

---

ENGROSSED SENATE BILL 5508

---

State of Washington                      53rd Legislature                      1993 Regular Session

By Senators Hargrove, Niemi, A. Smith, Nelson and Spanel

Read first time 02/01/93. Referred to Committee on Law & Justice.

1            AN ACT Relating to child dependency cases; amending RCW 13.34.070,  
2 13.34.160, 13.34.180, 26.19.071, and 26.19.075; and repealing RCW  
3 13.34.162.

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

5            **Sec. 1.** RCW 13.34.070 and 1990 c 246 s 2 are each amended to read  
6 as follows:

7            (1) Upon the filing of the petition, the clerk of the court shall  
8 issue a summons, one directed to the child, if the child is twelve or  
9 more years of age, and another to the parents, guardian, or custodian,  
10 and such other persons as appear to the court to be proper or necessary  
11 parties to the proceedings, requiring them to appear personally before  
12 the court at the time fixed to hear the petition. If the child is  
13 developmentally disabled and not living at home, the notice shall be  
14 given to the child's custodian as well as to the child's parent. The  
15 developmentally disabled child shall not be required to appear unless  
16 requested by the court. Where the custodian is summoned, the parent or  
17 guardian or both shall also be served with a summons. The fact-finding  
18 hearing on the petition shall be held no later than seventy-five days  
19 after the filing of the petition, unless exceptional reasons for a

1 continuance are found. The party requesting the continuance shall have  
2 the burden of proving by a preponderance of the evidence that  
3 exceptional circumstances do exist. To ensure that the hearing on the  
4 petition occurs within the seventy-five day time limit, the court shall  
5 schedule and hear the matter on an expedited basis.

6 (2) A copy of the petition shall be attached to each summons.

7 (3) The summons shall advise the parties of the right to counsel.  
8 The summons shall also inform the child's parent, guardian, or legal  
9 custodian of his or [her] right to appointed counsel, if indigent, and  
10 of the procedure to use to secure appointed counsel.

11 (4) The summons shall advise the parents that they may be held  
12 responsible for the support of the child if the child is placed in out-  
13 of-home care.

14 (5) The judge may endorse upon the summons an order directing any  
15 parent, guardian, or custodian having the custody or control of the  
16 child to bring the child to the hearing.

17 ~~((+5))~~ (6) If it appears from affidavit or sworn statement  
18 presented to the judge that there is probable cause for the issuance of  
19 a warrant of arrest or that the child needs to be taken into custody  
20 pursuant to RCW 13.34.050, the judge may endorse upon the summons an  
21 order that an officer serving the summons shall at once take the child  
22 into custody and take him to the place of shelter designated by the  
23 court.

24 ~~((+6))~~ (7) If the person summoned as provided in this section is  
25 subject to an order of the court pursuant to subsection ~~((+4) or~~) (5)  
26 or (6) of this section, and if the person fails to abide by the order,  
27 he may be proceeded against as for contempt of court. The order  
28 endorsed upon the summons shall conspicuously display the following  
29 legend:

30 NOTICE:

31 VIOLATION OF THIS ORDER  
32 IS SUBJECT TO PROCEEDING  
33 FOR CONTEMPT OF COURT  
34 PURSUANT TO RCW 13.34.070.

35 ~~((+7))~~ (8) If a party to be served with a summons can be found  
36 within the state, the summons shall be served upon the party personally  
37 as soon as possible following the filing of the petition, but in no  
38 case later than fifteen court days before the fact-finding hearing, or

1 such time as set by the court. If the party is within the state and  
2 cannot be personally served, but the party's address is known or can  
3 with reasonable diligence be ascertained, the summons may be served  
4 upon the party by mailing a copy thereof by certified mail as soon as  
5 possible following the filing of the petition, but in no case later  
6 than fifteen court days before the hearing, or such time as set by the  
7 court. If a party other than the child is without the state but can be  
8 found or the address is known, or can with reasonable diligence be  
9 ascertained, service of the summons may be made either by delivering a  
10 copy thereof to the party personally or by mailing a copy thereof to  
11 the party by certified mail at least ten court days before the fact-  
12 finding hearing, or such time as set by the court.

13 ~~((+8+))~~ (9) Service of summons may be made under the direction of  
14 the court by any person eighteen years of age or older who is not a  
15 party to the proceedings or by any law enforcement officer, probation  
16 counselor, or department of social and health services social worker.

17 ~~((+9+))~~ (10) In any proceeding brought under this chapter where the  
18 court knows or has reason to know that the child involved is a member  
19 of an Indian tribe, notice of the pendency of the proceeding shall also  
20 be sent by registered mail, return receipt requested, to the child's  
21 tribe. If the identity or location of the tribe cannot be determined,  
22 such notice shall be transmitted to the secretary of the interior of  
23 the United States.

