
SUBSTITUTE HOUSE BILL 2784

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Judiciary (originally sponsored by Representative Appelwick)

Read first time 02/07/92.

1 AN ACT Relating to technical and clarifying amendments to domestic
2 relations provisions; and amending RCW 26.09.006, 26.09.170, 26.09.175,
3 26.09.270, 26.10.015, 26.18.220, 26.19.035, 26.19.071, 26.26.065,
4 26.26.160, and 26.09.060.

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

6 **Sec. 1.** RCW 26.09.006 and 1990 1st ex.s. c 2 s 26 are each amended
7 to read as follows:

8 (1) Effective January 1, 1992, a party shall not file any pleading
9 with the clerk of the court in an action commenced under this chapter
10 unless on forms approved by the administrator for the courts.

11 (2) The parties shall comply with requirements for submission to
12 the court of forms as provided in RCW 26.18.220.

1 **Sec. 2.** RCW 26.09.170 and 1991 sp.s. c 28 s 2 are each amended to
2 read as follows:

3 (1) Except as otherwise provided in subsection (7) of RCW
4 26.09.070, the provisions of any decree respecting maintenance or
5 support may be modified: (a) Only as to installments accruing
6 subsequent to the ((motion)) petition for modification or motion for
7 adjustment except motions to compel court-ordered adjustments, which
8 shall be effective as of the first date specified in the decree for
9 implementing the adjustment; and, (b) except as otherwise provided in
10 subsections (4), (5), (8), and (9) of this section, only upon a showing
11 of a substantial change of circumstances. The provisions as to
12 property disposition may not be revoked or modified, unless the court
13 finds the existence of conditions that justify the reopening of a
14 judgment under the laws of this state.

15 (2) Unless otherwise agreed in writing or expressly provided in the
16 decree the obligation to pay future maintenance is terminated upon the
17 death of either party or the remarriage of the party receiving
18 maintenance.

19 (3) Unless otherwise agreed in writing or expressly provided in the
20 decree, provisions for the support of a child are terminated by
21 emancipation of the child or by the death of the parent obligated to
22 support the child.

23 (4) An order of child support may be modified one year or more
24 after it has been entered without showing a substantial change of
25 circumstances:

26 (a) If the order in practice works a severe economic hardship on
27 either party or the child;

28 (b) If a party requests an adjustment in an order for child support
29 which was based on guidelines which determined the amount of support

1 according to the child's age, and the child is no longer in the age
2 category on which the current support amount was based;

3 (c) If a child is still in high school, upon a finding that there
4 is a need to extend support beyond the eighteenth birthday to complete
5 high school; or

6 (d) To add an automatic adjustment of support provision consistent
7 with RCW 26.09.100.

8 (5) An order or decree entered prior to June 7, 1984, may be
9 modified without showing a substantial change of circumstances if the
10 requested modification is to:

11 (a) Require health insurance coverage for a child named therein; or

12 (b) Modify an existing order for health insurance coverage.

13 (6) An obligor's voluntary unemployment or voluntary
14 underemployment, by itself, is not a substantial change of
15 circumstances.

16 (7) The department of social and health services may file an action
17 to modify an order of child support if public assistance money is being
18 paid to or for the benefit of the child and the child support order is
19 twenty-five percent or more below the appropriate child support amount
20 set forth in the standard calculation as defined in RCW 26.19.011 and
21 reasons for the deviation are not set forth in the findings of fact or
22 order. The determination of twenty-five percent or more shall be based
23 on the current income of the parties and the department shall not be
24 required to show a substantial change of circumstances if the reasons
25 for the deviations were not set forth in the findings of fact or order.

26 (8)(a) (~~Except as provided in (b) and (c) of this subsection,~~)
27 All child support decrees may be adjusted once every twenty-four months
28 based upon changes in the income of the parents without a showing of
29 substantially changed circumstances. Either party may initiate the

1 (~~((modification pursuant to procedures of RCW 26.09.175))~~) adjustment by
2 filing a motion and child support worksheets.

