adopted as the data set for estimating the percentage of income spent on child rearing. Incorporated into the proposed schedule from the data and other studies that use the data, are the following:

1. Child expenditures decrease as a percentage of income as the income level rises. When there is one child under age 12, the percentages range from 22 percent for incomes below \$5,600 to 16.5 percent for incomes over \$52,000. This has been recognized within the proposed schedule, rather than applying a flat percentage rate for all levels of income. In all, seven different expenditure percentages for seven different income groups have been identified and incorporated. For consistency and to avoid arbitrary assignments of averages, it was assumed that these proportions are based on marginal increments of income. This assumption resulted in a range of expenditures across incomes of from 22 percent to 18 percent on the proposed schedule for support for one child under 12 years of age. It should be noted that the schedule is designed to be read directly for combined parental incomes up to \$7,000 net per month.
2. The additional percentage of income spent on each additional child decreases with the number of children at all income levels. For

example, with combined family income of \$15,000 the average percent of income spent on a single child under the age of twelve would be 21.6 percent. In the same income category the percentage of income spent on two children under the age of twelve would be 33.5 percent. The second child therefore causes the family to expend only an additional 11.9 percent of its income on the second child compared with the 21.6 percent spent on the first child. This trend continues as the number of children grows. This factor has been incorporated into the proposed support schedule. Expenditure percentages for up to six children have been calculated for all income groups.

3. The age of children affects the percentage of income spent on them at all income levels. Though there is some ambiguity concerning this in the 0-11 year age group (some studies suggest a difference between 0-5 year olds and 6-11 year olds while others show no difference), there is universal agreement among researchers that a significant difference exists in child rearing expenditures between 0-11 year olds and 12-17 year olds. Expenditures for the latter group are considerably and consistently higher. Because of these findings, the schedule adjusts support payments depending on the ages of the children, using the 0-11 and 12-17 year breakdown. On the schedule these adjustments are possible at all income levels and for any number of children.

4.1.4 Cost of Living Adjustments by Locality

There has been considerable discussion on the issue of whether different child support schedules would be appropriate for different areas or counties in the state. This idea has been rejected for a number of reasons.

First, and most importantly, the effects of different costs of living on the percentage of income spent on children is minimal. The Income Shares Model of child support relies on the proportion of income spent on children for the calculation of the support amount. Only at the points where the percentage of income for child expenditures changes (there are seven such points in this schedule) might there be any effect. In the proposed schedule these effects would amount to only a few dollars.

Below the poverty level of parental income (\$600), where on the schedule the income sharing is yet in effect, costs of living differences across the state might effect the purchasing power of child support payments. The difference, however, is small. The proposed schedule recommends that for combined income under the poverty level, child support be set at no less than \$25 per child. Were this to be adjusted for costs of living, the amount would increase eight percent in King County to \$27 and decrease in Yakima County seven percent to \$23.25. These differences, which constitute the largest variations from the state average, do not justify individual county schedules.

The substance and structure of an Income Shares Model of child support negates the need to consider differences in the costs of living across the state. Even when the Income Shares Model is not in effect (at the lowest income end of the schedule), the cost of living differences across the state

are so small as to not warrant multiple schedules.

4.1.5 Costs as Additions to the Income Shares Model

The Income Shares Model of child support calculation uses as its basis the average proportion of income spent on children by families with similar incomes. Certain special expenses incurred by families are of the type that put their child rearing expenditures far above the average for their income groups. Examples of these include private school tuitions, childcare expenses, uninsured and substantial medical expenses, orthodontia, summer camp costs, and travel expenses related to visitation over long distances. Because these costs are potentially of a magnitude that might overwhelm the budget of a residential parent, the proposed schedule proposed in this report allows these costs to be considered separately from the income shares portion of support.