24 **Sec. 2.** RCW 13.34.160 and 1987 c 435 s 14 are each amended to read  
25 as follows:

26 In ~~((any case in which))~~ an action brought under this chapter, the  
27 court ~~((shall find the child dependent, it may in the same or~~  
28 ~~subsequent proceeding upon the parent or parents, guardian, or other~~  
29 ~~person having custody of said child, being duly summoned or voluntarily~~  
30 ~~appearing, proceed to))~~ may inquire into the ability of ((such persons  
31 or person able)) the parent or parents of the child to pay child  
32 support ((the child or contribute thereto, the court)) and may enter  
33 ((such)) an order ((or decree as shall be according to equity in the  
34 premises, and)) of child support as set forth in chapter 26.19 RCW.  
35 The court may enforce the same by execution, or in any way in which a  
36 court of equity may enforce its decrees. All child support orders  
37 entered pursuant to this chapter shall be in compliance with the  
38 provisions of RCW 26.23.050.



1 steps to protect your interests. This petition could result in  
2 permanent loss of your parental rights.

3 1. You have the right to a fact-finding hearing before  
4 a judge.

5 2. You have the right to have a lawyer represent you at  
6 the hearing. A lawyer can look at the files in your case, talk  
7 to the department of social and health services and other  
8 agencies, tell you about the law, help you understand your  
9 rights, and help you at hearings. If you cannot afford a  
10 lawyer, the court will appoint one to represent you. To get a  
11 court-appointed lawyer you must contact:  (explain local  
12 procedure) .

13 3. At the hearing, you have the right to speak on your  
14 own behalf, to introduce evidence, to examine witnesses, and to  
15 receive a decision based solely on the evidence presented to  
16 the judge.

17 You should be present at this hearing.

18 You may call  (insert agency)  for more information  
19 about your child. The agency's name and telephone number are  
20  (insert name and telephone number) ."

21 **Sec. 4.** RCW 26.19.071 and 1991 sp.s. c 28 s 5 are each amended to  
22 read as follows:

23 (1) **Consideration of all income.** All income and resources of each  
24 parent's household shall be disclosed and considered by the court when  
25 the court determines the child support obligation of each parent. Only  
26 the income of the parents of the children whose support is at issue  
27 shall be calculated for purposes of calculating the basic support  
28 obligation. Income and resources of any other person shall not be  
29 included in calculating the basic support obligation.

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

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

37 (a) Salaries;

- 1 (b) Wages;
- 2 (c) Commissions;
- 3 (d) Deferred compensation;
- 4 (e) Overtime;
- 5 (f) Contract-related benefits;
- 6 (g) Income from second jobs;
- 7 (h) Dividends;
- 8 (i) Interest;
- 9 (j) Trust income;
- 10 (k) Severance pay;
- 11 (l) Annuities;
- 12 (m) Capital gains;
- 13 (n) Pension retirement benefits;
- 14 (o) Workers' compensation;
- 15 (p) Unemployment benefits;
- 16 (q) Spousal maintenance actually received;
- 17 (r) Bonuses;
- 18 (s) Social security benefits; and
- 19 (t) Disability insurance benefits.

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

- 23 (a) Income of a new spouse or income of other adults in the  
24 household;
- 25 (b) Child support received from other relationships;
- 26 (c) Gifts and prizes;
- 27 (d) Aid to families with dependent children;
- 28 (e) Supplemental security income;
- 29 (f) General assistance; and
- 30 (g) Food stamps.

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

34 (5) **Determination of net income.** The following expenses shall be  
35 disclosed and deducted from gross monthly income to calculate net  
36 monthly income:

- 37 (a) Federal and state income taxes;
- 38 (b) Federal insurance contributions act deductions;
- 39 (c) Mandatory pension plan payments;

1 (d) Mandatory union or professional dues;  
2 (e) State industrial insurance premiums;  
3 (f) Court-ordered spousal maintenance to the extent actually paid;  
4 (g) Up to two thousand dollars per year in voluntary pension  
5 payments actually made if the contributions were made for the two tax  
6 years preceding the earlier of the (i) tax year in which the parties  
7 separated with intent to live separate and apart or (ii) tax year in  
8 which the parties filed for dissolution; and

9 (h) Normal business expenses and self-employment taxes for self-  
10 employed persons. Justification shall be required for any business  
11 expense deduction about which there is disagreement.