3 (b) (~~((Parents whose decrees are entered before July 1, 1990, may~~
4 ~~petition the court for a modification after twelve months has expired~~
5 ~~from the entry of the decree or the most recent modification setting~~
6 ~~child support, whichever is later. However, if a party is granted~~
7 ~~relief under this provision, twenty-four months must pass before~~
8 ~~another petition for modification may be filed pursuant to (a) of this~~
9 ~~subsection.~~

10 (e)) A party may petition for modification in cases of
11 substantially changed circumstances((~~(7)~~)) under subsection (1) of this
12 section((~~(7)~~)) at any time. However, if relief is granted under
13 subsection (1) of this section, twenty-four months must pass before a
14 ((~~petition~~)) motion for ((~~modification~~)) an adjustment under (a) of
15 this subsection may be filed.

16 ((~~(d)~~)) (c) If, pursuant to (a) of this subsection or subsection
17 (9) of this section, the court adjusts or modifies a child support
18 obligation by more than thirty percent and the change would cause
19 significant hardship, the court may implement the change in two equal
20 increments, one at the time of the entry of the order and the second
21 six months from the entry of the order. Twenty-four months must pass
22 following the second change before a ((~~petition~~)) motion for
23 ((~~modification~~)) an adjustment under (a) of this subsection may be
24 filed.

25 ((~~(e)~~)) (d) A parent who is receiving transfer payments who
26 receives a wage or salary increase may not bring a modification action
27 pursuant to ((~~(a)~~)) subsection (1) of this ((~~subsection~~)) section
28 alleging that increase constitutes a substantial change of
29 circumstances ((~~under subsection (1) of this section~~)).

1 (9) An order of child support may be (~~modified~~) adjusted twenty-
2 four months from the date of the entry of the decree or the last
3 adjustment or modification, whichever is later, based upon changes in
4 the economic table or standards in chapter 26.19 RCW.

5 **Sec. 3.** RCW 26.09.175 and 1991 c 367 s 6 are each amended to read
6 as follows:

7 (1) A proceeding for the modification of an order of child support
8 shall commence with the filing of a petition and worksheets. The
9 petition shall be in (~~substantially~~) the form prescribed by the
10 administrator for the courts. There shall be a fee of twenty dollars
11 for the filing of a petition for modification of dissolution.

12 (2) The petitioner shall serve upon the other party the summons, a
13 copy of the petition, and the worksheets in the form prescribed by the
14 administrator for the courts. If the modification proceeding is the
15 first action filed in this state, service shall be made by personal
16 service. If the decree to be modified was entered in this state,
17 service shall be by personal service or by any form of mail requiring
18 a return receipt. If the support obligation has been assigned to the
19 state pursuant to RCW 74.20.330 or the state has a subrogated interest
20 under RCW 74.20A.030, the summons, petition, and worksheets shall also
21 be served on the attorney general. Proof of service shall be filed
22 with the court.

23 (3) The responding party's answer and worksheets shall be served
24 and the answer filed within twenty days after service of the petition
25 or sixty days if served out of state. The responding party's failure
26 to file an answer within the time required shall result in entry of a
27 default judgment for the petitioner.

28 (4) At any time after responsive pleadings are filed, either party
29 may schedule the matter for hearing.

1 (5) Unless both parties stipulate to arbitration or the presiding
2 judge authorizes oral testimony pursuant to subsection (6) of this
3 section, a petition for modification of an order of child support shall
4 be heard by the court on affidavits, the petition, answer, and
5 worksheets only.

6 (6) A party seeking authority to present oral testimony on the
7 petition to modify a support order shall file an appropriate motion not
8 later than ten days after the time of notice of hearing. Affidavits
9 and exhibits setting forth the reasons oral testimony is necessary to
10 a just adjudication of the issues shall accompany the petition. The
11 affidavits and exhibits must demonstrate the extraordinary features of
12 the case. Factors which may be considered include, but are not limited
13 to: (a) Substantial questions of credibility on a major issue; (b)
14 insufficient or inconsistent discovery materials not correctable by
15 further discovery; or (c) particularly complex circumstances requiring
16 expert testimony.