Under the proposed schedule, expected expenses are added together and allocated to each parent in the same proportion that each contributes to the total parental income. This is the same proportion used in the income sharing. For example, if each parent earns \$1500, total monthly parental income is \$3000. If there is a \$500 per month daycare expense, the mother and the father would each be responsible for one-half of the daycare expense, or \$250. Each parent would contribute their share of the basic amount of support from the schedule and their share of the daycare expense.

The worksheet included in the proposed schedule includes information on which expenses may be included in this category and how to include others not explicitly mentioned. In child support orders, the basic child support amount should be stated separately from the amount of daycare or other expenses to be paid. Even though the additional expenses may vary over time, the amount of the additional expenses should be written as a sum certain whenever possible to maximize its enforceability.

4.2 ISSUES RELATING TO THE CONSTRUCTION OF A CHILD SUPPORT SCHEDULE

In addition to the economic issues identified in the preceding section, a number of other issues must be considered and resolved before the schedule can actually be constructed. These include definitions of income, minimum and maximum levels of child support, wealth as a consideration in setting child support, and considerations for underemployment and voluntary unemployment by a parent. This section addresses these issues and explains how they were included in the construction of the proposed child support schedule.

4.2.1 Definitions of Income

For determining child support based on an Income Shares Model the definition of income must be carefully specified. First, it must be decided whether to use gross income as the basis for the schedule or net income. The proportion of income spent out of gross or net income will differ depending on which is chosen. Though the selection of gross income as the base greatly simplifies the calculations necessary for the computation of child support, it may not accurately measure the actual disposable income

available for support. The use of defined net income, on the other hand, more closely represents the amount of available funds and allows for clear specification of permissible deductions. The proposed schedule uses net income as the basis for child support obligations. While this may cause problems in certain cases when a parent attempts to "hide" income, other attributes of the schedule lessen the potential of this.

To reach the schedule's definition of net income, gross income must first be defined. Gross income is the sum of a parent's income from all sources, including but not limited to: wages, overtime pay, salaries, interest, dividends, profits from business, and payments from "non-means-tested government programs". Receipt of child support from other relationships, AFDC, SSI, General Assistance, and Food Stamps are not to be included. Spousal maintenance received from other relationships should be considered as a resource not as direct income. For the self-employed, gross income is defined as business income less normal business expenses. The self-employed parent has the burden of establishing the validity of depreciation and business expenses. Federal income tax returns are required to verify income for the three years preceding the child support decision.

- * Net income is defined as gross income minus the amount withheld for specified deductions. These deductions include: income taxes, FICA, required union dues, mandatory pension plan payments, and court-ordered maintenance.

4.2.2 Other Circumstances

When there is a determination of voluntary underemployment or voluntary unemployment of a parent, an income should be imputed as if the parent were employed at the level of which the parent is capable and qualified. Because unearned income and wealth are difficult to calculate, a section on the schedule calculation form is available for the listing of assets. Items to be listed here and to be used as consideration for adjustment to the child support schedule are all assets such as real estate, stocks, bonds, automobiles, recreational vehicles, boats and artwork.

The purpose of this section is to avoid situations where actual income appears low because it is "hidden" in the growth in value of non-performing physical or fiduciary assets. When hidden or potential income from these assets is deemed to be unusually high, income from them should be imputed and then added to gross income.

For the same reasons, a section is included on the computation sheets for the listing of any extraordinary, new or changing, household circumstances. These would include remarriage, new children, contributions to household income and expenses by new spouses or companions. These factors, if significant, can be used as a basis for deviations from the schedule.

4.2.3 Minimum and Maximum Child Support

In situations where the combined net income is less than \$600 the income shares concept does not apply, so the schedule provides for a case by case determination of child support. In these cases, the income and living expenses of the parents should be carefully reviewed to determine the

maximum amount of child support that can be reasonably ordered without denying the parents the means for self-support at a minimum subsistence level. A specific amount of support, not less than \$25 per child, should always be ordered to establish the principle of the parents' obligations to provide monetary support to the children.

