92117-2

No. 46824-7

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of

MICHAEL ST. GEORGE BENT,

Appellant,

v.

LASHANDRE NICHELE BENT,

Respondent.

PETITION FOR REVIEW

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Appellant, pro se

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Michael Bent, petitioner pro se, asks this Court to accept review of the Court of Appeals (CoA) decisions designated in Part B of this petition.

B. COURT OF APPEALS DECISION

CoA Division II filed its unpublished opinion July 7, 2015, affirming the Trial Court decisions and awarded attorney fees. Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Does this Court acknowledge the Bent Parents and their children share a Fundamental Right of Association? RAP 13.4(b)(1)&(4)

2. Did the Trial Court's process for selecting LaShandre Bent as the Primary Custodial Parent clear constitutional criteria to permit the discrimination afforded by the Relocation Act? RAP 13.4(b) (1)(3)&(4)

3. Is a finding of fitness required to assign residency and is an unbiased assessment against RCW 26.09.187(3) required to first establish residency before applying RCW 26.09.520? RAP 13.4(b)(1)(3)&(4)

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5. Does this Court accept Armstrong's holding that statutes impacting Civil Rights are not presumed constitutional? RAP 13.4(b)(1)(3)&(4)

STATEMENT OF THE CASE

LaShandre* petitioned for dissolution on 6/10/2013 using an Ex Parte Temporary Restraint Order (TRO) to restrain Michael from returning to the family home and contacting their two children. The approving officer failed to validate LaShandre claims. At Trial 15 months later Judge Veljacic, the only judiciary to engage LaShandre, did not find her credible. Referring to evidence she used for the TRO, he said "I didn't find the testimony ... to be to the point where I would have 191 restrictions." Photograph of a gun she claims was Michael's was shown to be a forgery at Trial. RP 749-750.

Seemingly appealing to the Court's emotions, LaShandre attempts to paint a picture of herself as a dutiful stay-at-home mom who sacrificed her career for her children. Inconsistently she states "the parties agreed that LaShandre would quit her job" then asserts "LaShandre quit working in 1999 at Michael's request." BR 4 & 10. Although LaShandre testified at length that only she found C's daycare issue burdensome, the CoA mysteriously accepts without pause "she quit working, at Michael's request." RP 192-3 & Op 3. In fact, LaShandre refused to work for others and subordinate herself to authority. She wanted to be her own boss and squandered much attempting self-employment like Hannah Walters Group. RP 375. She completed a Marketing MBA costing $45k expecting to secure a managerial position and rejected many job opportunities requiring

* First name used for clarity. No disrespect intended.

her to first establish herself and gain necessary experience in the field of marketing. Her 6 years of Healthcare experience afforded her great opportunities but not at the executive level she desired. RP 376-377. C corroborates her refusal to work and her unabated spending on personal luxury items contributed substantially to household stress and the martial decline. CP 40 at 3. Michael felt he was working himself to an early grave and was at his wits end with her haughty attitude and incessant demands. At Trial she deflects any personal responsibility, recasting as "threatened suicide" and feeling of "no value". BR 11. She adds "Michael wrote out his Will in summer 2010" causing her "concern" (BR 5), yet at Trial she testified she herself had requested it, corroborating the "Per your request" email subject line. RP 347.

LaShandre claimed Michael was violent and mentally unstable – declaring he was a danger to her, their children and the US Government. CP 11 ¶ 2.2. & RP 331. A thorough evaluation by Dr Dudley, a forensic psychologist showed Michael as a low risk of violence and confirmed he shared a loving relationship with both children who wanted more time with their father. CP 25C page 18 & RP 35.

LaShandre repeatedly pled to avoid evaluation while the Court gradually increased Michael's time with children. The Court approved a bilateral parenting evaluation but explicitly instructed that "no

psychological evaluation" of LaShandre was permitted. CP 48 ¶ 3.2. However, the appointed psychologist, Dr Poppleton administered a MMPI assessment of LaShandre revealing multiple very highly elevated scales. Ex 2 page 22. Michael had likewise submitted to a MMPI allowing Poppleton to contrast "her profile was blown up across various scales, where father's was not." RP 113. The CoA wrongly assumes a MMPI equates to "psychological testing on LaShandre" but, per Dr Poppleton the MMPI only allows, "raw-data hypotheses [that] would need some degree of corroboration," admitting that his failure to review his findings with LaShandre's counsellor was a "particular weakness of [his] evaluation." RP 156. Ironically her MMPI reveals she "present[s] herself in an overly favorable light" and needs "help with objectivity." These observations call into question her idealistic self-assessment. Ex 2 p 21 & p 33.

Michael remains concerned for their children being alone in her care without his moderating influence as in pre-separation. RP 88, 126 & 350. A conning convicted felon who befriended LaShandre also presents grave concern as she manipulates LaShandre's paranoia, leeches off her and has lived with the Bent children since separation. RP 351. Michael assures this Court his intention is not to belittle LaShandre but to highlight her need of care. Their children long for a warm, motherly relationship that she cannot now provide. Ex 2 at 22.

Acknowledged "separate" property of Michael's Traditional IRA and property owned exclusively by him were treated as "community". CP 117 ¶ 2.21. LaShandre acknowledged having received much during the marriage including almost $40k spent on luxuries during 2012-2013, on costly cosmetic surgery and expensive vacations. RP 714, 255, & 257. She saved little of what Michael provided her. Ex 44 & RP 715.

The Parenting Plan is heavily influenced by the approved cross-country relocation. CP 119 § III. Michael has time with their children but compromises his fundamental interest in day-to-day association. RP 481. Michael holds joint decision authority but seeks close association to remain engaged in raising and educating their children. CP 119 § IV. However his time is burdened by long, expensive cross-country trips and he is removed from their daily lives. Given Michael's limited vacation, his association is limited to concentrated blocks of time around school holidays which does not compensate for week-by-week involvement in the normal schedule of their lives, and is further frustrated by LaShandre's relentless and unrepentant efforts, in defiance of court advice, to block contact with their dad by phone and internet. CP 119 § VI & RP 731.

This Court is cautioned that her supposedly "neutral" Statement of Case in her Response is her own uncorroborated self-assessment noted in Dr Poppleton's report. BR 2 & Ex 2 at 12-20. Similarly distorted are her

claims like "Michael left for 36 days without contact on an east-coast trip." BR 8. However, at Trial it was clear Michael "was on the phone with them at least once a day." RP 463.

In general the Trial Court's errors were in failing to take critical action like not applying RCW 26.09.187(3) (hereafter 187(3)). Of course failure to do so left no findings to challenge yet the CoA complains "Michael fails to assign error to the trial court's finding" though he clearly identified the Court's failure to use 187(3) as his claimed error. Op 9 & BA 20. The CoA dismisses Michael's claim that the relocation assessment was fatally flawed by the discriminatory favor granted LaShandre. Op 14. CoA focuses instead on the 11-factor study and fails to grasp the Court erred by overlooking the Constitutional hurdle required to acceptably discriminate between the Bent parents when it applied the Child Relocation Act (CRA).

Mysteriously, in apparent defense of the Trial Court, the CoA suggests a 187(3) analysis was completed de facto based simply on a single factor from the RCW 26.09.520 (hereafter 520). CoA stresses it is "given the greatest weight." Op 11. Undoubtedly absurd even if all 520 factors are used. A 520 analysis diverges from 187(3) as there are no biasing presumptions in applying 187(3) and results differ when evaluating seemingly identical factors. Dr Poppleton affirms this divergence when, in applying 520, he asserts each factor must be assigned a preferred parent.

He referred to the process as "the constraint" when evaluating 520. CP 97. The CoA's assertion is absurd, misleading, mysterious and perplexing.

The CoA likewise dismisses Michael's submission of blurred lines between the Trial Court and the County as they are likely unaware of the practices of County Family Courts. Clark County and its Family Courts have mutually aligned interests through the Washington State Division of Child Support (DCS) that breaches the expected separation of powers. The Family Courts and County are intertwined.

As noted on appeal, the County has a financial interest in the federally funded Child Support Performance and Incentive Act (H.R.3130). The Act established what is commonly called "Title IV-D" (42 U.S.C. § 651 et seq.) and in Washington State, the DCS administers Title IV-D Grants. Per WAC 388-14A-1015, "(1)(a) Title IV-D of the Social Security Act sets out the federal requirements for a state's support enforcement program." WAC 388-14A-1060 adds, "(1) ... DCS is authorized to enter into cooperative ... financial arrangements with the appropriate *courts* ... to assist DCS in administering the state plan for support enforcement. ... (3) DCS shares the federal funds it receives under 42 U.S.C. 655 according to the cooperative and financial agreements." Appendix E [*Emphasis added*]. The cooperative financial arrangements authorized between DCS and the Family Courts were not available for inspection but the Clark County

auditor's office offered: "Grant funds are required to be used in the program for which the grant was awarded." Appendix B. In 2013 alone Clark County received $1.7M from DCS as incentives earned primarily by and payable to its Family Courts. Appendix B Audit Statement.

For the lucrative Title IV-D Federal Program to be utilized, a support obligation must be established and one parent must be classified as the "custodial parent." 42 U.S.C. § 654(4)(B). Appendix C. The Trial Court is authorized by RCW 26.09.285 to assign the parent with whom the child resides the majority of the time as custodian of the child. Appendix D. This seemingly simply step radically alters the life of each parent. Here, the custodial parent, LaShandre, enjoys day-to-day association with the Bent children free from government oversight while Michael, the noncustodial parent, is limited to blocks of time with their boys, is burdened with payments to LaShandre and dutifully performs under threat of jail time. Given these classifications were utilized for a Federal program, Federal criteria should have instead been used in classifying LaShandre as the custodial parent for purposes of Title IV-D. While Title IV-D does not proscribe guidelines, Federal Court opinions provide good guidance for State Courts and their precedent will better withstand Federal scrutiny.

The Federal "Incentive Payment to a State" provided under Title IV-D is derived by a complex algorithm established by 42 U.S.C. § 658a.

Essentially the "Incentive Payment to a State" is determined mostly by the "State Collections Base" and the "Establishment of child support orders %". Simply increasing the "State Collections Base" (the total sum of Support Orders) and "Establishment of child support orders %" (percentage of cases with Support Orders) will increase the Federal Incentive Grant Payments. As such the Trial Court can greatly influence its incentive bonus by its choice of custodial parent and support arrangements. LaShandre secured the services of DCS and all support payments since separation were processed via DCS. Michael's Support Orders adds to the "State Collections Base" and generates incentive payments for DCS which it shares with the Clark County Courts. Michael estimates the Trial Court will earn $19,000 in Federal Incentive bonus payments from his expected lifetime support payments.

See Appendix G for summary of these factors, Appendix C for 42 U.S.C. § 658a and Appendix F for DCS's FQA. The "State Collections Base" is not limited to Child Support but includes all "order[s] of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the noncustodial parent's spouse (or former spouse) with whom the child is living." 42 U.S.C. § 666 (e).

ARGUMENT WHY REVIEW SHOULD BE GRANTED

Constitutional violations in dissolutions, established by outdated traditions and only maintained by precedent, are so socially engrained as to be inconspicuous even to Courts. CoA regales Michael for challenging "well-settled areas of law" ignoring the Constitution stands supreme. CoA's opinion echoes with disbelief, asserting "no reasonable minds might differ" but ignores Supreme Court opinions without explanation except to label as "meritless constitutional issues." Op 15. This Court should grant review to resolve conflicts with Supreme Court opinions and because this case presents issues of substantial public interest. RAP 13.4(b)(1) & (4). Current practices incite antagonism, hostility and oftentimes bankruptcy.

Michael challenges the Trial Court's procedures and the divorce decree using constitutional arguments carefully adapted from Supreme Courts. His brief conforms to prior briefs that were accepted by this Court and will be more readily understood by this Court though foreign to CoA.

It is better for the Bent children for both parents to share custody, be charged by the Court to provide for the children's support and to live in geographical proximity so the children can maintain strong relationships with each parent. Although we live a modern society, parenting is best accomplished face-to-face and not by Skype, text or email.

1. This Court should accept review to affirm parents & children share a Fundamental Right of Association. RAP 13.4(b)(1)&(4)

The CoA rejected outright Michael's claimed right of association with their children. Quoting King, the CoA counters essentially that the Parenting Plan "does not terminate either Parent's parental rights" and Michael's interests in parent-child association "in this proceeding is not a fundamental parental liberty interest." Op 6-7. However, as developed in his brief, King fails to consider the parents' right of association and instead only considers their legal rights as parents. The CoA's rejection of the right of association as fundamental, directly conflicts with prior opinions of this and higher Courts holding this fundamental right is central and necessary to raising and educating children. The CoA offers no reason why this Court's opinion was invalid, only that it "lacks merit."

> "[F]reedom of 'expressive association' and freedom of 'intimate association.' ... are protected [for such] relationships [that] attend the creation and sustenance of a family, including ... raising and education of children." American Legion Post No. 149 v. Wash. State Dept. of Health, 164 Wn.2d 570, 595, 192 P.3d 306 (2008).
>
> "[F]reedom of association receives protection as a fundamental element of personal liberty." Roberts v. U.S. Jaycees, 468 U.S. 609, 618 (1984).

Infringing a fundamental right must clear strict scrutiny to assure equal protection of the parents' interests. Scrutiny is not reduced by the parties' presumed equivalency but is enhanced given the right is fundamental.

> "Equal protection requires that all persons similarly situated should be treated alike [and] is aimed at securing equality of treatment by prohibiting hostile discrimination. Under the equal protection clause, the appropriate level of scrutiny depends on the ... rights involved. ... Strict scrutiny ... applies to laws burdening fundamental rights or liberties." Am. Legion, 192 P.3d at 600.

The CRA discriminates between parents using classification based on residency, affording preferential treatment to the primary custodial parent. This bias triggers equal protection concerns. Michael's fundamental right to parent-child association was implicated and ...

> "equal protection analysis requires strict scrutiny of a legislative classification ... when the classification ... interferes with the exercise of a fundamental right" Mass. Bd. of Retirement v. Murgia, 427 U.S. 307, 312 (1976).

Only when a child is substantially more dependent on one of its parents, is there a compelling State interest to justify preferentially treatment. By rejecting this Court's opinion in Post the CoA moots Michael's argument and plea for justice. This Court should grant review to resolve this conflict with the Supreme Court under RAP 13.4(b) (1) & (4).

