
SENATE BILL 5566

State of Washington 54th Legislature 1995 Regular Session

By Senators Owen, Hargrove, Schow, Oke, Morton and Hochstatter

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1 AN ACT Relating to child support; amending RCW 26.19.001,
2 26.19.071, 26.19.075, and 26.09.100; reenacting and amending RCW
3 7.06.020; and adding a new section to chapter 26.19 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 7.06.020 and 1987 c 212 s 101 and 1987 c 202 s 127 are
6 each reenacted and amended to read as follows:

7 (1) All civil actions, except for appeals from municipal or
8 district courts, which are at issue in the superior court in counties
9 which have authorized arbitration, where the sole relief sought is a
10 money judgment, and where no party asserts a claim in excess of fifteen
11 thousand dollars, or if approved by the superior court of a county by
12 two-thirds or greater vote of the judges thereof, up to thirty-five
13 thousand dollars, exclusive of interest and costs, are subject to
14 mandatory arbitration.

15 (2) If approved by majority vote of the superior court judges of a
16 county which has authorized arbitration, all civil actions which are at
17 issue in the superior court in which the sole relief sought is the
18 establishment(~~(-)~~) or termination (~~(or modification)~~) of maintenance or
19 child support payments or the modification of maintenance are subject

1 to mandatory arbitration. The arbitrability of any such action shall
2 not be affected by the amount or number of payments involved.

3 (3) All civil actions that are at issue in the superior court in
4 which the sole relief sought is the modification of child support
5 payments are subject to binding arbitration except: (a) The action
6 shall be handled by mediation pursuant to RCW 26.09.015 upon the
7 request of one of the parties, or (b) the action shall be handled under
8 normal court motion procedures upon agreement of both parties.

9 **Sec. 2.** RCW 26.19.001 and 1988 c 275 s 1 are each amended to read
10 as follows:

11 The legislature intends, in establishing a child support schedule,
12 to insure that child support orders are adequate to meet a child's
13 basic needs and to provide additional child support commensurate with
14 the parents' income, ~~((resources, and standard of living))~~ while
15 recognizing that all parties to a divorce may by necessity suffer a
16 reduced standard of living as a result of the divorce. The legislature
17 also intends that the child support obligation should be equitably
18 apportioned between the parents.

19 The legislature finds that these goals will be best achieved by the
20 adoption and use of a state-wide child support schedule. Use of a
21 state-wide schedule will benefit children and their parents by:

22 (1) Increasing the adequacy of child support orders through the use
23 of economic data as the basis for establishing the child support
24 schedule;

25 (2) Increasing the equity of child support orders by providing for
26 comparable orders in cases with similar circumstances; and

27 (3) Reducing the adversarial nature of the proceedings by
28 increasing voluntary settlements as a result of the greater
29 predictability achieved by a uniform state-wide child support schedule.

30 **Sec. 3.** RCW 26.19.071 and 1993 c 358 s 4 are each amended to read
31 as follows:

32 (1) **Consideration of all income.** All income and resources of each
33 parent's household shall be disclosed and considered by the court when
34 the court determines the child support obligation of each parent. Only
35 the income of the parents of the children whose support is at issue
36 shall be calculated for purposes of calculating the basic support

1 obligation. Income and resources of any other person shall not be
2 included in calculating the basic support obligation.

3 (2) **Verification of income.** Tax returns for the preceding two
4 years and current paystubs shall be provided to verify income and
5 deductions. Other sufficient verification shall be required for income
6 and deductions which do not appear on tax returns or paystubs.

7 (3) **Income sources included in gross monthly income.** Except as
8 specifically excluded in subsection (4) of this section, monthly gross
9 income shall include income from any source, including:

- 10 (a) Salaries;
- 11 (b) Wages;
- 12 (c) Commissions;
- 13 (d) Deferred compensation;
- 14 (e) ~~((overtime;~~
- 15 ~~(f))~~ Contract-related benefits;
- 16 ~~((g) Income from second jobs;~~
- 17 ~~(h))~~ (f) Dividends;
- 18 ~~((i))~~ (g) Interest;
- 19 ~~((j))~~ (h) Trust income;
- 20 ~~((k))~~ (i) Severance pay;
- 21 ~~((l))~~ (j) Annuities;
- 22 ~~((m))~~ (k) Capital gains;
- 23 ~~((n))~~ (l) Pension retirement benefits;
- 24 ~~((o))~~ (m) Workers' compensation;
- 25 ~~((p))~~ (n) Unemployment benefits;
- 26 ~~((q))~~ (o) Spousal maintenance actually received;
- 27 ~~((r) Bonuses;~~
- 28 ~~(s))~~ (p) Social security benefits; and
- 29 ~~((t))~~ (q) Disability insurance benefits.