The schedule provides calculated amounts of child support to a combined net income of \$7000 per month. For cases with higher combined monthly net incomes, child support should be determined on a case by case basis but never at a level less than the schedule amount for \$7000 per month. Families with incomes above this amount represent a very small percentage of the population.

If the support obligation is too high, that might act as a disincentive to work, thereby reducing the actual payments to zero. As a general rule, neither parent should be obligated for more than 50 percent of net earnings for child support. However, the support order may exceed this maximum for good cause, including the possession of substantial wealth, children with daycare expenses or special medical, educational or psychological needs, and for larger families.

4.2.4 Review of the Schedule

Once a child support schedule is in place, there needs to be a mechanism to correct any problems which may arise and to amend the schedule based on updated economic data. The legislature should continue the Commission under its present format, requiring the Commission to meet next year to consider any problems with its original proposal, and then requiring the Commission to meet periodically on a limited basis to review the schedule and propose any modifications to the legislature.

4.3 ISSUES RELATING TO THE APPLICATION OF A CHILD SUPPORT SCHEDULE.

Once the economic and construction issues have been resolved, a number of issues must be considered concerning the application of the child support schedule. These include issues of updating the schedule, adjusting support orders, the schedule's use in subsequent modification cases, and the way in which the child's residence and time spent with a child should be considered. This section addresses these issues and explains how the child support schedule will be applied in these situations. The issues are grouped together with those concerning the initial determination of support appearing first, followed by those issues that arise after the initial setting of support.

4.3.1 Nature of Schedule

The fundamental issue that must be resolved in creating a child support schedule is how that schedule is to be applied to individual cases. A schedule may be mandatory, presumptive, or advisory. A mandatory schedule means that the numbers obtained from the tables must be applied strictly in each case without deviation. A presumptive schedule means that the tribunal and parties must follow the schedule unless deviation can be justified by the evidence. An advisory schedule means that the schedule may be used and con-

sidered as a guideline or it may be disregarded entirely.

The primary problem in determining how the child support schedule should be used is the conflict between the need for discretion to decide a case based upon its individual facts and circumstances, and the need for adequate support orders which are similar in similar cases. Each case is different and unique because the people, their personalities, their lifestyle and standard of living differ. What is fair and equitable in an individual case depends upon those individual factors. However, there are many similarities between different cases, and child support should be set in the same amount when the circumstances of the cases are the same. The issue, then, is whether there is any justification for different orders from one case to another and from one forum to another and, if so, what are the proper and acceptable parameters of those differences.

In recognition of the need for adequate support orders that are consistent between cases, while mindful of the individual circumstances of each case, the schedule should be applied as an open rebuttable presumption of the correct amount of child support to be paid. Whenever a child support order deviates from the amount set forth in the schedule, specific findings of fact must be entered to explain that deviation. The proposed schedule requires the completion of worksheets to determine whether the presumption is met in individual cases. The support order is subject to review for an abuse of discretion or if the findings are not supported by the evidence. This rule is to apply both in contested cases and in settlements.

Review of agreed support orders should be expanded to ensure that they are adequate. Whenever such an order is presented, the financial information contained in the order should be considered, compared with the amount from the support schedule, and the reasons given for deviating from the schedule should be examined. If the reason is insufficient, the agreed order should not be entered.

4.3.2 Parents' Living Expenses and Debt Structure

Once an income shares model is used as the basis for the child support schedule, a decision must be made whether the parents' actual living expenses and debt structure should be considered when applying the schedule. An income shares schedule does not expressly consider the parents' actual expenses.

Where a significant disparity exists between the parents' essential living costs due to conditions beyond their control, the schedule may allow for an adjustment in the support obligation. An adjustment also should be available where a parent has extraordinary ongoing medical expenses. With regard to the payment of family debts, the schedule should not allow for adjustment of support in cases where the parents have voluntarily incurred a large number of debts.