2. This Court should accept review to clarify the Constitutional threshold that must be cleared to permit discrimination inherent to the Relocation Act. RAP 13.4(b)(1)(3)&(4)

The CoA did not grasp the notion that simply identifying LaShandre as the "parent with whom the child[ren] is scheduled to reside the majority of the time" (custodial parent) did not suffice constitutionally

in this case to permit discrimination between the Bent parents. Given the CRA relies on the State's parens patriae power, the RA's purpose must focus on the Bent children's well-being and any discrimination authorized by the CRA must strongly relate to that compelling state purpose. Meaning the CRA cannot validly be used to discriminate against Michael unless the Bent Children's well-being is at stake.

> "In a case like this, the Equal Protection Clause requires more than the mere incantation of a proper state purpose". Trimble v. Gordon, 430 U.S. 762, 769, 97 S.Ct. 1459, 52 L.Ed.2d 31 (1977).

In some cases the well-being of a child is substantially more dependent on the custodian and allows the CRA to be constitutionally applied. Here however, neither Bent child is substantially more dependent on LaShandre than on Michael. Both Bent boys are self-reliant though need a parent who can guide them towards responsible adulthood and is willing to provide. LaShandre is unwilling to provide and acts irrationally. Discriminating between the Bent parents as the Court did in affording LaShandre the CRA's presumptive bias, violated Michael's fundamental right of association and per Munoz was therefore manifest abuse of discretion. The CoA rejects this argument is relevant to the CRA without comment and simply overlooks this Court's prior holding.

> "[W]here the trial court does not follow the generally established rule of noninterference [with fundamental rights] in child custody cases without an affirmative showing of compelling reasons for

> such action, we are of the opinion that this is tantamount to a manifest abuse of discretion." Munoz v. Munoz, 79 Wn.2d 810, 814, 489 P.2d 1133 (1971).

In its general discussion on Equal Protection Claims, the CoA asserts "the record contains no basis to conclude that the state is responsible for any classification" assigned to Michael causing him to be treated differently from LaShandre. Op 8. However, among others, the decree classifies Michael as Obligor and LaShandre as Obligee. The Parenting Plan ¶ 3.12 further classifies LaShandre as Custodian for "federal statutes which require a designation" such as the Title IV-D program. Use of this Federal program, entitling the Court to Federal Incentives, required a substantial relation to the children's well-being.

> "[A] statutory classification ... must rest upon some ground of difference having a ... substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Caban v. Mohammed, 441 U.S. 380, 391, 60 L.Ed.2d 297, 99 S.Ct. 1760 (1979).

Here, the state goal is to ensure the Bent children are adequately cared for and the only relevant attribute is that of being a fit parent. Only if one parent is unfit does the Constitution permit the Court to treat the Bent parents differently. No explicit finding of fitness or unfitness was made.

Title IV-D, per 42 U.S.C. § 658a(c) provides incentive funds to both states when there is interstate relocation like here and makes custodial determination yet more important to ensure wise use of Federal funds. As

noted, the Federal Incentive Payments to Washington State depends directly on the cumulative amount of Support Orders. Support Orders that violate the Federal Constitution may give the appearance of exploitation and compromise state continue participation in the Federal program.

CoA argues "both parents remain parents and retain substantial rights" Op 7. While correct, equal protection of Michael's fundamental right of association prevails. Until either Bent parent is shown unfit, they are considered similarly situated with regard to their relationship with their children. Michael was entitled to but denied equal protection of his right of association. This Court should grant review to clarify constitutional criteria to permit use of the Relocation Act under RAP 13.4(b) (1)(3)&(4).

3. This Court should accept review to affirm the mandatory application of RCW 26.09.187 at dissolution, affirm a finding of fitness is required to assign Custody and clarify the basic attributes of a fit parent per the Federal Constitution. RAP 13.4(b)(1)(3)&(4)

This Court recognizes parenting is a multifaceted role requiring a fit parent capable of providing for their child's welfare.

> "[C]ommonly understood general obligations of parenthood entail these minimum attributes: duty to supply the necessary food, clothing, and medical care [and] provide an adequate domicile". In re Adoption of Lybbert, 75 Wn.2d 671, 674, 453 P.2d 650 (1969)

Having a fit parent is critical to the child. So much so this Court ruled:

> "Custody may not be awarded unless and until there is a finding that the person being given the children is a fit and proper person." Barefield v. Barefield, 69 Wn.2d 158, 165, 417 P.2d 608, (1966).

LaShandre's fitness was not established at Trial and was not adequately evaluated to refute reliable concerns. CoA wrongly asserts an assessment against 187(3) was performed based on similarity of factors in 520. Among many differences, RCW 26.09.187(3)(a) establishes all factors in RCW 26.09.191 apply whereas RCW 26.09.520(4) lists only "limitations under RCW 26.09.191". RCW 26.09.191(5) is dispositive as it denies LaShandre the ability to use the period of temporary custody for 520. Plus CoA on page 10 of the Bent Opinion notes its own conflicting precedent:

> "Decisions regarding residential provisions must be made ... after considering the factors set forth in RCW 26.09.187(3)." In re Parentage of JH, 112 Wn. App. 486, 492-93, 49 P.3d 154 (2002).

The Trial Court was required to apply 187(3) equally to assure each parent is capable to perform parenting functions (see RCW 26.09.187(3)(a)(iii)). This Court should grant review to resolve the conflict with prior opinion of the Supreme Court and question of law under RAP 13.4(b) (1)(3)&(4).

4. This Court should accept review to affirm the US Supreme Court holding that individual rights are not disturbed by marriage and define limits of Community Property. RAP 13.4(b) (1)(3)&(4)

Spouses do not lose their constitutionally protected liberty when they marry, and though highly regulated, constitutionally a marital ...

> "couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. ... [Spouses] do not lose their constitutionally protected liberty when they marry. The Constitution protects all individuals, male or female, married or

> unmarried, from the abuse of governmental power, even where that power is employed for the supposed benefit of a member of the individual's family." Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 896-98, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

The Bent marriage established an intimate bilateral loyalty; a union whereby each Bent spouse committed to reciprocate.

> "Marriage is a coming together for better or for worse, hopefully enduring ... an association that promotes ... a bilateral loyalty, not commercial or social projects." Zablocki v. Redhail, 434 U.S. 374, 384, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978).

Michael's individual property right was, per Casey, not disturbed by his marital status. Assets held solely in Michael's name are his individual property and likewise LaShandre's assets are hers.

> "The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "personal" right, whether the "property" in question be a welfare check, a home, or a savings account. [R]ight to liberty and the personal right in property ... are basic civil rights ... long been recognized." Lynch v. Household Finance Corp., 405 U.S. 538, 552, 92 S.Ct. 1113, 31 L.Ed.2d 424 (1972).

This constitutional principle effectively bounds "Community Property" to property that is explicitly and legally jointly owned. The Court lacked authority to assign Michael's property to LaShandre, a public person.

> "[A]mong the civil rights intended to be protected from discriminatory state action ... are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was ... an essential pre-condition to the realization of other basic civil rights and liberties. ... [R]ights established are personal rights." Shelley v. Kraemer, 334 U.S. 1, 10-22, 68 S.Ct. 836, 92

L.Ed. 1161 (1948).

In apparent resistance, the CoA ignores these opinions as "Naked castings" and instead seeks substantive argument to justify why the decree property distributions were "huge financial burdens." Op 8. However the Constitution, representing the agreement between the People and our limited government, per the US Supreme Court did not grant the Court authority to disperse Michael's property as it feels is equitable. Michael challenges each and every Court Order dictating use of his property: property distribution, maintenance award, child support order, fees, etc.

> "[A] permanent [transfer of asset] authorized by government is a taking without regard to the public interests that it may serve." Loretto v Teleprompter Manhattan CATV Corp., 458 US 419, 426, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982).
>
> "A permanent [transfer of asset] authorized by state law is a taking without regard to whether the State, or instead a party authorized by the State, [received the asset]." Loretto, 458 US 419, Note 9.
>
> "[A] State, by ipse dixit, may not transform private property into public property without compensation .... This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent. That Clause stands as a shield against the arbitrary use of governmental power." Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U. S. 155, 164 (1980).
>
> "Modern realities do not comport with the traditional "supposed unity" of husband and wife. ... Things have changed. ... neither spouse is liable for the separate debts of the other and either spouse may sue the other for invasion of separate property rights." Freehe v Freehe, 81 Wn.2d 183, 186-187, 500 P.2d 771 (1972).

Only if Michael had refused to care for their children or was otherwise

convicted of violating LaShandre's rights could penalties be applied.

> "To hold otherwise would be to convert a remedy heretofore reserved for violations of legal rights into a privilege that all institutions throughout the Nation could grant at their pleasure to whatever groups are perceived as victims of societal discrimination. That is a step [the US Supreme Court has] never approved." Regents of the University of California v. Bakke, 438 U.S. 265, 310, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978).

However, Michael was able, willing and wanting to directly care for their children. The Court had no proper reason to select and order its preferred custodial arrangement, especially given it infringed Michael's right of autonomy to provide directly for their children (as he had since their births) while suspiciously enabling Title IV-D incentive kickbacks.

> "The trial court does not have the responsibility or the authority ... to create ideal circumstances for the family". In re Marriage of Littlefield, 133 Wash.2d 39, 940 P.2d 1362, 1371 (1997).

> "The state has a compelling interest in assuring that the primary obligation for support of ... children falls on both natural parents [and] responsibility for a child's support rests upon both parents." State v. Wood, 89 Wn.2d 97, 102-103, 569 P.2d 1148 (1977).

This was likely one of the "well-settled areas of law" the CoA dismissed. However, it is firmly established that constitutional rights prevail whenever statutory rights conflict.

> "Where a constitutional right conflicts with a common law principle — however ancient or cherished — the guarantee of the constitution must prevail." Tilton v. Cowles Publishing Co., 76 Wash.2d 707, 715, 459 P.2d 8 (1969).

This Court should grant review to resolve this question of law under the

US Constitution and due to broad public interest. RAP 13.4(b)(1)(3)&(4).

5. This Court should accept review to affirm that statutes impacting Fundamental Rights are not presumed constitutional. RAP 13.4(b)(1)(3)&(4)

The Armstrong opinion was never explicitly overruled and remains standing precedent and comports with US Supreme Court opinions.

> "There is no presumption in favor of the constitutionality of any regulation involving civil rights." State ex rel. Holcomb v. Armstrong, 39 Wn. (2d) 860, 863, 239 P. (2d) 545 (1952).

In Mugler, the US Supreme Court goes further to assert that Courts, "upon their own responsibility", must determine if laws are invalid.

> "There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, ... the courts must obey the Constitution rather than the law-making department of government, and must, *upon their own responsibility*, determine whether, in any particular case, these limits have been passed." Mugler v. Kansas, 123 U. S. 623, 661 (1887). [Emphasis added.]

The CoA disagrees. This Court should grant review to resolve the conflict with opinions of the Supreme Court under RAP 13.4(b)(1)(3)&(4).

CONCLUSION

This Court should accept review and reverse the Court of Appeals.

Respectfully submitted August 5, 2015.

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DECLARATION OF SERVICE

I certify that on the date listed below, I served by method noted, one copy of the PETITION FOR REVIEW on the following:

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Matter of the Marriage of: LA SHANDRE NICHELE BENT, Respondent, and MICHAEL ST. GEORGE BENT, Appellant.	No. 46824-7-II UNPUBLISHED OPINION

MELNICK, J. — Michael Bent appeals the trial court's orders[1] entered following a dissolution action. He raises many constitutional arguments, most of which seem to involve the parenting plan's residential provisions and the trial court's relocation order permitting La Shandre Bent's relocation to Florida with their children. We hold that Michael's constitutional arguments are meritless and that the trial court did not abuse its discretion when it established the parenting plan's residential provisions and granted La Shandre's relocation petition. We affirm.

FACTS

La Shandre and Michael Bent[2] married on June 29, 1991, and separated on June 10, 2013. They have two dependent children who were ages 14 and 11 at the time of separation.

[1] Bent's brief is difficult to understand and he does not make clear which trial court orders he is appealing.

[2] To avoid confusion, we refer to the parties by first name throughout the remainder of this opinion. We intend no disrespect.

La Shandre filed for dissolution.[3] On June 10, 2013, the trial court granted La Shandre a temporary restraining order against Michael and issued an order to show cause. After the show cause hearing, the trial court entered a temporary order establishing family support and it also entered a temporary restraining order against Michael, allowing only supervised visitation with the children. The trial court also ordered Michael to undergo a full psychological exam.

Michael moved the trial court to amend the temporary restraining order, appoint a guardian ad litem, order a psychological assessment of La Shandre, and order a bilateral child custody evaluation. Following a hearing, the trial court ordered that Michael's visitation with the children shall no longer be supervised and appointed Dr. Landon Poppleton to perform a bilateral child custody evaluation. The trial court denied the remainder of Michael's motions.

Dr. Poppleton began the evaluation in November 2013. "[T]he original focus of the evaluation was strictly on [Michael] and what amount of parenting time his disposition approach would be able to sustain." I Report of Proceedings (RP) at 94. But after La Shandre filed a notice of intent to relocate to Florida, Dr. Poppleton performed psychological testing on La Shandre.

On June 23, 2014, Dr. Poppleton completed a bilateral child custody evaluation and issued a report. Dr. Poppleton concluded that a difficult dynamic exists between La Shandre and Michael, which "does not bode well for joint decision making." Ex 2, at 24. Dr. Poppleton concluded that both children demonstrated a good relationship with each parent and that La Shandre had been the primary parent, carrying the demands of day-to-day parenting. Dr. Poppleton also investigated the issue of La Shandre's intent to relocate to Florida. Dr. Poppleton reviewed each RCW 26.09.520

[3] The record on appeal does not contain La Shandre's petition for dissolution; however, the parties agree that La Shandre filed for dissolution. La Shandre asserts that she filed for dissolution on June 10, 2013.

relocation factor and recommended that the trial court allow La Shandre to relocate with the children.

Trial began on July 7, 2014. The trial court heard testimony from Dr. Poppleton, La Shandre, Michael, one of Michael's coworkers, and one of Michael's extended family members. The parties presented evidence that La Shandre had been the children's primary caregiver and that she quit working, at Michael's request, after the oldest child was born. The evidence also showed that both children had a good relationship with each parent and that La Shandre carried the demands of day-to-day parenting. The trial court heard testimony regarding available familial support in Florida, as well as the children's involvement in school and extracurricular activities and the availability of those activities if the children reside primarily with La Shandre in Florida. The trial court also heard testimony regarding Michael's employment schedule.