30 (4) **Income sources excluded from gross monthly income.** The
31 following income and resources shall be disclosed but shall not be
32 included in gross income:

- 33 (a) Income of a new spouse or income of other adults in the
34 household;
- 35 (b) Overtime, whether mandatory or voluntary;
- 36 (c) If the parent has at least one full-time job that requires the
37 parent to work a minimum of forty hours per week, income derived from
38 a second job or additional jobs other than the full-time job;
- 39 (d) Child support received from other relationships;

1 ~~((e))~~ (e) Gifts and prizes;
2 ~~((d))~~ (f) Aid to families with dependent children;
3 ~~((e))~~ (g) Supplemental security income;
4 ~~((f))~~ (h) General assistance; ~~((and~~
5 ~~(g))~~ (i) Food stamps; and
6 (j) Bonuses.

7 Receipt of income and resources from aid to families with dependent
8 children, supplemental security income, general assistance, and food
9 stamps shall not be a reason to deviate from the standard calculation.

10 (5) **Determination of net income.** The following expenses shall be
11 disclosed and deducted from gross monthly income to calculate net
12 monthly income:

- 13 (a) Federal and state income taxes;
- 14 (b) Federal insurance contributions act deductions;
- 15 (c) Mandatory pension plan payments;
- 16 (d) Mandatory union or professional dues;
- 17 (e) State industrial insurance premiums;
- 18 (f) Court-ordered spousal maintenance to the extent actually paid;
- 19 (g) Up to two thousand dollars per year in voluntary pension,
20 retirement, or similar payments ~~((actually made if the contributions~~
21 ~~were made for the two tax years preceding the earlier of the (i) tax~~
22 ~~year in which the parties separated with intent to live separate and~~
23 ~~apart or (ii) tax year in which the parties filed for dissolution));~~
24 and

25 (h) Normal business expenses and self-employment taxes for self-
26 employed persons. Justification shall be required for any business
27 expense deduction about which there is disagreement. Normal business
28 expenses include unreimbursed business expenses appropriate to a
29 party's particular occupation. It is not intended that this section
30 apply only to self-employed persons, but shall also be applied to
31 unreimbursed business expenses incurred by other persons in the normal
32 course of their employment.

33 Items deducted from gross income under this subsection shall not be
34 a reason to deviate from the standard calculation.

35 (6) **Imputation of income.** The court shall impute income to a
36 parent when the parent is voluntarily unemployed or voluntarily
37 underemployed. In no event shall income be imputed to an individual
38 who is qualified for and receiving unemployment compensation benefits,
39 disability income, or the like. The court shall determine whether the

1 parent is voluntarily underemployed or voluntarily unemployed based
2 upon that parent's work history, education, health, and age, or any
3 other relevant factors. A court shall not impute income to a parent
4 who is gainfully employed on a full-time basis, unless the court
5 (~~finds~~) enters written findings of fact, on the basis of clear,
6 cogent, and convincing evidence, that the parent is voluntarily
7 underemployed and (~~finds~~) enters written findings of fact that the
8 parent is purposely underemployed to reduce the parent's child support
9 obligation. Income shall not be imputed for an unemployable parent.
10 Income shall not be imputed to a parent to the extent the parent is
11 unemployed or significantly underemployed due to the parent's efforts
12 to comply with court-ordered reunification efforts under chapter 13.34
13 RCW or under a voluntary placement agreement with an agency supervising
14 the child. In the absence of information to the contrary, a parent's
15 imputed income shall be based on the median income of year-round full-
16 time workers as derived from the United States bureau of census,
17 current populations reports, or such replacement report as published by
18 the bureau of census.