17 ~~((7) The administrator for the courts shall develop and prepare,~~
18 ~~in consultation with interested persons, model forms or notices for the~~
19 ~~use of the procedure provided by this section, including a notice~~
20 ~~advising of the right of a party to proceed with or without benefit of~~
21 ~~counsel.))~~

22 **Sec. 4.** RCW 26.09.270 and 1989 c 375 s 15 are each amended to read
23 as follows:

24 (1) A party seeking a temporary custody order or a temporary
25 parenting plan ~~((or modification of a custody decree or parenting~~
26 ~~plan))~~ shall submit together with his or her motion, an affidavit
27 setting forth facts supporting the requested order ~~((or modification))~~
28 and shall give notice, together with a copy of his or her affidavit, to
29 other parties to the proceedings, who may file opposing affidavits.

1 ((The court shall deny the motion unless it finds that adequate cause
2 for hearing the motion is established by the affidavits, in which case
3 it shall set a date for hearing on an order to show cause why the
4 requested order or modification should not be granted.))

5 (2) A party seeking a modification of a permanent parenting plan or
6 of a custody decree shall initiate the action by summons and petition.
7 A hearing on the petition's merits shall not be noted or scheduled
8 until the court has issued an order that adequate cause exists for
9 hearing the modification petition or until after the respondent has
10 failed to file a response within the applicable time period. Either
11 party may file a motion to set a date for an adequate cause hearing and
12 shall submit affidavits setting forth facts in support of the requested
13 relief. The party moving for an adequate cause hearing shall give
14 notice to the other party to the proceedings together with a copy of
15 the motion and affidavits submitted to the court. The responding party
16 may file opposing affidavits. The court shall deny the petition for
17 modification unless the court finds that the affidavits establish
18 adequate cause for hearing the petition. If the court finds adequate
19 cause exists the court shall set a date for hearing to determine if the
20 court should grant the requested modification.

21 **Sec. 5.** RCW 26.10.015 and 1990 1st ex.s. c 2 s 27 are each amended
22 to read as follows:

23 (1) Effective January 1, 1992, a party shall not file any pleading
24 with the clerk of the court in an action commenced under this chapter
25 unless on forms approved by the administrator for the courts.

26 (2) The parties shall comply with requirements for submission to
27 the court of forms as provided in RCW 26.18.220.

1 **Sec. 6.** RCW 26.18.220 and 1990 1st ex.s. c 2 s 25 are each amended
2 to read as follows:

3 (1) The administrator for the courts shall develop not later than
4 July 1, 1991, standard court forms and format rules for mandatory use
5 by litigants in all actions commenced under chapters 26.09, 26.10, and
6 26.26 RCW effective January 1, 1992. The administrator for the courts
7 shall develop a mandatory form for financial affidavits for integration
8 into the worksheets. The form shall be developed and approved not
9 later than September 1, 1992. The parties shall use the mandatory form
10 for financial affidavits for actions commenced on or after September 1,
11 1992. The administrator for the courts has continuing responsibility
12 to develop and revise mandatory forms and format rules as appropriate.

13 (2) A party may delete unnecessary portions of the forms according
14 to the rules established by the administrator for the courts. However,
15 if each party is required, by court rule or by court order, to submit
16 identical forms for the court's comparison, the parties shall not
17 delete any portion of the forms. A party may supplement the mandatory
18 forms with additional material.

19 (3) A party's failure to use the mandatory forms or follow the
20 format rules shall not be a reason to dismiss a case, refuse a filing,
21 or strike a pleading. However, the court may require the party to
22 submit a corrected pleading and may impose terms payable to the
23 opposing party or payable to the court, or both.

24 (4) The administrator for the courts shall distribute a master copy
25 of the forms to all county court clerks. The administrator for the
26 courts and county clerks shall distribute the mandatory forms to the
27 public upon request and may charge for the cost of production and
28 distribution of the forms. Private vendors may distribute the
29 mandatory forms. Distribution may be in printed or electronic form.

1 **Sec. 7.** RCW 26.19.035 and 1991 c 367 s 27 are each amended to read
2 as follows:

3 (1) **Application of the child support schedule.** The child support
4 schedule shall be applied:

5 (a) In each county of the state;

6 (b) In judicial and administrative proceedings under this title or
7 Title 13 or 74 RCW;

8 (c) In all proceedings in which child support is determined or
9 modified;

10 (d) In setting temporary and permanent support;

11 (e) In automatic modification provisions or decrees entered
12 pursuant to RCW 26.09.100; and

13 (f) In addition to proceedings in which child support is determined
14 for minors, to adult children who are dependent on their parents and
15 for whom support is ordered pursuant to RCW 26.09.100.