On August 20, 2014, the trial court issued an oral ruling. The trial court found Dr. Poppleton's report and testimony to be "very instructive and reliable." VI RP at 724. On October 10, 2014, the trial court entered written findings of fact and conclusions of law, a dissolution decree, a permanent parenting plan, a child support order, and an order on objection to relocation.

The trial court designated La Shandre as the primary custodial parent[4] because, based on the testimony of Dr. Poppleton, La Shandre, and Michael, she spent the majority of the time with the children. After considering each RCW 26.09.520 relocation factor, the trial court ordered that La Shandre could relocate with the children. The trial court entered the following written findings based on the factors enumerated in RCW 26.09.520: (1) La Shandre and Michael both have a strong relationship with the children, but La Shandre has been more involved with the children's lives. (2) Although there is no agreement for La Shandre to relocate with the children, La Shandre

[4] RCW 26.09.285

and Michael had previously significantly discussed moving the family to Florida and the evidence presented supports that they agreed a move to Florida would be beneficial for the children. (3) It would be more detrimental to disrupt contact between the children and La Shandre and she will be the better parent to help the children work through changes resulting from the move to Florida than Michael. (4) Restrictions under RCW 26.09.191 do not apply. (5) La Shandre sought the relocation in good faith, and Michael objected in good faith. (6) Although there will be adjustments to new schools in Florida and negative effects of moving the children, there is no evidence of physical detriment and no detriment sufficient to rebut the presumption. (7) This factor does not apply because the quality of life in both locations is comparable. (8) The parenting plan provides an "alternate arrangement sufficient to continue the children's relationship with [Michael]." Clerk's Papers (CP) at 105. (9) This factor does not apply. (10) The financial benefits to La Shandre and the children outweigh the cost. (11) The trial court did not consider this factor because it was making a final decision.

The trial court ordered that when La Shandre and the children moved to Florida, Michael would have parenting time during the school year of one visit every three months in Washington, including the children's winter and spring breaks. Additionally, the trial court ordered that Michael would be entitled to one visit per month in Florida that would equate to a standard weekend of two overnights. Furthermore, the trial court awarded Michael 60 percent of the summer break in one block of time. The trial court scheduled holidays between the parents in alternating even and odd years.

Michael appeals.

ANALYSIS

I. SELF-REPRESENTED LITIGANT AND ASSIGNMENTS OF ERROR

Michael first requests us to overlook "any formatting or procedural oversights" in his appeal because he is a self-represented litigant (SRL). Br. of Appellant at 10. SRL's are held to the same standard as attorneys and must comply with all procedural rules on appeal. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). We reject Michael's request.

RAP 10.3(a)(4) & (g) requires separate assignments of error for each of the trial court's contested factual findings. Because Michal failed to assign error to any of the trial court's factual findings, we treat them as verities on appeal. *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 407, 858 P.2d 494 (1993).

II. PRESUMED CONSTITUTIONALITY OF STATUTES

Michael requests "a Declaratory Judgment clarifying Washington's Courts' holding on presumed constitutionality of civil statutes." Br. of Appellant at 13. Notwithstanding that a declaratory judgment is not appropriate in this forum, the case law in this area is very clear: courts presume that statutes are constitutional and the burden to show unconstitutionality is on the challenger. *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 350, 340 P.3d 849 (2015); *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006); *In re Marriage of Johnson*, 96 Wn.2d 255, 258, 634 P.2d 877 (1981). We reject Michael's request for a declaratory judgment.

III. MICHAEL'S CONSTITUTIONAL ARGUMENTS LACK MERIT

A. "Right to Parent-Child Association"—Fundamental Parental Liberty Interest

Michael argues that, although his "legal right to parentage was undisturbed," the trial court's orders violate his "right to parent-child association."[5] Br. of Appellant at 18, 26. It is unclear to which trial court order Michael is referring, but Michael seems to claim that the parenting plan violated his fundamental parental liberty interest. This argument lacks merit and we reject it.

In support of his argument, Michael relies on *In re the Marriage of King*, 162 Wn.2d 378, 386, 174 P.3d 659 (2007). But his reliance is misplaced. In that case, our Supreme Court held that in dissolution proceedings, the trial court must balance the rights of both parents and further held that fundamental constitutional rights are not implicated as in a termination or dependency proceeding. *King*, 162 Wn.2d at 385. "The entry of a parenting plan effectuating the legislative purpose of continued parental involvement in the children's lives does not equate to an action where the State is seeking to terminate any and all parental rights and parental involvement with the children, severing the parent-child relationship permanently." *King*, 162 Wn.2d at 385. The entry of a parenting plan is a statutory requirement when children are involved in the marriage, and entry of such does not terminate either parent's parental rights. *King*, 162 Wn.2d at 385. Rather, it allocates parental rights to ensure that the parents may still exercise those rights. *King*, 162 Wn.2d at 385. "Even where a parenting plan results in [children] spending substantially more,

[5] Throughout his brief, Michael refers to the "County." The record contains no information that any county or state agency had involvement in this case. Additionally, from the context of some of Michael's arguments, he seems to use "County" to refer to the trial court. We do our best to address all of his arguments.

or even all, of . . . [their] time with one parent rather than the other, both parents remain parents and retain substantial rights, including the right to seek future modification of the parenting plan." *King*, 162 Wn.2d at 386; RCW 26.09.260.

This case is a dissolution proceeding with a parenting plan, not a termination or dependency proceeding. The state is not a party to the proceedings and had no say in determining how La Shandre's and Michael's residential time was divided. Michael provides no developed argument as to why the parenting plan does not effectuate the legislative purpose of continued parental involvement. Thus, the interest at stake in this proceeding is not a fundamental parental liberty interest. We reject Michael's argument.

B. State and Federal Equal Protection Claims

Michael next argues that a state or federal equal protection analysis should have been applied in the dissolution proceeding. Michael claims that no compelling state interest exists to justify allegedly violating his right to equal protection. For a violation of equal protection to occur, a law or its application must confer a privilege to a class of citizens. WASH. CONST., art. 1, § 12; *King*, 162 Wn.2d at 396. The privileges and immunities provision of our constitution protects "'against laws serving the interest of special classes of citizens to the detriment of the interests of all citizens.'" *King*, 162 Wn.2d at 397 (quoting *Grant County. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 812, 83 P.3d 419 (2004)). Privileges and immunities refers to fundamental rights that belong to citizens of Washington. *King*, 162 Wn.2d at 397. But here, Michael fails to identify a privilege and how the dissolution statutes deny him a privilege to which he would have been entitled but for state interference. Fundamental constitutional rights are not implicated. Therefore, we reject Michael's argument.

Additionally, no violation occurred under a federal equal protection analysis. No state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. "The states must treat like cases alike." *King*, 162 Wn.2d at 397. Michael cites no case supporting his claim that the state has drawn any distinction or classification to which he is subject. In addition, the record contains no basis to conclude that the state is responsible for any classification. *See King*, 162 Wn.2d at 397. Therefore, no basis exists for Michael's claim that the state violated his constitutional rights under federal equal protection analysis. We reject this argument.

C. Parental Autonomy

Michael next seems to argue that the parenting plan infringes on "his right to parental autonomy." Br. of Appellant at 36. But the trial court imposed no restrictions on Michael's parenting. The trial court specified that no statutory restrictions applied.[6] Furthermore, the trial court ordered that "[e]ach parent shall make decisions regarding the day-to-day care and control of each child while the children are residing with that parent" and that "either parent may make emergency decisions affecting the health or safety of the children." CP at 128. The trial court ordered that major educational and medical decisions shall be made jointly. It imposed no restrictions on decision making. Therefore, Michael's argument is without merit and we reject it.

D. Due Process Violations

Michael next argues that the "huge financial burdens" imposed on him by the trial court's orders violated due process. Br. of Appellant at 39. Michael does not identify which of the trial court orders he challenges and provides no substantive argument regarding the property distribution, maintenance award, or child support order. "'[P]arties raising constitutional issues

[6] RCW 26.09.191

must present considered arguments to this court.' . . . '[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.'" *State v. Bonds*, 174 Wn. App. 553, 567 n.3, 299 P.3d 663 (2013) (quoting *State v. Johnson*, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992)) (second alteration in original) (citation omitted). We decline to consider Michael's due process argument.

E. 42 U.S.C. § 1983 Claim

Michael seems to seek relief under 42 U.S.C. § 1983, alleging that the trial court infringed on his rights. "Under 42 U.S.C. § 1983, a plaintiff may recover money damages if [he] can show that [he] has been deprived of some federal right." *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 11, 829 P.2d 765 (1992). Although state courts have concurrent jurisdiction to hear and decide § 1983 claims, Michael never brought a claim in the trial court for deprivation of substantive due process rights or an unconstitutional taking under § 1983. *See Sintra, Inc.*, 119 Wn.2d at 11. Because there is nothing to review, we reject this claim.

III. RESIDENTIAL PROVISIONS

Michael next seems to argue that because he is the fitter parent, the trial court's conclusion that it would be in the best interest of the children to reside the majority of the time with La Shandre is incorrect.[7] Michael fails to assign error to the trial court's finding that La Shandre is the primary

[7] Michael also argues that the state's "parens patriae duty obligated it to assure the Bent children were entrusted to fit parent(s)." Br. of Appellant at 28. The state was not a party in this private matter initiated by the parties. Michael's argument is unclear, misplaced, and unsupported by any legal basis; therefore, we do not consider it. *See In re Dependency of I.J.S.*, 128 Wn. App. 108, 116, 114 P.3d 1215 (2005) (The state has an obligation to intervene and protect a child from harm in a termination proceeding.).

custodial parent. He also fails to provide sufficient argument on the parenting plan. We hold that the trial court did not abuse its discretion in establishing the parenting plan's residential provisions.

A. Standard of Review

We review a trial court's decisions about the parenting plan provisions for an abuse of discretion. *In re Custody of Halls*, 126 Wn. App. 599, 606, 109 P.3d 15 (2005). A trial court abuses its discretion if the decision rests on unreasonable or untenable grounds. *Halls*, 126 Wn. App. at 606. Because the trial court hears evidence firsthand and has a unique opportunity to observe the witnesses, we are "'extremely reluctant to disturb child placement dispositions.'" *In re Parentage of Schroeder*, 106 Wn. App. 343, 349, 22 P.3d 1280 (2001) (quoting *In re Marriage of Schneider*, 82 Wn. App. 471, 476, 918 P.2d 543 (1996), *overruled on other grounds by In re Marriage of Littlefield*, 133 Wn.2d 39, 940 P.2d 1362 (1997)). Decisions regarding residential provisions must be made in the best interests of the children after considering the factors set forth in RCW 26.09.187(3). *In re Parentage of J.H.*, 112 Wn. App. 486, 492-93, 49 P.3d 154 (2002).

In determining the residential provisions of a permanent parenting plan, the trial court considers the best interests of the child by analyzing seven factors identified in RCW 26.09.187(3)(a):

> (i) The relative strength, nature, and stability of the child's relationship with each parent;
> (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
> (iii) Each parent's past and potential for future performance of parenting functions, . . . including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
> (iv) The emotional needs and developmental level of the child;
> (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
> (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

> (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

The statute further specifies that "[f]actor (i) shall be given the greatest weight." RCW 26.09.187(3)(a). As long as the trial court properly considers these statutory factors, it has wide discretion in determining parenting responsibilities. *In re Marriage of Possinger*, 105 Wn. App. 326, 335, 19 P.3d 1109 (2001).

B. The Trial Court Did Not Abuse its Discretion

Here, the trial court considered all of the evidence presented at trial and properly applied the statutory factors contained in RCW 26.09.187(3)(a). In particular, the trial found that the evidence showed the children demonstrate a good relationship with each parent and La Shandre has been the primary parent, carrying the demands of day-to-day parenting. RCW 26.09.187(3)(a)(i), (iii). The trial court acknowledged the importance of the children spending significant time with Michael at "this stage in their lives" and gave more time to Michael with the children than Dr. Poppleton recommended. VI RP at 730; RCW 26.09.187(3)(a)(iv). But the trial court also found that separating the children from La Shandre would be detrimental and determined that the children should reside primarily with her.

In making the determination that La Shandre could relocate with the children, the trial court considered testimony regarding available familial support in Florida, the children's involvement in school and extracurricular activities, and the availability of those activities in Florida. The trial court also heard testimony regarding Michael's employment and included provisions for telephone access in accordance with Michael's schedule. RCW 26.09.187(3)(a)(vii). Because the trial court based its residential provision decision on the statutory factors set forth in RCW 26.09.187(3)(a) and on the evidence presented, its decision was not based on untenable grounds or manifestly

unreasonable. Therefore, the trial court did not abuse its discretion when it established the residential provisions in the parenting plan.

V. RELOCATION

Michael's remaining arguments seem to revolve around the trial court's decision to grant La Shandre's petition for relocation. We hold that the trial court did not abuse its discretion when it granted La Shandre's relocation petition.

A. Standard of Review

We review the trial court's decision to grant or deny a petition for relocation for abuse of discretion. *In re Marriage of Horner*, 151 Wn.2d 884, 893, 93 P.3d 124 (2004). A trial court abuses its discretion if its decision is manifestly unreasonable or based on "untenable grounds or reasons." *Horner*, 151 Wn.2d at 893 (quoting *State v. Brown*, 132 Wn.2d 529, 572, 940 P.2d 546 (1997)). "'A [trial] court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.'" *Horner*, 151 Wn.2d at 894 (quoting *Littlefield*, 133 Wn.2d at 47).

As discussed above, generally, we review the trial court's findings of fact and conclusions of law to determine whether substantial evidence in the record supports the findings and, if so, whether the findings support the trial court's conclusions. *In re Marriage of Fahey*, 164 Wn. App. 42, 55-56, 262 P.3d 128 (2011). Unchallenged findings of fact are verities on appeal. *Tapper*, 122 Wn.2d at 402. Michael failed to assign error to any findings of fact; therefore, we treat the trial court's factual determinations as verities.

B. Standard Under the Child Relocation Act

In 2000, the legislature passed the Child Relocation Act (CRA), RCW 26.09.405-.560, which shifts the analysis away from the best interests of the child to an analysis focusing on the best interests of the child and the relocating person. LAWS OF 2000, ch. 21, §§ 1, 14; *Horner*, 151 Wn.2d at 886-87. The CRA creates a rebuttable presumption that the relocation will be allowed, which may be rebutted when the objecting party proves that "the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon [11 child relocation] factors." RCW 26.09.520. The burden of overcoming the presumption is on the objecting party. *Horner*, 151 Wn.2d at 895. The factors are:

> (1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
> (2) Prior agreements of the parties;
> (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
> (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;
> (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
> (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
> (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
> (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
> (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
> (10) The financial impact and logistics of the relocation or its prevention; and
> (11) For a temporary order, the amount of time before a final decision can be made at trial.