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

14 (6) **Imputation of income.** The court shall impute income to a  
15 parent when the parent is voluntarily unemployed or voluntarily  
16 underemployed. The court shall determine whether the parent is  
17 voluntarily underemployed or voluntarily unemployed based upon that  
18 parent's work history, education, health, and age, or any other  
19 relevant factors. A court shall not impute income to a parent who is  
20 gainfully employed on a full-time basis, unless the court finds that  
21 the parent is voluntarily underemployed and finds that the parent is  
22 purposely underemployed to reduce the parent's child support  
23 obligation. Income shall not be imputed for an unemployable parent or  
24 to a parent of a child in foster care or other out-of-home placement if  
25 that parent's availability for employment is significantly reduced by  
26 family reunification efforts. In the absence of information to the  
27 contrary, a parent's imputed income shall be based on the median income  
28 of year-round full-time workers as derived from the United States  
29 bureau of census, current populations reports, or such replacement  
30 report as published by the bureau of census.

31 **Sec. 5.** RCW 26.19.075 and 1991 sp.s. c 28 s 6 are each amended to  
32 read as follows:

33 (1) Reasons for deviation from the standard calculation include but  
34 are not limited to the following:

35 (a) **Sources of income and tax planning.** The court may deviate from  
36 the standard calculation after consideration of the following:

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

4 (ii) Income of other adults in the household if the parent who is  
5 living with the other adult is asking for a deviation based on any  
6 other reason. Income of the other adults in the household is not, by  
7 itself, a sufficient reason for deviation;

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

9 (iv) Gifts;

10 (v) Prizes;

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

14 (vii) Extraordinary income of a child; or

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

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

26 (c) **Debt and high expenses.** The court may deviate from the  
27 standard calculation after consideration of the following expenses:

28 (i) Extraordinary debt not voluntarily incurred;

29 (ii) A significant disparity in the living costs of the parents due  
30 to conditions beyond their control;

31 (iii) Special needs of disabled children; ~~((or))~~

32 (iv) Special medical, educational, or psychological needs of the  
33 children; or

34 (v) Costs anticipated to be incurred by the parents in compliance  
35 with court-ordered reunification efforts under chapter 13.34 RCW or  
36 under a voluntary placement agreement with an agency supervising the  
37 child.

38 (d) **Residential schedule.** The court may deviate from the standard  
39 calculation if the child spends a significant amount of time with the



1 parent who is obligated to make a support transfer payment. The court  
2 may not deviate on that basis if the deviation will result in  
3 insufficient funds in the household receiving the support to meet the  
4 basic needs of the child or if the child is receiving aid to families  
5 with dependent children. When determining the amount of the deviation,  
6 the court shall consider evidence concerning the increased expenses to  
7 a parent making support transfer payments resulting from the  
8 significant amount of time spent with that parent and shall consider  
9 the decreased expenses, if any, to the party receiving the support  
10 resulting from the significant amount of time the child spends with the  
11 parent making the support transfer payment.

12 (e) **Children from other relationships.** The court may deviate from  
13 the standard calculation when either or both of the parents before the  
14 court have children from other relationships to whom the parent owes a  
15 duty of support.

16 (i) The child support schedule shall be applied to the mother,  
17 father, and children of the family before the court to determine the  
18 presumptive amount of support.

19 (ii) Children from other relationships shall not be counted in the  
20 number of children for purposes of determining the basic support  
21 obligation and the standard calculation.

22 (iii) When considering a deviation from the standard calculation  
23 for children from other relationships, the court may consider only  
24 other children to whom the parent owes a duty of support. The court  
25 may consider court-ordered payments of child support for children from  
26 other relationships only to the extent that the support is actually  
27 paid.

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

33 (2) All income and resources of the parties before the court, new  
34 spouses, and other adults in the households shall be disclosed and  
35 considered as provided in this section. The presumptive amount of  
36 support shall be determined according to the child support schedule.  
37 Unless specific reasons for deviation are set forth in the written  
38 findings of fact and are supported by the evidence, the court shall

1 order each parent to pay the amount of support determined by using the  
2 standard calculation.

3 (3) The court shall enter findings that specify reasons for any  
4 deviation or any denial of a party's request for any deviation from the  
5 standard calculation made by the court. The court shall not consider  
6 reasons for deviation until the court determines the standard  
7 calculation for each parent.

8 (4) When reasons exist for deviation, the court shall exercise  
9 discretion in considering the extent to which the factors would affect  
10 the support obligation.

11 (5) Agreement of the parties is not by itself adequate reason for  
12 any deviations from the standard calculation.

13 NEW SECTION. **Sec. 6.** RCW 13.34.162 and 1988 c 275 s 15 are each  
14 repealed.

--- END ---