19 **Sec. 4.** RCW 26.19.075 and 1993 c 358 s 5 are each amended to read
20 as follows:

21 (~~(1)~~) Reasons for deviation from the standard calculation include
22 but are not limited to the following:

23 (~~(a)~~) **(1) Sources of income and tax planning.** The court may
24 deviate from the standard calculation after consideration of the
25 following:

26 (~~(i)~~) ~~Income of a new spouse if the parent who is married to the~~
27 ~~new spouse is asking for a deviation based on any other reason. Income~~
28 ~~of a new spouse is not, by itself, a sufficient reason for deviation;~~

29 (~~(ii)~~) ~~Income of other adults in the household if the parent who is~~
30 ~~living with the other adult is asking for a deviation based on any~~
31 ~~other reason. Income of the other adults in the household is not, by~~
32 ~~itself, a sufficient reason for deviation;~~

33 (~~(iii)~~) (a) Income of a new spouse where the custodial parent has
34 remarried and the custodial parent's new spouse has a substantial
35 income, or income of another adult in the household of the custodial
36 parent, where the custodial parent is involved in an ongoing, stable
37 relationship with that person and the person has a substantial income.

1 In addition, before deviating under this subsection (1)(a), the
2 court must find that the noncustodial parent has a modest income, and
3 that there exists a significant disparity in income between the
4 noncustodial parent and the custodial parent's household to the extent
5 that the noncustodial parent is experiencing difficulty maintaining a
6 reasonable lifestyle commensurate with the noncustodial parent's level
7 of income;

8 (b) Child support actually received from other relationships;

9 ~~((iv))~~ (c) Gifts;

10 ~~((v))~~ (d) Prizes;

11 ~~((vi))~~ (e) Possession of wealth, including but not limited to
12 savings, investments, real estate holdings and business interests,
13 vehicles, boats, pensions, bank accounts, insurance plans, or other
14 assets;

15 ~~((vii))~~ (f) Extraordinary income of a child; or

16 ~~((viii))~~ (g) Tax planning considerations. A deviation for tax
17 planning may be granted only if the child would not receive a lesser
18 economic benefit due to the tax planning.

19 ~~((b))~~ (2) **Nonrecurring income.** The court may deviate from the
20 standard calculation based on a finding that a particular source of
21 income included in the calculation of the basic support obligation is
22 not a recurring source of income. Depending on the circumstances,
23 nonrecurring income may include overtime, contract-related benefits,
24 bonuses, or income from second jobs. Deviations for nonrecurring
25 income shall be based on a review of the nonrecurring income received
26 in the previous two calendar years.

27 ~~((e))~~ (3) **Debt and high expenses.** The court may deviate from the
28 standard calculation after consideration of the following expenses:

29 ~~((i))~~ (a) Extraordinary debt not voluntarily incurred;

30 ~~((ii))~~ (b) An obligation imposed on one party in a dissolution
31 decree for payment of substantial debt voluntarily incurred before the
32 parties were separated;

33 (c) A significant disparity in the living costs of the parents due
34 to conditions beyond their control;

35 ~~((iii))~~ (d) Special needs of disabled children;

36 ~~((iv))~~ (e) Special medical, educational, or psychological needs
37 of the children; or

38 ~~((v))~~ (f) Costs incurred or anticipated to be incurred by the
39 parents in compliance with court-ordered reunification efforts under

1 chapter 13.34 RCW or under a voluntary placement agreement with an
2 agency supervising the child.

3 ~~((d))~~ **(4) Residential schedule.** ~~((The court may deviate from the~~
4 ~~standard calculation if the child spends a significant amount of time~~
5 ~~with the parent who is obligated to make a support transfer payment.~~
6 ~~The court may not deviate on that basis if the deviation will result in~~
7 ~~insufficient funds in the household receiving the support to meet the~~
8 ~~basic needs of the child or if the child is receiving aid to families~~
9 ~~with dependent children. When determining the amount of the deviation,~~
10 ~~the court shall consider evidence concerning the increased expenses to~~
11 ~~a parent making support transfer payments resulting from the~~
12 ~~significant amount of time spent with that parent and shall consider~~
13 ~~the decreased expenses, if any, to the party receiving the support~~
14 ~~resulting from the significant amount of time the child spends with the~~
15 ~~parent making the support transfer payment))~~ The court shall grant to
16 the nonresidential parent a residential credit against the amount of
17 the transfer payment due under the standard calculation. The amount of
18 the residential credit shall be the amount of the transfer payment
19 under the standard calculation multiplied by the fraction whose
20 numerator is the number of overnight visits the children for whom
21 support is paid are scheduled to have with the nonresidential parent as
22 set forth in the parenting plan and whose numerator is three hundred
23 sixty-five. The amount of residential credit shall be divided by
24 twelve and the monthly transfer payment adjusted accordingly. The
25 court shall not grant a deviation from the standard calculation on the
26 basis of a residential credit if the child to whom the obligation of
27 support is owed, or the parent with whom the child resides, is
28 receiving aid to families with dependent children benefits.