4.3.3 Voluntary Unemployment

The Income Shares Model sets child support based upon the share of total income earned by each parent. In cases where an individual is voluntarily unemployed, the schedule sets an inadequate level of support unless

an adjustment is made. This adjustment is made by imputing income. No wage income should be imputed to a parent who is unemployable.

The difficult question posed in these cases is whether the unemployment is voluntary or not. An example of this is the parent who quits a job or refuses to work to avoid paying child support. A parent who has remarried or is cohabitating and not working may be voluntary unemployed.

4.3.4 Underemployment

Although the concepts of voluntary unemployment and underemployment are often treated together, they are distinct problems. Several states have addressed the issue of underemployment in their child support schedules. In Texas, if a parent's income is "significantly less" than that parent could earn due to "voluntary" underemployment, the court may consider the parent's earning potential. In Idaho, one is not underemployed if gainfully employed on a full time basis at the same or similar occupation for more than six months prior to the filing or separation.

A parent should not be considered to be "underemployed" as long as that parent is gainfully employed on a full-time basis. If voluntary underemployment can be established, income should be imputed to the underemployed individual and child support should be set based upon past earnings or earnings potential.

4.3.5 Pre-Existing Child Support Obligations

In some cases a parent is already required by court order to pay child support to a child of a prior relationship. A parent may also be receiving child support for a child of another relationship. A new support obligation may be determined by deducting either the amount of child support paid or the amount of the obligation even if unpaid. Deduction from the parent's income for child support actually paid has been a standard practice in this state.

- * Child support paid for children of other relationships shall not be a deduction from gross income. The Commission could not at this time determine a way to make a similar adjustment for the parent who cares for children in the home instead of paying child support. Support received for a child of another relationship should not be added to the parent's income but may be considered along with the expenses of that child as a basis for deviating from the schedule.

4.3.6 Adjustment for Residential Arrangements

Under an Income Shares Model, support is determined by the income of the parents. When the parent with whom the child does not regularly reside spends time with the child, that parent incurs expenses for the child and the other parent's expenses are reduced. Any adjustment for contact must be simple and easy to apply.

The schedule is predicated on the involvement of both parents and should allow an adjustment for time spent with the child where one parent has increased costs and the other parent has been saved expenses. This most

typically occurs and should be limited to overnight contact with a child.

- * Since a child's time with one parent does not reduce the other parent's expenses dollar for dollar, this adjustment should be available only for those parents whose time with the child exceeds 25 percent of the nights per year, or more than 91 nights. Special treatment need not be given to the situation where a parent spends a large block of time with a child because there is little economic distinction between that situation and a comparable number of overnights spent with a child which are spread throughout the year.

When a child shares a residence with each parent, or where each parent has a child of the relationship in their residence, the schedule should apportion the support obligation to reflect this significant sharing of residential responsibilities. If this adjustment is sought, evidence should be presented to demonstrate the parents' actual past involvement with the child, and the adjustment should reflect the past pattern of contact. The amount of the deviation and the anticipated sharing of residential time should be specified in the order so that support can be adjusted if the amount of sharing differs from that anticipated.

Special consideration should be given to situations in which a reduction in support is sought for contact or a shared living arrangement for families at lower income levels. The support payment should not be reduced if there will be insufficient funds available to adequately fund at least one residence. A reduction in the support payment should not be granted if the child is receiving AFDC benefits as there is no reduction in expense to the state.

4.3.7 Post-Majority Support

Under the Marriage Dissolution Act, the obligation to pay child support is based on dependency, not minority, and a court may require a parent to support a child beyond the legal age of majority, which is eighteen (RCW 26.09.100; Childers v. Childers, 89 Wn.2d 592, 575 P.2d 20 (1978)). This includes support for a child who is completing secondary education and support for a child for college or vocational training.

College and vocational training expenses are different from the expenses need to support a minor child. Additionally, a child in college may have a responsibility to assist in providing a post-secondary education. The schedule should be advisory rather than presumptive when setting support for children who have attained the age of 18 and have completed their secondary education.

