

HOUSE BILL REPORT

HB 2188

*As Reported By House Committee on:
Judiciary*

Title: An act relating to domestic relations.

Brief Description: Changing provisions relating to domestic relations.

Sponsor(s): Representatives Appelwick, Edmondson and Horn.

Brief History:

Reported by House Committee on:
Judiciary, April 5, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 2188 be substituted therefor, and the substitute bill do pass.* Signed by 10 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Paris, Assistant Ranking Minority Member; Forner; Hargrove; Inslee; R. Meyers; H. Myers; Scott; and Vance.

Minority Report: *Do not pass.* Signed by 7 members: Representatives Padden, Ranking Minority Member; Belcher; Broback; Mielke; D. Sommers; Tate; and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: The area of domestic relations governs a number of topics including child support, spousal maintenance, modifications of decrees, parenting plans, family court structure, and enforcement of support. The following background sets forth the current law on aspects of the law of domestic relations.

A. CHILD SUPPORT:

FEDERAL LAW. The Social Security Act, Title IV-D, requires the State to have a state plan for determining child support amounts. Failure to comply with federal law regarding child support places the state's federal funding for all the state's Title IV-D programs at risk. The Legislature adopted a child support schedule in the 1988 legislative session, which took effect July 1, 1988. At the same time,

the Legislature adopted a provision, known as the "Hayner amendment," that allows counties to adopt an alternative schedule for parents with combined monthly net incomes above \$2,500. The local table may vary by up to 25 percent from the state table. A number of counties have adopted a local table.

The federal government has advised the State that our state plan is out of compliance with federal law that requires the State to adopt one uniform table.

THE CHILD SUPPORT SCHEDULE. The child support schedule is based upon an "income shares" model which combines the net incomes of the parents and determines respective parental support obligations based on each parent's percentage of the combined income. The support is calculated by reference to an economic table and a set of standards. The intent of the Legislature when adopting the table was to set support at an amount that would meet the basic needs of the child and provide an additional amount commensurate with the parents' income and standard of living.

ECONOMIC TABLE. The economic table establishes a presumptive basic support obligation for parents with combined monthly incomes up to \$7,000 per month. The presumptive amounts vary depending upon the number of children and the children's ages.

STANDARDS. The schedule provides 16 standards for determining child support. The standards establish what sources of income are included, excluded, and deducted from gross income, define extraordinary expenses, establish a formula for residential credits against child support for time spent with the child, and set forth a basis for deviation. For a complete detail of the standards, see the House Bill Report on E2SSB 5120.

B. MODIFICATIONS OF PARENTING PLANS:

Generally, parents may not obtain a change in the parenting plan unless there has been a substantial change in circumstances of the child or of the parent who has not moved the court for the modification.

C. POSTDECREE MEDIATION PROCEEDINGS:

Predecree mediation of contested issues in a divorce are confidential. The law provides that the rules providing for mediation in predecree proceedings do not apply to postdecree mediation. The Legislature may have intended to provide that the confidentiality restrictions do not apply

in postdecree mediation, but that the other rules governing mediation apply to postdecree mediation.

D. PROPERTY AWARDS AND SPOUSAL MAINTENANCE UPON DIVORCE:

In determining property division upon divorce, the court considers the nature and extent of community property, separate property, the duration of the marriage, and the economic circumstances of both parties. In determining spousal maintenance, the court considers the financial resources of each party, the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment, the standard of living established during the marriage, the age, physical, and emotional condition, and financial obligations of the spouse seeking maintenance, and the ability of the spouse from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the other spouse. The past, present, and future earning or economic capacity of each spouse, including the earning or economic capacity of each spouse that was enhanced, diminished, or foregone during marriage, is not an express factor for awards of property or spousal maintenance. Unless otherwise agreed in writing, spousal maintenance terminates upon remarriage.

E. VENUE IN DOMESTIC RELATIONS ACTIONS:

In divorce actions, the venue for the action may be filed in the county where the petitioner lives. In actions to modify the decree or parenting plan, the action may be brought where the children live, or the custodial parent lives.

F. ACCESS TO EDUCATION AND HEALTH RECORDS:

Divorced parents have full access to the education and health records of their child absent a court order to the contrary.

G. DECREES THAT PROVIDE FOR PERIODIC MODIFICATION OF CHILD SUPPORT:

The court may order periodic adjustments of child support. The statute does not prescribe any basis for the modifications or the time periods of the periodic modifications. Changes in the child support schedule last year may form the basis for a modification action, but the modification action may only be brought after 12 months has expired from the entry of the decree or the most recent modification setting child support, whichever is later. If the change is 30 percent or more and creates a substantial hardship, the court may stagger the change over a year

period in two equal increments. Modifications of support apply prospectively only.