RCW 26.09.520.

These factors are not listed or weighted in any particular order. RCW 26.09.520; *Horner*, 151 Wn.2d at 887. The trial court must consider each of the factors and determine by a preponderance of the evidence whether these factors show that relocation would be more detrimental than beneficial, and it must make findings on the record regarding each of the factors. *Horner*, 151 Wn.2d at 895-97.

C. The Trial Court Did Not Abuse Its Discretion

Because Michael objected to relocation, the burden shifted to him to rebut the presumption that permitted relocation. The record establishes that the trial court sufficiently considered the relocation factors; and, its findings of fact support its conclusions of law. The trial court found that factors (1), (2), (3), (6), (8), (10) weighed in favor of permitting La Shandre to relocate to Florida.[8] Because the trial court considered each factor and found that Michael did not rebut the presumption favoring relocation, its conclusion to allow La Shandre to relocate is supported by its findings. Thus, the trial court's decision to grant La Shandre's petition for relocation was neither based on untenable grounds nor manifestly unreasonable. Therefore, the trial court did not abuse its discretion when it granted La Shandre's petition for relocation.

VI. ATTORNEY FEES

La Shandre requests attorney fees on appeal and we grant her request on two grounds. RAP 18.1 permits us to award attorney fees to a party entitled to them under "applicable law." RCW 26.09.140 allows us, in our discretion and after considering the "financial resources" of the parties, to order a party to pay the attorney fees of the other party in cases governed by chapter 26.09 RCW. We may award such fees after considering the financial need of the requesting party, the other party's ability to pay, and the arguable merits of the issues raised on appeal. *In re Marriage of*

[8] The trial court found that factors (4), (7), and (9) did not apply.

Kim, 179 Wn. App. 232, 256, 317 P.3d 555, *review denied*, 180 Wn.2d 1012 (2014). A party must timely file a financial declaration for his or her resources to be considered. RAP 18.1(c). La Shandre filed a financial declaration on March 5, 2015.

La Shandre has significant financial need, as she is currently unemployed. Her monthly net income is $3,888.33 while her expenses total $7,112.73 monthly. La Shandre's earning capacity is approximately $40,000 to $45,000 per year. Michael earns approximately $126,000 plus bonuses per year. Michael raises meritless issues. Therefore, we grant La Shandre attorney fees on appeal under RAP 18.1.

La Shandre also requests attorney fees on the ground that Michael's appeal is frivolous. RAP 18.9. Such a claim requires us to consider the following factors:

> (1) A civil appellant has a right to appeal under RAP 2.2, (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant, (3) the record should be considered as a whole, (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous, and (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.

Streater v. White, 26 Wn. App. 430, 434-35, 613 P.2d 187 (1980).

Here, Michael's brief is inadequate to make clear which trial court orders he is appealing and he provides no argument specific to any of the orders. He raises numerous meritless constitutional issues for the first time, most of which pertain to well-settled areas of law and some of which have no bearing on this appeal. Because no reasonable minds might differ and Michael's arguments are so devoid of merit that there is no reasonable possibility of reversal, we also award attorney fees to La Shandre under RAP 18.9.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Melnick, J.

Melnick, J.

We concur:

Worswick, J.

Worswick, J.

Johanson, C.J.

Johanson, C.J.

APPENDIX B

---------- Forwarded message ----------
From: **Scullion, Tom** <Tom.Scullion@clark.wa.gov>
Date: Tue, Feb 24, 2015 at 8:04 AM
Subject: RE: Clark County Grant info
To: Michael Bent <msgbent@gmail.com>
Cc: "Dixon, Kay" <Kay.Dixon@clark.wa.gov>

Grants are audited annually by the WA State Auditor's Office.

They may also be audited periodically by the granting authority to ensure compliance with grant requirements.

Grant funds are required to be used in the program for which the grant was awarded.

Those programs are shown on the list provided.

Thanks

Thomas G. Scullion

Senior Management Analyst

Clark County Auditor's Office

360-397-2310x4789

From: Michael Bent [mailto:msgbent@gmail.com]
Sent: Monday, February 23, 2015 5:54 PM
To: Scullion, Tom
Cc: Dixon, Kay
Subject: Re: Clark County Grant info

Hi Mr Scullion,

Thanks for this extensive list. As part of the Federal Grant is the County limited to use these funds in a particular manner (and allocated to select County department) or are the grant funds managed as an aggregate sum? If limited, does your office audit the usage to ensure grants are utilized as required? For example, this report includes U.S. Department of Health and Human Services/Pass-Through from WA DSHS Child Support Enforcement with total Expenditure of $1,714,464. This Federal grant rewards the county for enforcing child support. Does this Grant go towards the enforcement program listed in the Comprehensive Annual Financial Report (page 104) as budgeted Expenditures of $4,029,289? $3.5M of that amount is for "Child Support Enforcement Personal Services" Does the Audit assure that these funds are actually used for Personal Services (wages?) of Child Support Enforcers or just that the amount ($4,029,289) was allocated to an account described as a "Child Support Enforcement".

Michael

On Mon, Feb 23, 2015 at 3:59 PM, Scullion, Tom <Tom.Scullion@clark.wa.gov> wrote:

Mr. Bent

Here is a listing of Federal awards to Clark County in 2013.

Thanks

		Expenditures		
Federal Agency Name/ Pass-Through Agency Name	**Cluster Title/Federal Program Name**	**From Pass-Through Awards**	**From Direct Awards**	**Total Amount**
-	State-Administered Child Nutrition Cluster			

U.S. Department of HHS/Pass-Through from WA DOH				
U.S. Department of HHS/Pass-Through from WA DSHS	Substance Abuse and Mental Health Services-Access to Recovery	389,713		389,713
U.S. Department of Health and Human Services/Pass-Through from WA DOH	Centers for Disease Control and Prevention_Investigations and Technical Assistance	20,074		20,074
U.S. Department of Health and Human Services/Pass-Through from WA DOH	National Public Health Improvement Initiative	$627		$627
U.S. Department of HHS/Pass-Through from WA DOH	Pregnancy Assistance Fund Program	49,139		49,139
U.S. Department of Health and Human Services/ Pass-Through from WA State Dept of Health	PPHF 2012: Community Transformation Grants and National Dissemination and Support for Community Transformation Grants -financed solely by 2012 Prevention and Public Health Funds	301,576		301,576
U.S. Department of Health and Human Services/Pass-Through from WA State Dept of Health	PPHF 2012 - Prevention and Public Health Fund (Affordable Care Act) - Capacity Building Assistance to Strengthen Public Health Immunization Infrastructure and Performance financed in part by 2012 Prevention and Public Health Funds	7,257		7,257
U.S. Department of Health and Human Services/ pass-through from WA State Dept of Health	PPHF2013: State Nutrition, Physical Activity, and Obesity Programs - financed in part by 2013 PPHF	10,091		10,091
U.S. Department of Health and Human Services/ pass-through from WA State Dept of Social & Health Services	Temporary Assistance for Needy Families	11,275		11,275
U.S. Department of Health and Human	Child Support Enforcement	1,635,833		
Services/Pass-Through from WA DSHS		78,631		
		1,714,464		1,714,464
U.S. Department of Health and Human	Low Income Home Energy	2,152,072		
Services/Pass-Through from WA State	Assistance	122,054		
Dept of Commerce		183,030		
		234,695		
		2,691,851		2,691,851
U.S. Department of Health and Human	Community Services Block Grant	56,604		
Services/Pass-Through WA State		237,051		
Dept of Commerce		293,655		293,655
		5,099		5,099

APPENDIX C

42 U.S. Code § 651 - Authorization of appropriations

Current through Pub. L. 114-9 (http://www.gpo.gov/fdsys/pkg/PLAW-114publ9/html/PLAW-114publ9.htm). (See Public Laws for the current Congress (http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws).)

US Code (/uscode/text/42/651?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates)

Notes (/uscode/text/42/651?qt-us_code_temp_noupdates=1#qt-us_code_temp_noupdates)

Authorities (CFR) (/uscode/text/42/651?qt-us_code_temp_noupdates=3#qt-us_code_temp_noupdates)

prev | next (/uscode/text/42/652)

For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for assistance under a State program funded under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

42 U.S. Code § 654 - State plan for child and spousal support

Current through Pub. L. 114-9 (http://www.gpo.gov/fdsys/pkg/PLAW-114publ9/html/PLAW-114publ9.htm). (See Public Laws for the current Congress (http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws).)

US Code (/uscode/text/42/654?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates)

Notes (/uscode/text/42/654?qt-us_code_temp_noupdates=1#qt-us_code_temp_noupdates)

Authorities (CFR) (/uscode/text/42/654?qt-us_code_temp_noupdates=3#qt-us_code_temp_noupdates)

prev (/uscode/text/42/653a) | next (/uscode/text/42/654a)

A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that the State will—

(A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to—

(i) each child for whom

(I) assistance is provided under the State program funded under part A of this subchapter,

(II) benefits or services for foster care maintenance are provided under the State program funded under part E of this subchapter,

(III) medical assistance is provided under the State plan approved under subchapter XIX of this chapter, or

(IV) cooperation is required pursuant to section 2015 (/uscode/text/7/2015) (l)(1) (/uscode/text/7/usc_sec_07_00002015---000-#l_1) of title 7 (/uscode/text/7), unless, in accordance with paragraph (29), good cause or other exceptions exist;

(ii) any other child, if an individual applies for such services with respect to the child (except that, if the individual applying for the services resides in a foreign reciprocating country or foreign treaty country, the State may opt to require the individual to request the services through the Central Authority for child support enforcement

in the foreign reciprocating country or the foreign treaty country, and if the individual resides in a foreign country that is not a foreign reciprocating country or a foreign treaty country, a State may accept or reject the application); and

(B) enforce any support obligation established with respect to—

(i) a child with respect to whom the State provides services under the plan; or

(ii) the custodial parent of such a child;

(5) provide that

(A) in any case in which support payments are collected for an individual with respect to whom an assignment pursuant to section 608 (/uscode/text/42/608) (a)(3) (/uscode/text/42/usc_sec_42_00000608----000-#a_3) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 (/uscode/text/42/657) of this title and shall not be paid directly to the family, and the individual will be notified on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden) of the amount of the support payments collected, and

(B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1396k (/uscode/text/42/1396k) of this title, such payments shall be made to the State for distribution pursuant to section 1396k (/uscode/text/42/1396k) of this title, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;

(6) provide that—

(A) services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan;

(B)

(i) an application fee for furnishing such services shall be imposed on an individual, other than an individual receiving assistance under a State program funded under part A or E of this subchapter, or under a State plan approved under subchapter XIX of this chapter, or who is required by the State to cooperate with the State agency administering the program under this part pursuant to subsection (l) or (m) ofsection 2015 (/uscode/text/42/2015) of title 7, and shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which

(I) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and

(II) may vary among such individuals on the basis of ability to pay (as determined by the State); and

(ii) in the case of an individual who has never received assistance under a State program funded under part A and for whom the State has collected at least $500 of support, the State shall impose an annual fee of $25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the first $500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and the fees shall be considered income to the program);

(C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664 (/uscode/text/42/664) (a)(2) (/uscode/text/42/usc_sec_42_00000664----000-#a_2) of this title;

(D) a fee (in accordance with regulations of the Secretary) for performing genetic tests may be imposed on any individual who is not a recipient of assistance under a State program funded under part A of this subchapter; and

(E) any costs in excess of the fees so imposed may be collected—

(i) from the parent who owes the child or spousal support obligation involved; or

(ii) at the option of the State, from the individual to whom such services are made available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials and Indian tribes or tribal organizations (as defined in subsections (e) and (l) ofsection 450b of title 25)

(A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and

(B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that, for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or making or enforcing a child custody or visitation determination, as defined in section 663 (/uscode/text/42/663) (d)(1) (/uscode/text/42/usc_sec_42_00000663----000-#d_1) of this title the agency administering the plan will establish a service to locate parents utilizing—

(A) all sources of information and available records; and

(B) the Federal Parent Locator Service established under section 653 (/uscode/text/42/653) of this title,

and shall, subject to the privacy safeguards required under paragraph (26), disclose only the information described in sections 653 (/uscode/text/42/653) and 663 (/uscode/text/42/663) of this title to the authorized persons specified in such sections for the purposes specified in such sections;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary;

(B) in locating a noncustodial parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State;

(C) in securing compliance by a noncustodial parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State;

(D) in carrying out other functions required under a plan approved under this part; and

(E) not later than March 1, 1997, in using the forms promulgated pursuant to section 652 (/uscode/text/42/652) (a)(11) (/uscode/text/42/usc_sec_42_00000652----000-#a_11) of this title for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(11)

(A) provide that amounts collected as support shall be distributed as provided in section 657 (/uscode/text/42/657) of this title; and

(B) provide that any payment required to be made under section 656 (/uscode/text/42/656) or 657 (/uscode/text/42/657) of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(12) provide for the establishment of procedures to require the State to provide individuals who are applying for or receiving services under the State plan, or who are parties to cases in which services are being provided under the State plan—

(A) with notice of all proceedings in which support obligations might be established or modified; and

(B) with a copy of any order establishing or modifying a child support obligation, or (in the case of a petition for modification) a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan;

(14)

(A) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

(B) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(15) provide for—

(A) a process for annual reviews of and reports to the Secretary on the State program operated under the State plan approved under this part, including such information as may be necessary to measure State compliance with Federal requirements for expedited procedures, using such standards and procedures as are required by the Secretary, under which the State agency will determine the extent to which the program is operated in compliance with this part; and

(B) a process of extracting from the automated data processing system required by paragraph (16) and transmitting to the Secretary data and calculations concerning the levels of accomplishment (and rates of improvement) with respect to applicable performance indicators (including paternity establishment percentages) to the extent necessary for purposes of sections 652 (/uscode/text/42/652) (g) (/uscode/text/42/usc_sec_42_00000652----000-#g) and 658a (/uscode/text/42/658a) of this title;