4.3.8 New Families

After a child support order is entered, many parents create new families or acquire new dependents. New spouses may be reluctant to accept responsibility for the support of their present spouse's child of another relationship at the expense of their own children. If cohabitation is to be considered, that factor alone may result in the termination of the relationship and living arrangement. Furthermore, the actual allocation and computation of income of the new family members and the needs of additional child-

ren become extremely complex, and may well be beyond the ability of any schedule to address fairly.

Two general principles adopted by the Commission apply in this situation. They are: each child of a given parent has an equal right to share in that parent's income; and the schedule should avoid creating economic disincentives for remarriage. Whatever approach is adopted must also treat both parents in the same way, either including or excluding the income of new spouses and the needs of new children.

The creation of a new family, its income and needs, should not by itself be the grounds to modify a pre-existing support order. If there are statutory grounds for a modification, the new family may be considered when redetermining the child support obligation.

- * Parents should remain primarily responsible for their own children, while the state and stepparents are secondarily liable to provide support for the children. The support obligation should be set on a presumptive basis looking to the income and resources of the natural parents; a deviation may be justified based upon other funds being received for the children.

4.3.9 Setting of Temporary and Permanent Child Support

The schedule should apply to both temporary and permanent determinations of child support. Parents may undergo temporary and extraordinary problems during the initial period of separation. The proposed schedule has a section in which extraordinary circumstances can be listed for consideration in deciding whether to deviate from the schedule.

4.3.10 Adjustment of Child Support Orders

Although a support order may be adequate and fair at the time it is entered, the circumstances of the parents and the child change over time so the order may become inappropriate. Under current law, child support may be adjusted based upon the reapplication of a schedule, the use of an index, or changes in income.

- * The use of the schedule is presumptive and should be applied in all situations where child support is set, including the adjustment of support orders. However, the parents may request and the court may order an alternative for adjustment of the support amount in response to the specific needs of the family and which provides at least as much disclosure and certainty as would be provided by reapplication of the schedule. The orders should be drafted to include procedures for adjusting the order, including the process to share income information, the effective date of any increase, and the effect of the failure to share information or seek an adjustment.

CHAPTER V

AREAS OF DISCRETION

Under the child support schedule recommended by the Commission, any deviation must be supported by a specific finding of fact. This leaves room to view the individual facts and circumstances of every case and make a decision appropriate to that case. Discretion is retained, but accountability is required, because any deviation from the schedule must be justified. The proposed schedule includes a section on which the parents shall list all facts which might justify a deviation from the scheduled amount of support. Without limiting the areas in which discretion would be appropriate, the following areas have been identified.

5.1 WEALTH

Using an Income Shares Model, child support is based on the income of the parents, which includes both earned and unearned income. Items of family wealth, such as artwork, non-income producing real or personal property, and other assets are not directly factored into the support formula. For this reason the court should consider such resources when determining support, and may properly deviate from the formula based upon the family's wealth. Consideration of wealth and unearned income is appropriate under current law.

A child's income will not ordinarily be added to a parents' income when setting child support. Although that income is available to the family, its inclusion in the support calculations would reduce the amount of support provided by the parents and would act as a disincentive for the child to work. However, in cases where the child earns an extraordinary income, that income should be included in family wealth and may be considered as a basis for deviating from the schedule.

Spousal maintenance may reflect a parent's need for rehabilitation, a property division, or tax planning. Spousal maintenance received from another relationship is a form of wealth which may justify deviation from the formula.

5.2 SHARED LIVING ARRANGEMENTS

Under present law the financial contributions to the household by a parent's new spouse, live-in companion, or roommate may be considered when setting child support. A shared living arrangement may decrease the parent's expenses, making more money available for the payment of child support.

- * In either case, these additional resources should be disclosed and will justify a deviation from the amount calculated on the worksheets. Alternatively, the amount of income for a parent's household may be increased for calculation purposes to reflect additional financial benefits received by virtue of the shared household.