16 The provisions of this chapter for determining child support and
17 reasons for deviation from the standard calculation shall be applied in
18 the same manner by the court, presiding officers, and reviewing
19 officers.

20 (2) **Written findings of fact supported by the evidence.** An order
21 for child support shall be supported by written findings of fact upon
22 which the support determination is based and shall include reasons for
23 any deviation from the standard calculation and reasons for denial of
24 a party's request for deviation from the standard calculation. The
25 court shall enter written findings of fact in all cases whether or not
26 the court: (a) Sets the support at the presumptive amount, for
27 combined monthly net incomes below five thousand dollars; (b) sets the
28 support at an advisory amount, for combined monthly net incomes between
29 five thousand and seven thousand dollars; or (c) deviates from the
30 presumptive or advisory amounts.

1 (3) **Completion of worksheets.** Worksheets in the form developed by
2 the office of the administrator for the courts shall be completed under
3 penalty of perjury and filed in every proceeding in which child support
4 is determined. The court shall not accept incomplete worksheets or
5 worksheets that vary from the worksheets developed by the office of the
6 administrator for the courts.

7 (4) **Court review of the worksheets and order.** The court shall
8 review the worksheets and the order setting support for the adequacy of
9 the reasons set forth for any deviation or denial of any request for
10 deviation and for the adequacy of the amount of support ordered. Each
11 order shall state the amount of child support calculated using the
12 standard calculation and the amount of child support actually ordered.
13 Worksheets shall be attached to the decree or order or if filed
14 separately shall be initialed or signed by the judge and filed with the
15 order.

16 **Sec. 8.** RCW 26.19.071 and 1991 sp.s. c 28 s 5 are each amended to
17 read as follows:

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

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

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

4 (a) Salaries;

5 (b) Wages;

6 (c) Commissions;

7 (d) Deferred compensation;

8 (e) Overtime;

9 (f) Contract-related benefits;

10 (g) Income from second jobs;

11 (h) Dividends;

12 (i) Interest;

13 (j) Trust income;

14 (k) Severance pay;

15 (l) Annuities;

16 (m) Capital gains;

17 (n) Pension retirement benefits;

18 (o) Workers' compensation;

19 (p) Unemployment benefits;

20 (q) Spousal maintenance actually received from an exspouse or
21 expartner who is not a party to the action before the court;

22 (r) Bonuses;

23 (s) Social security benefits; and

24 (t) Disability insurance benefits.

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

28 (a) Income of a new spouse or income of other adults in the
29 household;

30 (b) Child support received from other relationships;

- 1 (c) Gifts and prizes;
- 2 (d) Aid to families with dependent children;
- 3 (e) Supplemental security income;
- 4 (f) General assistance; and
- 5 (g) Food stamps.

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

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

- 12 (a) Federal and state income taxes;
- 13 (b) Federal insurance contributions act deductions;
- 14 (c) Mandatory pension plan payments;
- 15 (d) Mandatory union or professional dues;
- 16 (e) State industrial insurance premiums;
- 17 (f) Court-ordered spousal maintenance to the extent actually paid
18 to an exspouse or expartner who is not a party to the action before the
19 court;
- 20 (g) Up to two thousand dollars per year in voluntary pension
21 payments actually made if the contributions were made for the two tax
22 years preceding the earlier of the (i) tax year in which the parties
23 separated with intent to live separate and apart or (ii) tax year in
24 which the parties filed for dissolution; 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.

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

1 (6) **Imputation of income.** The court shall impute income to a
2 parent when the parent is voluntarily unemployed or voluntarily
3 underemployed. The court shall determine whether the parent is
4 voluntarily underemployed or voluntarily unemployed based upon that
5 parent's work history, education, health, and age, or any other
6 relevant factors. A court shall not impute income to a parent who is
7 gainfully employed on a full-time basis, unless the court finds that
8 the parent is voluntarily underemployed and finds that the parent is
9 purposely underemployed to reduce the parent's child support
10 obligation. Income shall not be imputed for an unemployable parent.
11 In the absence of information to the contrary, a parent's imputed
12 income shall be based on the median income of year-round full-time
13 workers as derived from the United States bureau of census, current
14 populations reports, or such replacement report as published by the
15 bureau of census.