29 ~~((e))~~ **(5) Children from other relationships.** ~~((The court may~~
30 ~~deviate from the standard calculation when either or both of the~~
31 ~~parents before the court have children from other relationships to whom~~
32 ~~the parent owes a duty of support.~~

33 ~~(i) The child support schedule shall be applied to the mother,~~
34 ~~father, and children of the family before the court to determine the~~
35 ~~presumptive amount of support.~~

36 ~~(ii) Children from other relationships shall not be counted in the~~
37 ~~number of children for purposes of determining the basic support~~
38 ~~obligation and the standard calculation.~~

1 ~~(iii) When considering a deviation from the standard calculation~~
2 ~~for children from other relationships, the court may consider only~~
3 ~~other children to whom the parent owes a duty of support. The court~~
4 ~~may consider court ordered payments of child support for children from~~
5 ~~other relationships only to the extent that the support is actually~~
6 ~~paid.~~

7 ~~(iv) When the court has determined that either or both parents have~~
8 ~~children from other relationships, deviations under this section shall~~
9 ~~be based on consideration of the total circumstances of both~~
10 ~~households. All child support obligations paid, received, and owed for~~
11 ~~all children shall be disclosed and considered.~~

12 ~~(2) All income and resources of the parties before the court, new~~
13 ~~spouses, and other adults in the households shall be disclosed and~~
14 ~~considered as provided in this section. The presumptive amount of~~
15 ~~support shall be determined according to the child support schedule.~~
16 ~~Unless specific reasons for deviation are set forth in the written~~
17 ~~findings of fact and are supported by the evidence, the court shall~~
18 ~~order each parent to pay the amount of support determined by using the~~
19 ~~standard calculation.~~

20 ~~(3) The court shall enter findings that specify reasons for any~~
21 ~~deviation or any denial of a party's request for any deviation from the~~
22 ~~standard calculation made by the court. The court shall not consider~~
23 ~~reasons for deviation until the court determines the standard~~
24 ~~calculation for each parent.~~

25 ~~(4) When reasons exist for deviation, the court shall exercise~~
26 ~~discretion in considering the extent to which the factors would affect~~
27 ~~the support obligation.~~

28 ~~(5) Agreement of the parties is not by itself adequate reason for~~
29 ~~any deviations from the standard calculation)) The basic support~~
30 ~~obligation for a parent owing a duty of child support who also owes a~~
31 ~~duty of support to children from other relationships, whether natural,~~
32 ~~step, or adoptive children, shall be computed based upon the total~~
33 ~~number of children to whom that parent owes a duty of support. Only~~
34 ~~those children who are actually receiving support shall be included in~~
35 ~~the calculation of the basic support obligation under this subsection.~~

36 ~~(a) In calculating the basic support obligation under this~~
37 ~~subsection, the court shall first identify the total number of children~~
38 ~~to whom the obligor parent owes a duty of support. The amount of basic~~
39 ~~support owed by the obligor parent to the children whose support is~~

1 being calculated shall be calculated by using the column in the
2 economic table based on the total number of children so identified and
3 the ages of the children whose support obligation is being calculated.

4 (b) When the basic support obligation is calculated under this
5 subsection, the court shall consider the income of and child support
6 actually received by the other parent of the natural, step, or adoptive
7 children to whom the obligor parent owes a duty of support, but only if
8 that other parent resides in the same household as the obligor parent.

9 **Sec. 5.** RCW 26.09.100 and 1991 sp.s. c 28 s 1 are each amended to
10 read as follows:

11 (1) In a proceeding for dissolution of marriage, legal separation,
12 declaration of invalidity, maintenance, or child support, after
13 considering all relevant factors but without regard to marital
14 misconduct, the court shall order either or both parents owing a duty
15 of support to any child of the marriage dependent upon either or both
16 spouses to pay an amount determined under chapter 26.19 RCW.