H. PROHIBITION AGAINST CONDITIONING ONE PART OF THE PARENTING PLAN UPON ANOTHER:

Current law prohibits parents from conditioning one part of a parenting plan upon another. A parent who attempts to do so may be punished with contempt.

I. FAMILY COURTS AND FAMILY COURT SERVICES:

An existing chapter creates family courts and encourages counties to implement family court services. Only some counties have family courts, and fewer offer family court services.

J. ENFORCEMENT OF SUPPORT ISSUES:

Numerous provisions exist regarding enforcement of child support.

Private parties may obtain wage assignment orders for collection of support that is more than 15 days past due in an amount equal to or greater than one month's support payment. The law currently is unclear what the employer's responsibilities are when the employee has left employment. A number of sanctions against employers who fail to comply with the wage assignment order or who punish an employee subject to a wage assignment order are specified in one chapter on enforcement of support but not in another. Federal law has changed and allows the parties to agree to terminate a wage assignment order or develop an alternative payment plan under certain conditions.

Federal law requires the Office of Support Enforcement to seek immediate wage withholding against an employee's wages through a payroll deduction. The Office of Support Enforcement must also use payroll deductions to obtain unemployment benefits. The federal law requires the states to develop a procedure for review of the state's child support guidelines every four years. The Office of Support Enforcement must also begin helping either parent with a modification of support and not represent either party or the child but the State. Certain provisions in Washington law provide that the Office of Support Enforcement acts on behalf of the child or the natural mother or custodian.

Numerous other provisions and issues exist regarding enforcement of support.

Summary of Substitute Bill:

A. CHILD SUPPORT:

DEFINITIONS. Definitions are added and amended. New definitions include "court" to apply to both judicial and administrative proceedings, "multiple families" to define the possible combinations of families with children to whom a parent may owe a duty of support, and "support transfer payment" to define the payment that one parent transfers to the other parent. Other definitions currently referred to in the child support schedule are included in the statute with appropriate references to the sections in the bill.

CALCULATION OF CHILD SUPPORT. As provided in current law, the court first determines the "basic support obligation" which is the monthly child support obligation determined from the economic table based on the parents' combined monthly net incomes and the number of children. The parents' share of the basic support obligation is allocated to each parent based upon each parent's share of the combined monthly net income. After determination of the basic support obligation, each parent's proportionate share of any extraordinary expenses is added and credits are deducted to obtain the "standard calculation." Then the court considers reasons for deviation from the standard calculation and determines each parent's child support obligation.

THE TABLE. The economic table adopts the Clark County economic table. For net incomes between \$2,600 to \$7,000, the table is reduced by up to 25 percent. Although the reduction is gradual, it is not a straight line reduction to 25 percent. However, ordinary medical expenses are no longer included in the economic table but are extraordinary expenses.

CAP AT THE UPPER END OF THE TABLE. The cap on the table is at \$7,000 combined monthly net income as provided in current law.

COMBINED MONTHLY NET INCOMES THAT EXCEED \$7,000. As provided in current law, child support for parents with combined monthly net income that exceeds \$7,000 shall be set at the presumptive amount of support for parents with combined monthly net income of \$7,000. The court may exceed that amount in the court's discretion, but must find a basis for deviation to award less support than the presumptive amount set for \$7,000.

CAP AT LOWER END OF THE TABLE. The amount of support ordered may not reduce the monthly net income of the parent making the transfer payment to an amount lower than the

federal needs standard except for a mandatory minimum payment of \$25 in support per child per month.

CAP AT 45 PERCENT OF A PARENT'S NET INCOME. The total amount of child support a parent is obligated to pay is 45 percent of the parent's net income instead of 50 percent except for good cause shown. Good cause includes day-care expenses, larger families, and special needs.

TREATMENT OF HEALTH CARE EXPENSES. All health care expenses are considered extraordinary expenses.

TREATMENT OF EXTRAORDINARY EXPENSES. As provided in current law, day-care expenses, health care expenses, long-distance transportation expenses, and special child rearing expenses, are not included in the economic table. The parents must share these expenses in the same proportion as the basic support obligation.