(16) provide for the establishment and operation by the State agency, in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652 (/uscode/text/42/652) (d) (/uscode/text/42/usc_sec_42_00000652----000-#d) of this title, of a statewide automated data processing and information retrieval system meeting the requirements of section 654a (/uscode/text/42/654a) of this title designed effectively and efficiently to assist management in the administration of the State plan, so as to control, account for, and monitor all the factors in the support

enforcement collection and paternity determination process under such plan;

(17) provide that the State will have in effect an agreement with the Secretary entered into pursuant to section 663 (/uscode/text/42/663) of this title for the use of the Parent Locator Service established under section 653 (/uscode/text/42/653) of this title, and provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 (/uscode/text/42/664) of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency; and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law; or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 659 (/uscode/text/42/659) (i)(5) (/uscode/text/42/usc_sec_42_00000659----000-#i_5) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 (/uscode/text/42/666) of this title, that the State

(A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and

(B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)

(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 666 (/uscode/text/42/666) (e) (/uscode/text/42/usc_sec_42_00000666----000-#e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the noncustodial parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658a (/uscode/text/42/658a) of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate;

(24) provide that the State will have in effect an automated data processing and information retrieval system—

(A) by October 1, 1997, which meets all requirements of this part which were enacted on or before October 13, 1988; and

(B) by October 1, 2000, which meets all requirements of this part enacted on or before August 22, 1996, except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(25) provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family;

(26) have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including—

(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify, or enforce support, or to make or enforce a child custody determination;

(B) prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(C) prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child;

(D) in cases in which the prohibitions under subparagraphs (B) and (C) apply, the requirement to notify the Secretary, for purposes of section 653 (/uscode/text/42/653) (b)(2) (/uscode/text/42/usc_sec_42_00000653----000-#b_2) of this title, that the State has reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child; and

(E) procedures providing that when the Secretary discloses information about a parent or child to a State court or an agent of a State court described in section 653 (/uscode/text/42/653) (c)(2) (/uscode/text/42/usc_sec_42_00000653----000-#c_2) or 663 (/uscode/text/42/663) (d)(2)(B) (/uscode/text/42/usc_sec_42_00000663----000-#d_2_B) of this title, and advises that court or agent that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse pursuant to section 653 (/uscode/text/42/653) (b)(2) (/uscode/text/42/usc_sec_42_00000653----000-#b_2) of this title, the court shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make any such disclosure;

(27) provide that, on and after October 1, 1998, the State agency will—

(A) operate a State disbursement unit in accordance with section 654b (/uscode/text/42/654b) of this title; and

(B) have sufficient State staff (consisting of State employees) and (at State option) contractors reporting directly to the State agency to—

(i) monitor and enforce support collections through the unit in cases being enforced by the State pursuant to paragraph (4) (including carrying out the automated data processing responsibilities described in section 654a (/uscode/text/42/654a) (g) (/uscode/text/42/usc_sec_42_00000654---a000-#g) of this title); and

(ii) take the actions described in section 666 (/uscode/text/42/666) (c)(1) (/uscode/text/42/usc_sec_42_00000666----000-#c_1) of this title in appropriate cases;

(28) provide that, on and after October 1, 1997, the State will operate a State Directory of New Hires in accordance with section 653a (/uscode/text/42/653a) of this title;

(29) provide that the State agency responsible for administering the State plan—

(A) shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the supplemental nutrition assistance program, as defined under section 2012 (/uscode/text/7/2012) (l) (/uscode/text/7/usc_sec_07_00002012----000-#l) of title 7 (/uscode/text/7), is cooperating in good faith with the State in establishing the paternity of, or in establishing, modifying, or enforcing a support order for, any child of the individual by providing the State agency with the name of, and such other information as the State agency may require with respect to, the noncustodial parent of the child, subject to good cause and other exceptions which—

(i) in the case of the State program funded under part A of this subchapter, the State program under part E of this subchapter, or the State program under subchapter XIX of this chapter shall, at the option of the State, be defined, taking into account the best interests of the child, and applied in each case, by the State agency administering such program; and

(ii) in the case of the supplemental nutrition assistance program, as defined under section 2012 (/uscode/text/7/2012) (l) (/uscode/text/7/usc_sec_07_00002012----000-#l) of title 7 (/uscode/text/7), shall be defined and applied in each case under that program in accordance with section 2015 (/uscode/text/7/2015) (l)(2) (/uscode/text/7/usc_sec_07_00002015----000-#l_2) of title 7 (/uscode/text/7);

(B) shall require the individual to supply additional necessary information and appear at interviews, hearings, and legal proceedings;

(C) shall require the individual and the child to submit to genetic tests pursuant to judicial or administrative order;

(D) may request that the individual sign a voluntary acknowledgment of paternity, after notice of the rights and consequences of such an acknowledgment, but may not require the individual to sign an acknowledgment or otherwise relinquish the right to genetic tests as a condition of cooperation and eligibility for assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the supplemental nutrition assistance program, as defined under section 2012 (/uscode/text/7/2012) (l) (/uscode/text/7/usc_sec_07_00002012----000-#l) of title 7 (/uscode/text/7); and

(E) shall promptly notify the individual and the State agency administering the State program funded under part A of this subchapter, the State agency administering the State program under part E of this subchapter, the State agency administering the State program under subchapter XIX of this chapter, or the State agency administering the supplemental nutrition assistance program, as defined under section 2012 (/uscode/text/7/2012) (l) (/uscode/text/7/usc_sec_07_00002012----000-#l) of title 7 (/uscode/text/7), of each such determination, and if noncooperation is determined, the basis therefor;

(30) provide that the State shall use the definitions established under section 652 (/uscode/text/42/652) (a)(5) (/uscode/text/42/usc_sec_42_00000652----000-#a_5) of this title in collecting and reporting information as required under this part;

(31) provide that the State agency will have in effect a procedure for certifying to the Secretary, for purposes of the procedure under section 652 (/uscode/text/42/652) (k) (/uscode/text/42/usc_sec_42_00000652----000-#k) of this title, determinations that individuals owe arrearages of child support in an amount exceeding $2,500, under which procedure—

(A) each individual concerned is afforded notice of such determination and the consequences thereof, and an opportunity to contest the determination; and

(B) the certification by the State agency is furnished to the Secretary in such format, and accompanied by such supporting documentation, as the Secretary may require;

(32)

(A) provide that any request for services under this part by a foreign reciprocating country, a foreign treaty country, or a foreign country with which the State has an arrangement described in section 659a (/uscode/text/42/659a) (d) (/uscode/text/42/usc_sec_42_00000659---a000-#d) of this title shall be treated as a request by a State;

(B) provide, at State option, notwithstanding paragraph (4) or any other provision of this part, for services under the plan for enforcement of a spousal support order not described in paragraph (4)(B) entered by such a country (or subdivision); and

(C) provide that no applications will be required from, and no costs will be assessed for such services against, the foreign reciprocating country, foreign treaty country, or foreign individual (but costs may at State option be assessed against the obligor);

(33) provide that a State that receives funding pursuant to section 628 (/uscode/text/42/628) of this title and that has within its borders Indian country (as defined in section 1151 (/uscode/text/18/1151) of title 18 (/uscode/text/18)) may enter into cooperative agreements with an Indian tribe or tribal organization (as defined in subsections (e) and (l) ofsection 450b of title 25), if the Indian tribe or tribal organization demonstrates that such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, or enforce support orders, or to enter support orders in

accordance with child support guidelines established or adopted by such tribe or organization, under which the State and tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all collections pursuant to the functions performed by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute such collections in accordance with such agreement; and

(34) include an election by the State to apply section 657 (/uscode/text/42/657) (a)(2)(B) (/uscode/text/42/usc_sec_42_00000657----000-#a_2_B) of this title or former section 657 (/uscode/text/42/657) (a)(2)(B) (/uscode/text/42/usc_sec_42_00000657----000-#a_2_B) of this title (as in effect for the State immediately before the date this paragraph first applies to the State) to the distribution of the amounts which are the subject of such sections and, for so long as the State elects to so apply such former section, the amendments made by subsection (b)(1) ofsection 7301 (/uscode/text/42/7301) of the Deficit Reduction Act of 2005 shall not apply with respect to the State, notwithstanding subsection (e) of such section 7301 (/uscode/text/42/7301).

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21). Nothing in paragraph (33) shall void any provision of any cooperative agreement entered into before August 22, 1996, nor shall such paragraph deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 1322 (/uscode/text/25/1322) of title 25 (/uscode/text/25).

Payments to States

US Code (/uscode/text/42/655?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates)

Notes (/uscode/text/42/655?qt-us_code_temp_noupdates=1#qt-us_code_temp_noupdates)

Authorities (CFR) (/uscode/text/42/655?qt-us_code_temp_noupdates=3#qt-us_code_temp_noupdates)

prev (/uscode/text/42/654b) | next (/uscode/text/42/655a)

(a) Amounts payable each quarter

(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 (/uscode/text/42/654) of this title,

(B) equal to the percent specified in paragraph (3) of the sums expended during such quarter that are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system); and [1]

(C) equal to 66 percent of so much of the sums expended during such quarter as are attributable to laboratory costs incurred in determining paternity, and

(D) equal to 66 percent of the sums expended by the State during the quarter for an alternative statewide system for which a waiver has been granted under section 652 (/uscode/text/42/652) (d)(3) (/uscode/text/42/usc_sec_42_00000652----000-#d_3) of this title, but only to the extent that the total of the sums so expended by the State on or after July 16, 1998, does not exceed the least total cost estimate submitted by the State pursuant to section 652 (/uscode/text/42/652) (d)(3)(C) (/uscode/text/42/usc_sec_42_00000652----000-#d_3_C) of this title in the request for the waiver;

except that no amount shall be paid to any State on account of amounts expended from amounts paid to the State under section 658a (/uscode/text/42/658a) of this title or to carry out an agreement which it has entered into pursuant to section 663 (/uscode/text/42/663) of this title. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989, and

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

(3)

(A) The Secretary shall pay to each State, for each quarter in fiscal years 1996 and 1997, 90 percent of so much of the State expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements specified in section 654 (/uscode/text/42/654) (16) (/uscode/text/42/usc_sec_42_00000654----000-#16) of this title (as in effect on September 30, 1995) but limited to the amount approved for States in the advance planning documents of such States submitted on or before September 30, 1995.

(B)

(i) The Secretary shall pay to each State or system described in clause (iii), for each quarter in fiscal years 1996 through 2001, the percentage specified in clause (ii) of so much of the State or system expenditures described in paragraph (1)(B) as the Secretary finds are for a system meeting the requirements of sections 654 (/uscode/text/42/654) (16) (/uscode/text/42/usc_sec_42_00000654----000-#16) and 654a (/uscode/text/42/654a) of this title.

(ii) The percentage specified in this clause is 80 percent.

(iii) For purposes of clause (i), a system described in this clause is a system that has been approved by the Secretary to receive enhanced funding pursuant to the Family Support Act of 1988 (Public Law 100-485; 102 Stat. 2343 (/usc-cgi/get_external.cgi?type=statRef&target=date:nonech:nonestatnum:102_2343)) for the purpose of developing a system that meets the requirements of sections 654 (/uscode/text/42/654) (16) (/uscode/text/42/usc_sec_42_00000654----000-#16) of this title (as in effect on and after September 30, 1995) and 654a of this title, including systems that have received funding for such purpose pursuant to a waiver under section 1315 (/uscode/text/42/1315) (a) (/uscode/text/42/usc_sec_42_00001315----000-#a) of this title.

(4)

(A)

(i) If—

(I) the Secretary determines that a State plan under section 654 (/uscode/text/42/654) of this title would (in the absence of this paragraph) be disapproved for the failure of the State to comply with a particular subparagraph of section 654 (/uscode/text/42/654) (24) (/uscode/text/42/usc_sec_42_00000654----000-#24) of this title, and that the State has made and is continuing to make a good faith effort to so comply; and

(II) the State has submitted to the Secretary a corrective compliance plan that describes how, by when, and at what cost the State will achieve such compliance, which has been approved by the Secretary,

then the Secretary shall not disapprove the State plan under section 654 (/uscode/text/42/654) of this title, and the Secretary shall reduce the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the fiscal year by the penalty amount.

(ii) All failures of a State during a fiscal year to comply with any of the requirements referred to in the same subparagraph of section 654 (/uscode/text/42/654) (24) (/uscode/text/42/usc_sec_42_00000654----000-#24) of this title shall be considered a single failure of the State to comply with that subparagraph during the fiscal year for purposes of this paragraph.

(B) In this paragraph:

(i) The term "penalty amount" means, with respect to a failure of a State to comply with a subparagraph of section 654 (/uscode/text/42/654) (24) (/uscode/text/42/usc_sec_42_00000654----000-#24) of this title—

(I) 4 percent of the penalty base, in the case of the first fiscal year in which such a failure by the State occurs (regardless of whether a penalty is imposed under this paragraph with respect to the failure);

(II) 8 percent of the penalty base, in the case of the second such fiscal year;

(III) 16 percent of the penalty base, in the case of the third such fiscal year;

(IV) 25 percent of the penalty base, in the case of the fourth such fiscal year; or

(V) 30 percent of the penalty base, in the case of the fifth or any subsequent such fiscal year.

(ii) The term "penalty base" means, with respect to a failure of a State to comply with a subparagraph of section 654 (/uscode/text/42/654) (24)

(/uscode/text/42/usc_sec_42_00000654----000-#24) of this title during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.

(C)

(i) The Secretary shall waive a penalty under this paragraph for any failure of a State to comply with section 654 (/uscode/text/42/654) (24)(A) (/uscode/text/42/usc_sec_42_00000654----000-#24_A) of this title during fiscal year 1998 if—

(I) on or before August 1, 1998, the State has submitted to the Secretary a request that the Secretary certify the State as having met the requirements of such section;

(II) the Secretary subsequently provides the certification as a result of a timely review conducted pursuant to the request; and

(III) the State has not failed such a review.

(ii) If a State with respect to which a reduction is made under this paragraph for a fiscal year with respect to a failure to comply with a subparagraph of section 654 (/uscode/text/42/654) (24) (/uscode/text/42/usc_sec_42_00000654----000-#24) of this title achieves compliance with such subparagraph by the beginning of the succeeding fiscal year, the Secretary shall increase the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the succeeding fiscal year by an amount equal to 90 percent of the reduction for the fiscal year.