17 (2) The court may require automatic periodic adjustments or
18 modifications of child support. That portion of any decree that
19 requires periodic adjustments or modifications of child support shall
20 use the provisions in chapter 26.19 RCW as the basis for the adjustment
21 or modification. Provisions in the decree for periodic adjustment or
22 modification shall not conflict with RCW 26.09.170 except that the
23 decree may require periodic adjustments or modifications of support
24 more frequently than the time periods established pursuant to RCW
25 26.09.170.

26 (3) Upon motion of a party and without a substantial change of
27 circumstances, the court shall modify the decree to comply with
28 subsection (2) of this section as to installments accruing subsequent
29 to entry of the court's order on the motion for modification.

30 (4) The adjustment or modification provision may be modified by the
31 court due to economic hardship consistent with the provisions of RCW
32 26.09.170(4)(a).

33 (5) A parent obligated to pay child support may file a motion for
34 an accounting of how the support is being spent by the receiving
35 parent. The parent filing the motion must meet the following
36 conditions prior to filing the motion:

37 (a) The parent filing the motion must be obligated to pay at least
38 fifty percent of the basic child support obligation for both parents;

1 (b) If support is owed for one child, the parent must be obligated
2 to pay at least three hundred dollars per month in child support; for
3 two children, the parent must be obligated to pay at least five hundred
4 twenty-five dollars per month in child support; for three or more
5 children, the parent must be obligated to pay at least six hundred
6 sixty dollars per month in child support; and

7 (c) The parent must be current in all child support payments.

8 (6)(a) The motion for an accounting must be accompanied by an
9 affidavit setting forth facts demonstrating that the parent receiving
10 support is not spending a substantial portion of the child support for
11 the direct or indirect benefit of the child. The motion, affidavit,
12 and notice of hearing shall be served on the parent receiving support.
13 The only issue at the preliminary hearing on the motion shall be
14 whether there is reasonable cause to believe that the support is
15 directly or indirectly benefiting the child.

16 (b) If the court determines at the preliminary hearing that the
17 motion and affidavit establish reasonable cause to believe that a
18 substantial portion of the support is not directly or indirectly
19 benefiting the child, the court may: (i) Set a show cause hearing on
20 the motion and affidavit; or (ii) order the parents to mediate the
21 issue with a court commissioner, family court commissioner, or other
22 appropriate person. The court's order shall be in writing and shall
23 set forth the facts that establish reasonable cause. The parent
24 receiving support may be required to produce at the show cause hearing
25 such documentation as the court determines is necessary to resolve the
26 issue and that is reasonably available to the parent. The parent
27 receiving support shall not be required to provide documentation for
28 expenditures for more than six months prior to the time of the filing
29 of the motion.

30 (c) If the court determines at the preliminary hearing that the
31 motion and affidavit do not establish reasonable cause to believe that
32 a substantial portion of the support is not directly or indirectly
33 benefiting the child, the court shall order the parent filing the
34 motion and affidavit to pay costs and statutory attorneys' fees to the
35 parent receiving the support.

36 The court may award reasonable attorneys' fees to the parent
37 receiving support if the court determines that:

38 (i) The motion was brought in bad faith, for harassment, or
39 frivolously; or

1 (ii) The motion was based on material statements of fact that were
2 false.

3 (7) If at the show cause hearing on the motion and affidavit the
4 parent obligated to pay support demonstrates by a preponderance of the
5 evidence that a substantial portion of the support is not directly or
6 indirectly benefiting the child, the court shall enter an appropriate
7 order directing the parent receiving the support to spend the child
8 support to benefit the child. The court may order the child support
9 payments to be paid to a protective payee for the benefit of the child.
10 The only issue at the hearing on the motion shall be whether the parent
11 receiving support is spending support to directly or indirectly benefit
12 the child.

13 (8) A motion and affidavit for an accounting of child support
14 expenditures may not be filed more than once every twelve months.

15 NEW SECTION. Sec. 6. A new section is added to chapter 26.19 RCW
16 to read as follows:

17 If the combined monthly net income of the parties exceeds five
18 thousand dollars, the court may in its discretion enter an order
19 requiring that a specific portion of the child support payment be
20 placed in an education trust account. The moneys collected in this
21 account shall only be used for the purpose of payment of educational
22 expenses incurred as a result of attendance at an accredited
23 educational institution. The court may not create an education trust
24 account unless it first determines that the diversion of funds to the
25 account will not affect the basic needs of the child and will not
26 affect the child's ability to sustain a reasonable standard of living.

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