STANDARDS FOR DETERMINATION OF INCOME: DIFFERENCES FROM CURRENT LAW.

a. Verification of income. Tax returns for two years rather than three are required to verify income.

b. Sources of income previously not considered in gross income. Spousal maintenance actually received is included in income rather than considered as a basis for deviation.

c. Sources of income previously considered in gross income, now excluded. Overtime, whether mandatory or voluntary, is excluded from gross income but may be a basis for deviation. If a parent has at least one job that is 40 hours a week, income from other jobs is excluded from gross income but may be a reason to deviate. Nonrecurring bonuses, contract related cash benefits, gifts, and prizes are excluded from gross income but may be a basis for deviation. Veterans aid and attendance allowance is excluded from gross income and may not be a reason to deviate. Attendant care provided from workers' compensation or any other source for persons disabled to the point of needing attendant care is excluded from gross income and may not be a reason to deviate.

d. Sources of income that are deducted from gross income that were previously not an allowable deduction. A parent may deduct up to \$2,000 per year in voluntary pension payments made if the contributions were made for the two tax years preceding the earlier of the tax year in which the parties separated with intent to live separate and apart or the tax year in which the parties filed for divorce. A parent may also deduct court ordered spousal maintenance to the extent the maintenance is actually paid.

e. Imputation of income. The court must impute income to any parent based upon that parent's work history when the parent is voluntarily unemployed or underemployed.

BASIS FOR DEVIATION BASED UPON INCOME: CHANGES FROM CURRENT LAW. In addition to existing grounds for deviation, the court may deviate from the standard calculation based upon receipt of income that was excluded from gross income: overtime, voluntary or mandatory; contract related cash benefits; gifts; prizes; and income derived from a second job or additional jobs if the parent has at least one 40-hour-per-week job.

RESIDENTIAL SCHEDULE CHANGES. The court may deviate from the basic support obligation if the child spends a significant amount of time with the parent who transfers child support funds to the other parent. The court may not make this adjustment if the receiving household receives Aid to Families with Dependent Children, or if the household where the child resides the majority of the time would receive insufficient funds. The court must consider the increased expenses to the parent resulting from the significant time spent with the parent and the decreased expenses, if any, to the parent receiving support when determining the amount of the deviation.

DEVIATION FOR MULTIPLE FAMILIES. The rules governing deviations for children from other relationships are not changed but are clarified. The court may deviate from the standard calculation to the extent the parent pays support for children from other relationships. Any deviation for other children must be based on the circumstances of both households.

STATED GROUNDS FOR DEVIATION OR FAILURE TO DEVIATE UPON REQUEST. In addition to specifying reasons in writing why the court has deviated from the basic support obligation, the court must enter written findings of fact about why the court has denied any deviation requested by a party.

HAYNER AMENDMENT REPEALED. The ability of the local jurisdictions to deviate from the state table by up to 25 percent for combined monthly net incomes above \$2,500 is repealed.

POST-SECONDARY EDUCATION SUPPORT. The child must be enrolled in an accredited academic or vocational school, and pursuing a course of study commensurate with the child's vocational goals. The child must make all records available to the parents. The court shall direct the payments be made directly to the educational institution if feasible.

REIMBURSEMENT AND VERIFICATION OF EXTRAORDINARY EXPENSES.

Extraordinary expenses are subject to verification. If those expenses are reduced to a sum certain, payment for those expenses must be made at the same time as the support transfer payment. If those expenses vary, they must be paid within a 30-day period after receipt of verification of the actual expenditure. Wage assignment orders may be obtained to collect extraordinary expenses that are not paid and reduced to judgment.

MISCELLANEOUS SECTIONS. A number of existing sections in the current chapter on child support are repealed, including the intent section, some provisions that set forth some of the standards for application of the schedule, and the definition section. A severability clause is included.

B. MINOR MODIFICATIONS OF PARENTING PLANS:

A court may order a change in the parenting plan upon a substantial change of circumstances of either parent or the child if the change involves only the following: (1) the dispute resolution process; or (2) a minor change in the residential schedule that (a) does not change the residence where the child resides most of the time, and (b) does not exceed 24 full days per year or five days per month, or (c) is based on a change of residence or an involuntary change in the work schedule of a parent that makes the original residential schedule impractical to follow.

C. POSTDECREE MEDIATION PROCEEDINGS:

The rules that apply to mediation of contested issues in a divorce action apply to postdecree mediation proceedings. However, the confidentiality restrictions that require predecree mediation proceedings to be confidential do not apply to postdecree mediation.

D. PROPERTY AWARDS AND SPOUSAL MAINTENANCE:

In determining property division and spousal maintenance upon divorce, the court must consider the past, present, and future earning or economic capacity of each spouse, including the earning or economic capacity of each spouse that was enhanced, diminished, or foregone during marriage. In addition, when awarding spousal maintenance the court must consider the standard of living each spouse will experience after the divorce. As provided in current law, spousal maintenance continues to terminate upon remarriage unless otherwise agreed in writing. If the governor vetoes certain other sections of the bill, these provisions will be null and void.