(iii) The Secretary shall reduce the amount of any reduction that, in the absence of this clause, would be required to be made under this paragraph by reason of the failure of a State to achieve compliance with section 654 (/uscode/text/42/654) (24)(B) (/uscode/text/42/usc_sec_42_00000654----000-#24_B) of this title during the fiscal year, by an amount equal to 20 percent of the amount of the otherwise required reduction, for each State performance measure described in section 658a (/uscode/text/42/658a) (b)(4) (/uscode/text/42/usc_sec_42_00000658---a000-#b_4) of this title with respect to which the applicable percentage under section 658a (/uscode/text/42/658a) (b)(6) (/uscode/text/42/usc_sec_42_00000658---a000-#b_6) of this title for the fiscal year is 100 percent, if the Secretary has made the determination described in section 658a (/uscode/text/42/658a) (b)(5)(B) (/uscode/text/42/usc_sec_42_00000658---a000-#b_5_B) of this title with respect to the State for the fiscal year.

(D) The Secretary may not impose a penalty under this paragraph against a State with respect to a failure to comply with section 654 (/uscode/text/42/654) (24)(B) (/uscode/text/42/usc_sec_42_00000654----000-#24_B) of this title for a fiscal year if the Secretary is required to impose a penalty under this paragraph against the State with respect to a failure to comply with section 654 (/uscode/text/42/654) (24)(A) (/uscode/text/42/usc_sec_42_00000654----000-#24_A) of this title for the fiscal year.

(5)

(A)

(i) If—

(I) the Secretary determines that a State plan under section 654 (/uscode/text/42/654) of this title would (in the absence of this paragraph) be disapproved for the failure of the State to comply with subparagraphs (A) and (B)(i) of section 654 (/uscode/text/42/654) (27) (/uscode/text/42/usc_sec_42_00000654----000-#27) of this title, and that the State has made and is continuing to make a good faith effort to so comply; and

(II) the State has submitted to the Secretary, not later than April 1, 2000, a corrective compliance plan that describes how, by when, and at what cost the State will achieve such compliance, which has been approved by the Secretary,

then the Secretary shall not disapprove the State plan under section 654 (/uscode/text/42/654) of this title, and the Secretary shall reduce the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the fiscal year by the penalty amount.

(ii) All failures of a State during a fiscal year to comply with any of the requirements of section 654B (/uscode/text/42/654b) of this title shall be considered a single failure of the State to comply with subparagraphs (A) and (B)(i) of section 654 (/uscode/text/42/654) (27) (/uscode/text/42/usc_sec_42_00000654----000-#27) of this title during the fiscal year for purposes of this paragraph.

(B) In this paragraph:

(i) The term "penalty amount" means, with respect to a failure of a State to comply with subparagraphs (A) and (B)(i) of section 654 (/uscode/text/42/654) (27) (/uscode/text/42/usc_sec_42_00000654----000-#27) of this title—

(I) 4 percent of the penalty base, in the case of the 1st fiscal year in which such a failure by the State occurs (regardless of whether a penalty is imposed in that fiscal year under this

paragraph with respect to the failure), except as provided in subparagraph (C)(ii) of this paragraph;

(II) 8 percent of the penalty base, in the case of the 2nd such fiscal year;

(III) 16 percent of the penalty base, in the case of the 3rd such fiscal year;

(IV) 25 percent of the penalty base, in the case of the 4th such fiscal year; or

(V) 30 percent of the penalty base, in the case of the 5th or any subsequent such fiscal year.

(ii) The term "penalty base" means, with respect to a failure of a State to comply with subparagraphs (A) and (B)(i) of section 654 (/uscode/text/42/654) (27) (/uscode/text/42/usc_sec_42_00000654----000-#27) of this title during a fiscal year, the amount otherwise payable to the State under paragraph (1)(A) of this subsection for the preceding fiscal year.

(C)

(i) The Secretary shall waive all penalties imposed against a State under this paragraph for any failure of the State to comply with subparagraphs (A) and (B)(i) of section 654 (/uscode/text/42/654) (27) (/uscode/text/42/usc_sec_42_00000654----000-#27) of this title if the Secretary determines that, before April 1, 2000, the State has achieved such compliance.

(ii) If a State with respect to which a reduction is required to be made under this paragraph with respect to a failure to comply with subparagraphs (A) and (B)(i) of section 654 (/uscode/text/42/654) (27) (/uscode/text/42/usc_sec_42_00000654----000-#27) of this title achieves such compliance on or after April 1, 2000, and on or before September 30, 2000, then the penalty amount applicable to the State shall be 1 percent of the penalty base with respect to the failure involved.

(D) The Secretary may not impose a penalty under this paragraph against a State for a fiscal year for which the amount otherwise payable to the State under paragraph (1)(A) of this subsection is reduced under paragraph (4) of this subsection for failure to comply with section 654 (/uscode/text/42/654) (24)(A) (/uscode/text/42/usc_sec_42_00000654----000-#24_A) of this title.

(b) Estimate of amounts payable; installment payments

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under

subsection (a) of this section for such quarter, such estimates to be based on

(A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and

(B) such other investigation as the Secretary may find necessary.

(2) Subject to subsection (d) of this section, the Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) Repealed. Pub. L. 97-248, title I, § 174(b),Sept. 3, 1982, 96 Stat. 403

(d) State reports

Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a) of this section, there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a) of this section.

(e) Special project grants for interstate enforcement; appropriations

(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their noncustodial parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such

grants to carry out special projects designed to demonstrate and test such methods.

(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 658 (/uscode/text/42/658) (b) (/uscode/text/42/usc_sec_42_00000658----000-#b) [2] of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 654 (/uscode/text/42/654) of this title.

(5) There is authorized to be appropriated the sum of $7,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, and $15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection.

(f) Direct Federal funding to Indian tribes and tribal organizations

The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.

[1] So in original. The "; and" probably should be a comma.

[2] See References in Text note below.

that contains links to or references LII.

(a) In general

In addition to any other payment under this part, the Secretary shall, subject to subsection (f) of this section, make an incentive payment to each State for each fiscal year in an amount determined under subsection (b) of this section.

(b) Amount of incentive payment

(1) In general

The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year.

(2) Incentive payment pool

(A) In general

In paragraph (1), the term "incentive payment pool" means—

(i) $422,000,000 for fiscal year 2000;

(ii) $429,000,000 for fiscal year 2001;

(iii) $450,000,000 for fiscal year 2002;

(iv) $461,000,000 for fiscal year 2003;

(v) $454,000,000 for fiscal year 2004;

(vi) $446,000,000 for fiscal year 2005;

(vii) $458,000,000 for fiscal year 2006;

(viii) $471,000,000 for fiscal year 2007;

(ix) $483,000,000 for fiscal year 2008; and

(x) for any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year, multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year.

(B) CPI

For purposes of subparagraph (A), the CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year. As used in the preceding sentence, the term "Consumer Price Index" means the last Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) State incentive payment share

In paragraph (1), the term "State incentive payment share" means, with respect to a fiscal year—

(A) the incentive base amount for the State for the fiscal year; divided by

(B) the sum of the incentive base amounts for all of the States for the fiscal year.

(4) Incentive base amount

In paragraph (3), the term "incentive base amount" means, with respect to a State and a fiscal year, the sum of the applicable percentages (determined in accordance with paragraph (6)) multiplied by the corresponding maximum incentive base amounts for the State for the fiscal year, with respect to each of the following measures of State performance for the fiscal year:

(A) The paternity establishment performance level.

(B) The support order performance level.

(C) The current payment performance level.

(D) The arrearage payment performance level.

(E) The cost-effectiveness performance level.

(5) Maximum incentive base amount

(A) In general

For purposes of paragraph (4), the maximum incentive base amount for a State for a fiscal year is—

(i) with respect to the performance measures described in subparagraphs (A), (B), and (C) of paragraph (4), the State collections base for the fiscal year; and

(ii) with respect to the performance measures described in subparagraphs (D) and (E) of paragraph (4), 75 percent of the State collections base for the fiscal year.

(B) Data required to be complete and reliable

Notwithstanding subparagraph (A), the maximum incentive base amount for a State for a fiscal year with respect to a performance measure described in paragraph (4) is zero, unless the Secretary determines, on the basis of an audit performed under section 652 (/uscode/text/42/652) (a)(4)(C)(i) (/uscode/text/42/usc_sec_42_00000652----000-#a_4_C_i) of this title, that the data which the State submitted pursuant to section 654 (/uscode/text/42/654) (15)(B) (/uscode/text/42/usc_sec_42_00000654----000-#15_B) of this title for the fiscal year and which is used to determine the performance level involved is complete and reliable.

(C) State collections base

For purposes of subparagraph (A), the State collections base for a fiscal year is equal to the sum of—

(i) 2 times the sum of—

(I) the total amount of support collected during the fiscal year under the State plan approved under this part in cases in which the support obligation involved is required to be assigned to the State pursuant to part A or E of this subchapter or subchapter XIX of this chapter; and

(II) the total amount of support collected during the fiscal year under the State plan approved under this part in cases in which the support obligation involved was so assigned but, at the time of collection, is not required to be so assigned; and

(ii) the total amount of support collected during the fiscal year under the State plan approved under this part in all other cases.

(6) Determination of applicable percentages based on performance levels

(A) Paternity establishment

(i) Determination of paternity establishment performance level The paternity establishment performance level for a State for a fiscal year is, at the option of the State, the IV-D paternity establishment percentage determined under section 652 (/uscode/text/42/652) (g)(2)(A) (/uscode/text/42/usc_sec_42_00000652----000-#g_2_A) of this title or the statewide paternity establishment percentage determined under section 652 (/uscode/text/42/652) (g)(2)(B) (/uscode/text/42/usc_sec_42_00000652----000-#g_2_B) of this title.

(ii) Determination of applicable percentage The applicable percentage with respect to a State's paternity establishment performance level is as follows:

If the paternity establishment performance level is:	At least:	But less than:	The applicable percentage is:
80%	100		
79%	80%	98	
78%	79%	96	
77%	78%	94	
76%	77%	92	
75%	76%	90	
74%	75%	88	
73%	74%	86	
72%	73%	84	
71%	72%	82	
70%	71%	80	
69%	70%	79	
68%	69%	78	
67%	68%	77	
66%	67%	76	
65%	66%	75	
64%	65%	74	
63%	64%	73	
62%	63%	72	
61%	62%	71	
60%	61%	70	
59%	60%	69	
58%	59%	68	
57%	58%	67	
56%	57%	66	

55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
0%	50%	0.

Notwithstanding the preceding sentence, if the paternity establishment performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 10 percentage points the paternity establishment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's paternity establishment performance level is 50 percent.

(B) Establishment of child support orders

(i) Determination of support order performance level The support order performance level for a State for a fiscal year is the percentage of the total number of cases under the State plan approved under this part in which there is a support order during the fiscal year.

(ii) Determination of applicable percentage The applicable percentage with respect to a State's support order performance level is as follows:

If the support order performance level is:	At least:	But less than:	The applicable percentage is:
80%	100		
79%	80%	98	
78%	79%	96	
77%	78%	94	
76%	77%	92	
75%	76%	90	
74%	75%	88	
73%	74%	86	
72%	73%	84	
71%	72%	82	
70%	71%	80	
69%	70%	79	
68%	69%	78	
67%	68%	77	
66%	67%	76	
65%	66%	75	
64%	65%	74	
63%	64%	73	
62%	63%	72	
61%	62%	71	
60%	61%	70	
59%	60%	69	
58%	59%	68	
57%	58%	67	

56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
0%	50%	0.

Notwithstanding the preceding sentence, if the support order performance level of a State for a fiscal year is less than 50 percent but exceeds by at least 5 percentage points the support order performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's support order performance level is 50 percent.

(C) Collections on current child support due

(i) Determination of current payment performance level The current payment performance level for a State for a fiscal year is equal to the total amount of current support collected during the fiscal year under the State plan approved under this part divided by the total amount of current support owed during the fiscal year in all cases under the State plan, expressed as a percentage.

(ii) Determination of applicable percentage The applicable percentage with respect to a State's current payment performance level is as follows:

If the current payment performance level is:	At least:	But less than:	The applicable percentage is:
80%	100		
79%	80%	98	
78%	79%	96	
77%	78%	94	
76%	77%	92	
75%	76%	90	
74%	75%	88	
73%	74%	86	
72%	73%	84	
71%	72%	82	
70%	71%	80	
69%	70%	79	
68%	69%	78	
67%	68%	77	
66%	67%	76	
65%	66%	75	
64%	65%	74	
63%	64%	73	
62%	63%	72	
61%	62%	71	
60%	61%	70	
59%	60%	69	

58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
49%	50%	59
48%	49%	58
47%	48%	57
46%	47%	56
45%	46%	55
44%	45%	54
43%	44%	53
42%	43%	52
41%	42%	51
40%	41%	50
0%	40%	0.

Notwithstanding the preceding sentence, if the current payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the current payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's current payment performance level is 50 percent.

(D) Collections on child support arrearages

(i) Determination of arrearage payment performance level The arrearage payment performance level for a State for a fiscal year is equal to the total number of cases under the State plan approved under this part in which payments of past-due child support were received during the fiscal year and part or all of the payments were distributed to the family to whom the past-due child support was owed (or, if all past-due child support owed to the family was, at the time of receipt, subject to an assignment to the State, part or all of the payments were retained by the State) divided by the total number of cases under the State plan in which there is past-due child support, expressed as a percentage.

(ii) Determination of applicable percentage The applicable percentage with respect to a State's arrearage payment performance level is as follows:

If the arrearage payment performance level is:	**At least:**	**But less than:**	**The applicable percentage is:**
80%	100		
79%	80%	98	
78%	79%	96	
77%	78%	94	
76%	77%	92	

75%	76%	90
74%	75%	88
73%	74%	86
72%	73%	84
71%	72%	82
70%	71%	80
69%	70%	79
68%	69%	78
67%	68%	77
66%	67%	76
65%	66%	75
64%	65%	74
63%	64%	73
62%	63%	72
61%	62%	71
60%	61%	70
59%	60%	69
58%	59%	68
57%	58%	67
56%	57%	66
55%	56%	65
54%	55%	64
53%	54%	63
52%	53%	62
51%	52%	61
50%	51%	60
49%	50%	59
48%	49%	58
47%	48%	57
46%	47%	56
45%	46%	55
44%	45%	54
43%	44%	53
42%	43%	52
41%	42%	51
40%	41%	50
0%	40%	0.

Notwithstanding the preceding sentence, if the arrearage payment performance level of a State for a fiscal year is less than 40 percent but exceeds by at least 5 percentage points the arrearage payment performance level of the State for the immediately preceding fiscal year, then the applicable percentage with respect to the State's arrearage payment performance level is 50 percent.