5.3 TAX PLANNING

In some cases the amount of support being transferred can be increased through the use of effective tax planning. Although the Divorce Tax Reform Act of 1984 has placed obstacles on the treatment of child support as maintenance for tax planning purposes, this technique remains available.

The Commission recognizes that effective tax planning, can be used to increase support to a child. Deviation from the schedule is proper should such an arrangement be made. In such cases, it would be appropriate to set the spousal maintenance prior to the child support. However, the orders should provide that when the maintenance obligation terminates, child support is set in an amount consistent with the combined income of the parents and the support schedule.

5.4 DISABLED CHILDREN

Disabled children are likely to have special needs which are not addressed in the basic support amount from the schedule. There may be also public entitlement benefits available. Consideration must be given to the child's special needs and the benefits available. Deviation from the schedule may be appropriate based upon a consideration of those factors.

CHAPTER VI

ISSUES REQUIRING LEGISLATION

In order to adopt the recommendations of the Commission, the following legislative action should be taken.

6.1 ADOPTION OF THE SCHEDULE

The legislature should adopt the child support schedule proposed by the Commission, including its standards, instructions, worksheets, and table. The schedule should be applied as a rebuttable presumption in all support proceedings whether judicial or administrative. Adoption of the schedule itself should not cause a review of existing support orders.

6.2 CHILD SUPPORT ORDERS

Child support orders should contain written findings of fact upon which the determination was made, the reasons for deviating from the schedule amount, and the evidence upon which any deviation was based. The worksheets should be completed and filed in each proceeding.

6.3 STANDARD FOR DETERMINING SUPPORT

- * Support shall be set based upon the parents' financial capacity. A child's financial need is the total of the cost commonly expended based upon age, family size, family income and resources together with those special financial needs pertaining to the particular child or family.

6.4 NEW BASIS FOR MODIFICATION OF SUPPORT ORDERS

Current law generally requires a petitioner to show a substantial change of circumstances before modifying a support order. Although there are some exceptions to this rule, parents also should be allowed to modify the support order every three years without showing a substantial change of circumstances.

6.5 COMMISSION TO REVIEW SCHEDULE

The Child Support Schedule Commission should continue on a limited basis to review the schedule and propose changes to the legislature at least every two years.

6.6 ACCOUNTABILITY FOR SUPPORT

- * Although the Commission's work has focused primarily on the creation of a support schedule and implementing legislation, a number of related issues

merit consideration by the legislature. A frequently-stated concern is that support is not being spent for the child. In certain cases an accountability hearing is appropriate. When an accounting is requested, safeguards should be established to avoid abuse of the process.

The legislature should enact a statute explicitly giving the court the authority to order an accounting for a parent's support obligation. The statute should be narrowly drafted to allow an accounting only in cases where there is evidence of probable mismanagement.

6.7 INTERFERENCE WITH A PARENT'S CONTACT WITH A CHILD

The child's rights to be adequately supported and to enjoy a meaningful relationship with both parents are of equal importance, and each is entitled to be enforced. Many parents use the denial of one right as an excuse to deny the other right, to the ultimate detriment of the child. For example, if contact is denied, the suspension of child support denies the child of both support and parental contact.

Legislation should be enacted to strengthen the court's authority and power to deal with denials of contact, as well as the wilful failure to pay the support. A mechanism is needed to identify the wilful denial of contact with a child and to assure the contact that is the child's right. Several alternatives exist to meet this need.

6.8 NONJUDICIAL PROCESSES FOR SETTING CHILD SUPPORT

The use of the child support schedule will make the setting of child support more predictable and less complex. In light of the delay that exists in many counties in getting a trial date and the expense of going to court, nonjudicial alternatives for setting support should be explored. The legislature should consider the expanded use of arbitration and mediation. Nonjudicial alternatives should be available for the initial setting and modification of support orders.