E. VENUE IN DIVORCE ACTIONS:

In divorce actions, the case must be brought in the county where either one of the parents lives. Upon motion and hearing before the court of the county where the petition is filed, the court may waive venue in that county for good cause shown. Motions for modifications of child support may also be brought in the county where the child lives or the custodial parent lives.

F. ACCESS TO EDUCATION AND HEALTH RECORDS:

The right of parents to have access to their child's health and education records is clarified to provide that the right applies to all records of private and public schools in all grades and post-secondary educational institutions if the parent is still paying support. Neither parent may veto the other parent's right, nor may the child. The health care provider and the educational institution may not assert a privilege on behalf of the child.

G. MODIFICATION OF CHILD SUPPORT PROVISIONS:

The law governing modifications of decrees to comply with the child support schedule is clarified. Any decree providing for periodic modifications of child support must use the child support schedule as a basis for that modification. Periodic modifications may be more frequently but not less frequently than provided in statute. Any decree that fails to use the child support schedule as a basis is void. The statutory time periods control the periods for modifications unless the decree provides for more frequent modifications. Changes in the child support schedule form the basis for a modification action without a substantial change in circumstances. However, existing restrictions on bringing a modification after a change in the schedule continue to apply. Any decree that conflicts with the statutory time periods or basis for modification must be amended upon request to conform to the statutory requirements. A special exception to the general rule that modifications only apply prospectively is created for military personnel who served in the war with Iraq. If their income was lowered as a result of active duty, military personnel may move for a retroactive modification of support without a substantial change of circumstances. The motion must be made within 90 days of the end of active duty. Any modification must be credited against future support obligations in an amount and over a period of time in the court's discretion.

H. CONDITIONING ONE PART OF THE PARENTING PLAN UPON ANOTHER:

Parents may not condition payment of child support upon an aspect of the parenting plan. Any parent who attempts to condition child support or one part of the parenting plan upon another will be considered to have acted in bad faith and must be punished by contempt of court.

I. FAMILY COURTS AND FAMILY COURT SERVICES:

The chapter on family courts is restructured. Family court services are defined. If counties provide family court services, then the counties will be eligible for any state funding available on a percentage basis. A null and void clause is provided.

J. ENFORCEMENT OF SUPPORT ISSUES:

Numerous changes are made to enforcement of support provisions. The 15-day restriction on moving for a wage assignment order is removed. The employer's responsibilities to comply with a wage assignment order when an employee no longer works for the employer are described. The liability of the employer for noncompliance is specified to comport with existing provisions.

Numerous changes in the laws governing the Office of Support Enforcement are modified to comply with federal law, and settlements of recent lawsuits against the agency, as well as other provisions to assist the agency in support enforcement actions. The Office of Support Enforcement must begin immediate wage withholding unless the court approves an alternate payment plan. The role of the Office of Support Enforcement is clarified to provide that the office does not represent either parent or the child, but represents the state of Washington. Procedures are established for parents to contest the Office of Support Enforcement's determination of support. The Office of the Administrator for the Courts will review the child support schedule every four years to ensure that the schedule provides adequate support awards.

A number of other changes are made regarding enforcement of support.

Substitute Bill Compared to Original Bill: The provision providing that spousal maintenance does not automatically terminate upon remarriage is stricken. If the governor vetoes certain sections of the bill, then the remaining provisions on consideration of the past, present, and future earning capacity and the foregone opportunities during a marriage for purposes of property division and spousal maintenance will be null and void.

The "Desert Shield" provision is added allowing military personnel an opportunity to retroactively modify their support orders for the time period that they were on active duty in the war with Iraq. The Clark County table replaces the economic table in the bill with ordinary medical expenses deleted from inclusion in the table. A provision is added requiring the judge to specify in writing reasons for denying a party's request for a deviation.

Payments for hiring attendants through the workers' compensation fund or any other source of income for that purpose are not included in gross income and may not be a reason to deviate. Child support awards may not exceed 45 percent of a parent's net income instead of 50 percent. The accounting provision is stricken. The provision is stricken that required the Office of Support Enforcement to collect attorney fees incurred by a disabled worker when trying to collect disability.

Technical corrections are made.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect September 1, 1991.

Testimony For: None. See "Testimony For" section on related bill, E2SSB 5120.

Testimony Against: None. See "Testimony Against" section on related bill, E2SSB 5120.

Witnesses: None. See "Witnesses" section on related bill, E2SSB 5120.