(E) Cost-effectiveness

(i) Determination of cost-effectiveness performance level The cost-effectiveness performance level for a State for a fiscal year is equal to the total amount collected during the fiscal year

under the State plan approved under this part divided by the total amount expended during the fiscal year under the State plan, expressed as a ratio.

(ii) Determination of applicable percentage The applicable percentage with respect to a State's cost-effectiveness performance level is as follows:

If the cost-effectiveness performance level is:	At least:	But less than:	The applicable percentage is:
5.00	100		
4.50	4.99	90	
4.00	4.50	80	
3.50	4.00	70	
3.00	3.50	60	
2.50	3.00	50	
2.00	2.50	40	
0.00	2.00	0.	

(c) Treatment of interstate collections

In computing incentive payments under this section, support which is collected by a State at the request of another State shall be treated as having been collected in full by both States, and any amounts expended by a State in carrying out a special project assisted under section 655 (/uscode/text/42/655) (e) (/uscode/text/42/usc_sec_42_00000655----000-#e) of this title shall be excluded.

(d) Administrative provisions

The amounts of the incentive payments to be made to the States under this section for a fiscal year shall be estimated by the Secretary at/or before the beginning of the fiscal year on the basis of the best information available. The Secretary shall make the payments for the fiscal year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section are deemed obligated.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary governing the calculation of incentive payments under this section, including directions for excluding from the calculations certain closed cases and cases over which the States do not have jurisdiction.

(f) Reinvestment

A State to which a payment is made under this section shall expend the full amount of the payment to supplement, and not supplant, other funds used by the State—

(1) to carry out the State plan approved under this part; or

(2) for any activity (including cost-effective contracts with local agencies) approved by the Secretary, whether or not the expenditures for the activity are eligible for reimbursement under this part, which may contribute to improving the effectiveness or efficiency of the State program operated under this part.

42 U.S. Code § 666 - Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

Current through Pub. L. 114-9 (http://www.gpo.gov/fdsys/pkg/PLAW-114publ9/html/PLAW-114publ9.htm). (See Public Laws for the current Congress (http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws).)

US Code (/uscode/text/42/666?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates)

Notes (/uscode/text/42/666?qt-us_code_temp_noupdates=1#qt-us_code_temp_noupdates)

Authorities (CFR) (/uscode/text/42/666?qt-us_code_temp_noupdates=3#qt-us_code_temp_noupdates)

prev (/uscode/text/42/665) | next (/uscode/text/42/667)

(a) Types of procedures required

In order to satisfy section 654 (/uscode/text/42/654) (20)(A) (/uscode/text/42/usc_sec_42_00000654----000-#20_A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(1)

(A) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

(B) Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before January 1, 1994, if not otherwise subject to withholding under subsection (b) of this section, shall become subject to withholding as provided in subsection (b) of this section if arrearages occur, without the need for a judicial or administrative hearing.

(2) Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment within the

political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to a noncustodial parent will be reduced, after notice has been sent to that noncustodial parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such noncustodial parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657 (/uscode/text/42/657) of this title in the case of overdue support assigned to a State pursuant to section 608 (/uscode/text/42/608) (a)(3) (/uscode/text/42/usc_sec_42_00000608----000-#a_3) or 671 (/uscode/text/42/671) (a)(17) (/uscode/text/42/usc_sec_42_00000671----000-#a_17) of this title, or, in any other case, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the noncustodial parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) Liens.— Procedures under which—

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

(5) Procedures concerning paternity establishment.—

(A) Establishment process available from birth until age 18.—

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) Procedures concerning genetic testing.—

(i) Genetic testing required in certain contested cases.— Procedures under which the State is required, in a contested

paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654 (/uscode/text/42/654) (29) (/uscode/text/42/usc_sec_42_00000654----000-#29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party—

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) Other requirements.— Procedures which require the State agency, in any case in which the agency orders genetic testing—

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

(C) Voluntary paternity acknowledgment.—

(i) Simple civil process.— Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally, or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) Hospital-based program.— Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) Paternity establishment services.—

(I) State-offered services.— Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

(II) Regulations.—

(aa) Services offered by hospitals and birth record agencies.— The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

(bb) Services offered by other entities.— The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a

requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment programs of hospitals and birth record agencies.

(iv) Use of paternity acknowledgment affidavit.— Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 652 (/uscode/text/42/652) (a)(7) (/uscode/text/42/usc_sec_42_00000652----000-#a_7) of this title for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

(D) Status of signed paternity acknowledgment.—

(i) Inclusion in birth records.— Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if—

(I) the father and mother have signed a voluntary acknowledgment of paternity; or

(II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

(ii) Legal finding of paternity.— Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—

(I) 60 days; or

(II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

(iii) Contest.— Procedures under which, after the 60-day period referred to in clause (ii), a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

(E) Bar on acknowledgment ratification proceedings.— Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(F) Admissibility of genetic testing results.— Procedures—

(i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is—

(I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and

(II) performed by a laboratory approved by such an accreditation body;

(ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and

(iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

(G) Presumption of paternity in certain cases.— Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) Default orders.— Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(I) No right to jury trial.— Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

(J) Temporary support order based on probable paternity in contested cases.— Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

(K) Proof of certain support and paternity establishment costs. — Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

(L) Standing of putative fathers.— Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

(M) Filing of acknowledgments and adjudications in state registry of birth records.— Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or

administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

(6) Procedures which require that a noncustodial parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such noncustodial parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) Reporting arrearages to credit bureaus.—

(A) In general.— Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 1681a (/uscode/text/15/1681a) (f) (/uscode/text/15/usc_sec_15_00001681--a000-#f) of title 15 (/uscode/text/15)) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

(B) Safeguards.— Procedures ensuring that, in carrying out subparagraph (A), information with respect to a noncustodial parent is reported—

(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency (as so defined).

(8)

(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

(i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where

(I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or

(II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) of this section (which shall apply in the case of each noncustodial parent against whom

a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b) of this section, where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

(10) Review and adjustment of support orders upon request.—

(A) 3-year cycle.—

(i) In general.— Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request of either parent or if there is an assignment under part A of this subchapter, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved—

(I) review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667 (/uscode/text/42/667) (a) (/uscode/text/42/usc_sec_42_00000667----000-#a) of this title if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II) apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(III) use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(ii) Opportunity to request review of adjustment.— If the State elects to conduct the review under subclause (II) or (III) of clause (i), procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 667 (/uscode/text/42/667) (a) (/uscode/text/42/usc_sec_42_00000667----000-#a) of this title.

(iii) No proof of change in circumstances necessary in 3-year cycle review.— Procedures which provide that any adjustment under clause (i) shall be made without a requirement for proof or showing of a change in circumstances.

(B) Proof of substantial change in circumstances necessary in request for review outside 3-year cycle.— Procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under clause (i), the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 667 (/uscode/text/42/667) (a) (/uscode/text/42/usc_sec_42_00000667----000-#a) of this title.

(C) Notice of right to review.— Procedures which require the State to provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

(12) Locator information from interstate networks.— Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

(13) Recording of social security numbers in certain family matters.— Procedures requiring that the social security number of—

(A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application;

(B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

(C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

For purposes of subparagraph (A), if a State allows the use of a number other than the social security number to be used on the face of

the document while the social security number is kept on file at the agency, the State shall so advise any applicants.

(14) High-volume, automated administrative enforcement in interstate cases.—

(A) In general.— Procedures under which—

(i) the State shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another State to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting State;

(ii) the State may, by electronic or other means, transmit to another State a request for assistance in enforcing support orders through high-volume, automated administrative enforcement, which request—

(I) shall include such information as will enable the State to which the request is transmitted to compare the information about the cases to the information in the data bases of the State; and

(II) shall constitute a certification by the requesting State—

(aa) of the amount of support under an order the payment of which is in arrears; and

(bb) that the requesting State has complied with all procedural due process requirements applicable to each case;

(iii) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other State (but the assisting State may establish a corresponding case based on such other State's request for assistance); and

(iv) the State shall maintain records of—

(I) the number of such requests for assistance received by the State;

(II) the number of cases for which the State collected support in response to such a request; and

(III) the amount of such collected support.

(B) High-volume automated administrative enforcement.— In this part, the term "high-volume automated administrative enforcement", in interstate cases, means, on request of another State, the identification by a State, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other States, and the seizure of such assets by the State, through levy or other appropriate processes.

(15) Procedures to ensure that persons owing overdue support work or have a plan for payment of such support.— Procedures under which the State has the authority, in any case in which an individual owes overdue support with respect to a child receiving assistance under a State program funded under part A of this

subchapter, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to—

(A) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or

(B) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 607 (/uscode/text/42/607) (d) (/uscode/text/42/usc_sec_42_00000607----000-#d) of this title) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

(16) Authority to withhold or suspend licenses.— Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(17) Financial institution data matches.—

(A) In general.— Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State—

(i) to develop and operate, in coordination with such financial institutions, and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and

(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph (4).

(B) Reasonable fees.— The State agency may pay a reasonable fee to a financial institution for conducting the data match provided for in subparagraph (A)(i), not to exceed the actual costs incurred by such financial institution.

(C) Liability.— A financial institution shall not be liable under any Federal or State law to any person—

(i) for any disclosure of information to the State agency under subparagraph (A)(i);

(ii) for encumbering or surrendering any assets held by such financial institution in response to a notice of lien or levy issued by the State agency as provided for in subparagraph (A)(ii); or

(iii) for any other action taken in good faith to comply with the requirements of subparagraph (A).

(D) Definitions.— For purposes of this paragraph—

(i) Financial institution.— The term "financial institution" has the meaning given to such term by section 669A (/uscode/text/42/669a) (d)(1) (/uscode/text/42/usc_sec_42_00000669---A000-#d_1) of this title.

(ii) Account.— The term "account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(18) Enforcement of orders against paternal or maternal grandparents.— Procedures under which, at the State's option, any child support order enforced under this part with respect to a child of minor parents, if the custodial parent of such child is receiving assistance under the State program under part A of this subchapter, shall be enforceable, jointly and severally, against the parents of the noncustodial parent of such child.

(19) Health care coverage.— Procedures under which—

(A) effective as provided in section 401(c)(3) of the Child Support Performance and Incentive Act of 1998, all child support orders enforced pursuant to this part shall include a provision for medical support for the child to be provided by either or both parents, and shall be enforced, where appropriate, through the use of the National Medical Support Notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 (and referred to in section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 [29 (/uscode/text/29) U.S.C. 1169 (/uscode/text/29/1169) (a)(5)(C) (/uscode/text/29/usc_sec_29_00001169----000-#a_5_C)] in connection with group health plans covered under title I of such Act [29 (/uscode/text/29) U.S.C. 1001 (/uscode/text/29/1001) et seq.], in section 401(e) of the Child Support Performance and Incentive Act of 1998 in connection with State or local group health plans, and in section 401(f) of such Act in connection with church group health plans);

(B) unless alternative coverage is allowed for in any order of the court (or other entity issuing the child support order), in any case in which a parent is required under the child support order to provide such health care coverage and the employer of such parent is known to the State agency—

(i) the State agency uses the National Medical Support Notice to transfer notice of the provision for the health care coverage of the child to the employer;

(ii) within 20 business days after the date of the National Medical Support Notice, the employer is required to transfer the Notice, excluding the severable employer withholding notice described in section 401(b)(2)(C) of the Child Support Performance and Incentive Act of 1998, to the appropriate plan providing any such health care coverage for which the child is eligible;

(iii) in any case in which the parent is a newly hired employee entered in the State Directory of New Hires pursuant to section 653a (/uscode/text/42/653a) (e) (/uscode/text/42/usc_sec_42_00000653---a000-#e) of this title, the State agency provides, where appropriate, the National Medical Support Notice, together with an income withholding notice issued pursuant to subsection (b), within two days after the date of the entry of such employee in such Directory; and

(iv) in any case in which the employment of the parent with any employer who has received a National Medical Support Notice is terminated, such employer is required to notify the State agency of such termination; and

(C) any liability of the obligated parent to such plan for employee contributions which are required under such plan for enrollment of the child is effectively subject to appropriate enforcement, unless the obligated parent contests such enforcement based on a mistake of fact.

Notwithstanding section 654 (/uscode/text/42/654) (20)(B) (/uscode/text/42/usc_sec_42_00000654----000-#20_B) of this title, the procedures which are required under paragraphs (3), (4), (6), (7), and (15) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in subsection (a)(1)(A) of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's income must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673 (/uscode/text/15/1673) (b) (/uscode/text/15/usc_sec_15_00001673----000-#b) of title 15 (/uscode/text/15). If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State

need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for assistance under a State program funded under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3)

(A) The income of a noncustodial parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after October 13, 1988, on the effective date of the order; except that such income shall not be subject to such withholding under this subparagraph in any case where

(i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or

(ii) a written agreement is reached between both parties which provides for an alternative arrangement.

(B) The income of a noncustodial parent shall become subject to such withholding, in the case of income not subject to withholding under subparagraph (A), on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

(i) the date as of which the noncustodial parent requests that such withholding begin,

(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

(iii) such earlier date as the State may select.

(4)

(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies—

(i) that the withholding has commenced; and

(ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.

(B) The notice under subparagraph (A) of this paragraph shall include the information provided to the employer under paragraph (6)(A).

(5) Such withholding must be administered by the State through the State disbursement unit established pursuant to section 654b (/uscode/text/42/654b) of this title, in accordance with the requirements of section 654b (/uscode/text/42/654b) of this title.

(6)

(A)

(i) The employer of any noncustodial parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such noncustodial parent's income the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the State disbursement unit within 7 business days after the date the amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part. The employer shall withhold funds as directed in the notice, except that when an employer receives an income withholding order issued by another State, the employer shall apply the income withholding law of the State of the obligor's principal place of employment in determining—

(I) the employer's fee for processing an income withholding order;

(II) the maximum amount permitted to be withheld from the obligor's income;

(III) the time periods within which the employer must implement the income withholding order and forward the child support payment;

(IV) the priorities for withholding and allocating income withheld for multiple child support obligees; and

(V) any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(ii) The notice given to the employer shall be in a standard format prescribed by the Secretary, and contain only such information as may be necessary for the employer to comply with the withholding order.

(iii) As used in this subparagraph, the term "business day" means a day on which State offices are open for regular business.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from income due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who—

(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State disbursement unit in accordance with this subsection.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same income.

(8) For purposes of subsection (a) of this section and this subsection, the term "income" means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by noncustodial parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(11) Procedures under which the agency administering the State plan approved under this part may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.

(c) Expedited procedures

The procedures specified in this subsection are the following:

(1) Administrative action by State agency

Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without

the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

(A) Genetic testing

To order genetic testing for the purpose of paternity establishment as provided in subsection (a)(5) of this section.

(B) Financial or other information

To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

(C) Response to State agency request

To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

(D) Access to information contained in certain records

To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

(i) Records of other State and local government agencies, including—

(I) vital statistics (including records of marriage, birth, and divorce);

(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

(III) records concerning real and titled personal property;

(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(V) employment security records;

(VI) records of agencies administering public assistance programs;

(VII) records of the motor vehicle department; and

(VIII) corrections records.

(ii) Certain records held by private entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is sought), consisting of—

(I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by subparagraph (B); and

(II) information (including information on assets and liabilities) on such individuals held by financial institutions.

(E) Change in payee

In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to part A of this subchapter, part E of this subchapter, or section 1396k (/uscode/text/42/1396k) of this title, or to a requirement to pay through the State disbursement unit established pursuant to section 654b (/uscode/text/42/654b) of this title, upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.

(F) Income withholding

To order income withholding in accordance with subsections (a)(1)(A) and (b) of this section.

(G) Securing assets

In cases in which there is a support arrearage, to secure assets to satisfy any current support obligation and the arrearage by—

(i) intercepting or seizing periodic or lump-sum payments from—

(I) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and

(II) judgments, settlements, and lotteries;

(ii) attaching and seizing assets of the obligor held in financial institutions;

(iii) attaching public and private retirement funds; and

(iv) imposing liens in accordance with subsection (a)(4) of this section and, in appropriate cases, to force sale of property and distribution of proceeds.

(H) Increase monthly payments

For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages, subject to such conditions or limitations as the State may provide.

Such procedures shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

(2) Substantive and procedural rules

The expedited procedures required under subsection (a)(2) of this section shall include the following rules and authority, applicable with

respect to all proceedings to establish paternity or to establish, modify, or enforce support orders:

(A) Locator information; presumptions concerning notice

Procedures under which—

(i) each party to any paternity or child support proceeding is required (subject to privacy safeguards) to file with the State case registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer; and

(ii) in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the court or administrative agency of competent jurisdiction shall deem State due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the State case registry pursuant to clause (i).

(B) Statewide jurisdiction

Procedures under which—

(i) the State agency and any administrative or judicial tribunal with authority to hear child support and paternity cases exerts statewide jurisdiction over the parties; and

(ii) in a State in which orders are issued by courts or administrative tribunals, a case may be transferred between local jurisdictions in the State without need for any additional filing by the petitioner, or service of process upon the respondent, to retain jurisdiction over the parties.

(3) Coordination with ERISA

Notwithstanding subsection (d) ofsection 514 of the Employee Retirement Income Security Act of 1974 [29 (/uscode/text/29) U.S.C. 1144 (/uscode/text/29/1144) (d) (/uscode/text/29/usc_sec_29_00001144----000-#d)] (relating to effect on other laws), nothing in this subsection shall be construed to alter, amend, modify, invalidate, impair, or supersede subsections (a), (b), and (c) of such section 514 [29 (/uscode/text/29) U.S.C. 1144 (/uscode/text/29/1144) (a) (/uscode/text/29/usc_sec_29_00001144----000-#a)–(c)] as it applies with respect to any procedure referred to in paragraph (1) and any expedited procedure referred to in paragraph (2), except to the extent that such procedure would be consistent with the requirements of section 206(d)(3) of such Act [29 (/uscode/text/29) U.S.C. 1056 (/uscode/text/29/1056) (d)(3) (/uscode/text/29/usc_sec_29_00001056----000-#d_3)] (relating to qualified domestic relations orders) or the requirements of section 609 (a) of such Act [29 (/uscode/text/29) U.S.C. 1169 (/uscode/text/29/1169) (a) (/uscode/text/29/usc_sec_29_00001169----000-#a)] (relating to qualified medical child support orders) if the

reference in such section 206 (/uscode/text/42/206) (d)(3) (/uscode/text/42/usc_sec_42_00000206----000-#d_3) to a domestic relations order and the reference in such section 609 (/uscode/text/42/609) (a) (/uscode/text/42/usc_sec_42_00000609----000-#a) to a medical child support order were a reference to a support order referred to in paragraphs (1) and (2) relating to the same matters, respectively.

(d) Exemption of States

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) "Overdue support" defined

For purposes of this section, the term "overdue support" means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the noncustodial parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of section 654 (/uscode/text/42/654) (4) (/uscode/text/42/usc_sec_42_00000654----000-#4) of this title. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.

(f) Uniform Interstate Family Support Act

In order to satisfy section 654 (/uscode/text/42/654) (20)(A) (/uscode/text/42/usc_sec_42_00000654----000-#20_A) of this title, on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.

(g) Laws voiding fraudulent transfers

In order to satisfy section 654 (/uscode/text/42/654) (20)(A) (/uscode/text/42/usc_sec_42_00000654----000-#20_A) of this title, each State must have in effect—

(1)

(A) the Uniform Fraudulent Conveyance Act of 1981;

(B) the Uniform Fraudulent Transfer Act of 1984; or

(C) another law, specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid payment to a child support creditor, which the Secretary finds affords comparable rights to child support creditors; and

(2) procedures under which, in any case in which the State knows of a transfer by a child support debtor with respect to which such a prima facie case is established, the State must—

(A) seek to void such transfer; or

(B) obtain a settlement in the best interests of the child support creditor.

APPENDIX D

26.09.187
Criteria for establishing permanent parenting plan.

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW

26.09.184(5)(a);

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in *RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that

facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

[2007 c 496 § 603; 1989 c 375 § 10; 1987 c 460 § 9.]

Notes:

***Reviser's note:** RCW 26.09.004 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (3) to subsection (2).

Part headings not law -- 2007 c 496: See note following RCW 26.09.002.

Custody, designation of for purposes of other statutes: RCW 26.09.285.

26.09.191
Restrictions in temporary or permanent parenting plans.

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent

resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for

sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child

sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent

resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section:

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

[2011 c 89 § 6; 2007 c 496 § 303; 2004 c 38 § 12; 1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

Notes:

Effective date -- 2011 c 89: See note following RCW 18.320.005.

Findings -- 2011 c 89: See RCW 18.320.005.

Part headings not law -- 2007 c 496: See note following RCW 26.09.002.

Effective date -- 2004 c 38: See note following RCW 18.155.075.

Effective date -- 1996 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1996]." [1996 c 303 § 3.]

Effective date -- 1994 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 267 § 6.]

26.09.285
Designation of custody for the purpose of other state and federal statutes.

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time shall be deemed to be the custodian of the child for the purposes of such federal and state statutes.

[1989 c 375 § 16; 1987 c 460 § 21.]

26.09.520
Basis for determination.

The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:

(1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;

(2) Prior agreements of the parties;

(3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;

(4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;

(5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;

(6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

(7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;

(8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;

(9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

(10) The financial impact and logistics of the relocation or its prevention; and

(11) For a temporary order, the amount of time before a final decision can be made at trial.

[2000 c 21 § 14.]

Notes:

Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.

APPENDIX E

No agency filings affecting this section since 2003

WAC 388-14A-1015

What laws regulate the actions of the division of child support?

(1) The following are the primary state and federal laws which apply to the division of child support (DCS):

(a) Title IV-D of the Social Security Act sets out the federal requirements for a state's support enforcement program.

(b) Title 45 of the Code of Federal Regulations contains the federal regulations regarding support enforcement programs.

(c) Chapter **26.23** RCW establishes the Washington state support enforcement program.

(2) Most state statutes governing DCS are found in Title 26 RCW and chapters **74.20** and **74.20A** RCW.

(3) The Washington Administrative Code (WAC) contains the state regulations regarding the Washington state support enforcement program.

[Statutory Authority: RCW **74.08.090**. WSR 01-03-089, § 388-14A-1015, filed 1/17/01, effective 2/17/01.]

No agency filings affecting this section since 2003

WAC 388-14A-1060

The division of child support cooperates with courts and law enforcement.

(1) The division of child support (DCS) is authorized to enter into cooperative arrangements and written agreements including financial arrangements with the appropriate courts and law enforcement officials (including Indian tribes) to assist DCS in administering the state plan for support enforcement.

(2) These cooperative arrangements include the investigation and prosecution of fraud related to paternity and child support.

(3) DCS shares the federal funds it receives under 42 U.S.C. 655 according to the cooperative and financial agreements.

(4) Any support payments that are made by a noncustodial parent (NCP) after DCS refers a case to a court or law enforcement official must be submitted to the Washington state support registry.

[Statutory Authority: RCW **74.08.090**. WSR 01-03-089, § 388-14A-1060, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-370.]

APPENDIX F

WASHINGTON STATE

Child Support Federal Performance Incentives Frequently Asked Questions

What are performance incentive payments?

Incentives are amounts of money that the federal government pays to states for running an effective child support program, based on the provisions of 42 U.S.C. 658a.

How do states receive performance incentive payments?

1.) A state must pass an annual data reliability audit and review.
2.) Performance is measured in 5 key areas
    a. paternity establishment
    b. order establishment
    c. collection on current support cases
    d. cases paying towards arrears
    e. cost effectiveness
3.) States are paid from a capped pool of incentive funds
4.) Any incentives a state receives must be reinvested in the state's child support program

Where does the money come from?

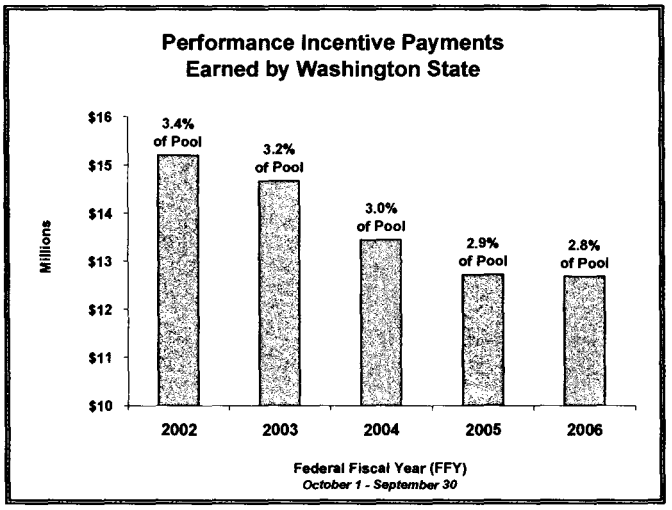
Funding for the incentive payments comes from the Federal Budget general fund. Although the law providing for incentive payments is found in the Social Security Act, social security tax payments do not fund the incentives. Social Security tax payments go to the Social Security trust fund which is a separate account.

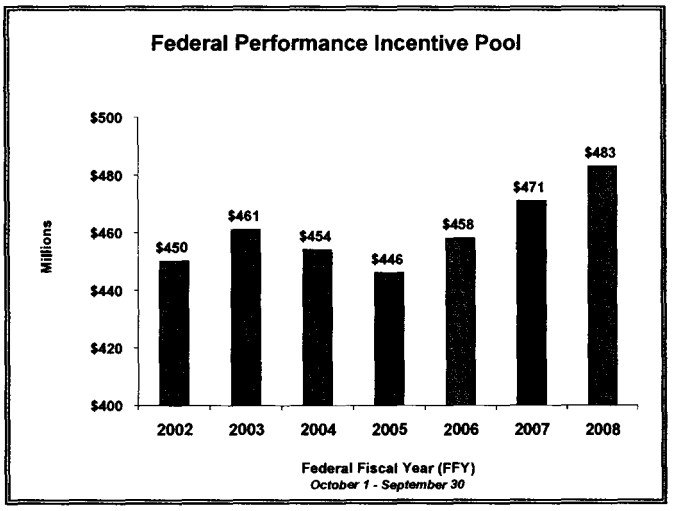
How is the incentive amount determined?

The funds available for incentive payments are authorized and distributed according to Federal law. Federal law caps the total amount available for distribution nationally and then sets the formula, including performance rates on each of the incentive measures, that determines the allocation to each state.

Is the incentive pool likely to grow?

Congress authorized fixed dollar amounts for the incentive payment pool through 2008. After that, the incentive pool is multiplied by the percentage increase in the consumer price index (CPI) between the two preceding years. For example, for fiscal year 2009, if the CPI increases by one percent between fiscal years 2007 and 2008, the incentive pool for 2009 would increase one percent over the 2008 incentive payment pool amount.





Why do county clerks share in incentive payments?

Federal rules require that states share incentive payments with political subdivisions that help them carry out the activities required under the state child support enforcement plan. Each state develops its own formula to determine the amount of money that is shared. In Washington the formula involves determining what percentage of court pleadings in a county relate to child support and what costs are involved in processing those pleadings. Counties submit monthly invoices to the state to claim payments.

APPENDIX G

Summary of primary factors in 42 USC 658a.

1. The Federal "Incentive Payment to a State" provided under Title IV-D is derived by a complex algorithm established by 42 U.S.C. 658a. In salient portion the complex algorithm can be simplified to:

(Incentive Payment to a State) = (State Collections Base) *
[(Incentive Payment Pool) / (Sum of Incentive Base Amounts for all States)] *
[(Establishment of child support orders %) + (Collections on current child support due %)].

2. The "State Collections Base" is defined by 42 U.S.C. 658a (b)(5)(C)(ii) as the "total amount of support collected during the fiscal year under the State plan ..." (that is, the total court ordered family support provided by obligators and managed through the federally recognized Washington State entity, DCS). Bent's support obligation is managed by DCS (Case No. XXX4616).
3. "Establishment of child support orders" %, per 42 U.S.C. 658a (b)(6)(B)(i), "is the percentage of the total number of cases under the State plan approved under this part in which there is a support order during the fiscal year."
4. "Collections on current child support due" %, per 42 U.S.C. 658a (b)(6)(C)(i), "is equal to the total amount of current support collected during the fiscal year under the State plan approved under this part divided by the total amount of current support owed during the fiscal year in all cases under the State plan, expressed as a percentage."
5. "Incentive Payment Pool" per 42 U.S.C. 658a (b)(2)(A) is the annual Federal Incentive Grant of approximately $500M used to fund the incentive program.
6. "Incentive Base Amounts for all States" per 42 U.S.C. 658a (b)(4) is the total annual support payments made within all states discounted by their effectiveness measures. These measures include "Establishment of child support orders" % and "Collections on current child support due" % shown in the simplified formula, and other less significant measures listed in 42 U.S.C. 658a.