16 **Sec. 9.** RCW 26.26.065 and 1990 1st ex.s. c 2 s 28 are each amended
17 to read as follows:

18 (1) Effective January 1, 1992, a party shall not file any pleading
19 with the clerk of the court in an action commenced under this chapter
20 unless on forms approved by the administrator for the courts.

21 (2) The parties shall comply with requirements for submission to
22 the court of forms as provided in RCW 26.18.220.

23 **Sec. 10.** RCW 26.26.160 and 1989 c 360 s 36 are each amended to
24 read as follows:

25 (1) Except as provided in subsection (2) of this section the court
26 has continuing jurisdiction to prospectively modify a judgment and
27 order for future education and future support, and with respect to
28 matters listed in RCW 26.26.130 (3) and (4), and RCW 26.26.150(2) upon

1 showing a substantial change of circumstances. The procedures set
2 forth in RCW 26.09.175 shall be used in modification proceedings under
3 this section.

4 (2) A judgment or order entered under this chapter may be modified
5 without a showing of substantial change of circumstances upon the same
6 grounds as RCW 26.09.170 permits support orders to be modified without
7 a showing of a substantial change of circumstance.

8 (3) The court may modify a parenting plan or residential provisions
9 adopted pursuant to RCW 26.26.130(6) in accordance with the provisions
10 of chapter 26.09 RCW.

11 **Sec. 11.** RCW 26.09.060 and 1989 c 360 s 37 are each amended to
12 read as follows:

13 (1) In a proceeding for:

14 (a) Dissolution of marriage, legal separation, or a declaration of
15 invalidity; or

16 (b) Disposition of property or liabilities, maintenance, or support
17 following dissolution of the marriage by a court which lacked personal
18 jurisdiction over the absent spouse; either party may move for
19 temporary maintenance or for temporary support of children entitled to
20 support. The motion shall be accompanied by an affidavit setting forth
21 the factual basis for the motion and the amounts requested.

22 (2) As a part of a motion for temporary maintenance or support or
23 by independent motion accompanied by affidavit, either party may
24 request the court to issue a temporary restraining order or preliminary
25 injunction, providing relief proper in the circumstances, and
26 restraining or enjoining any person from:

27 (a) Transferring, removing, encumbering, concealing, or in any way
28 disposing of any property except in the usual course of business or for
29 the necessities of life, and, if so restrained or enjoined, requiring

1 him to notify the moving party of any proposed extraordinary
2 expenditures made after the order is issued;

3 (b) Molesting or disturbing the peace of the other party or of any
4 child and, upon a showing by clear and convincing evidence that the
5 party so restrained or enjoined has used or displayed or threatened to
6 use a deadly weapon as defined in RCW 9A.04.110 in an act of violence
7 or has previously committed acts of domestic violence and is likely to
8 use or display or threaten to use a deadly weapon in an act of domestic
9 violence, requiring the party to surrender any deadly weapon in his
10 immediate possession or control or subject to his immediate possession
11 or control to the sheriff of the county having jurisdiction of the
12 proceeding or to the restrained or enjoined party's counsel or to any
13 person designated by the court. The court may order temporary
14 surrender of deadly weapons without notice to the other party only if
15 it finds on the basis of the moving affidavit or other evidence that
16 irreparable injury could result if an order is not issued until the
17 time for response has elapsed;

18 (c) Entering the family home or the home of the other party upon a
19 showing of the necessity therefor;

20 (d) Removing a child from the jurisdiction of the court.

21 (3) The court may issue a temporary restraining order without
22 requiring notice to the other party only if it finds on the basis of
23 the moving affidavit or other evidence that irreparable injury could
24 result if an order is not issued until the time for responding has
25 elapsed.

26 (4) The court may issue a temporary restraining order or
27 preliminary injunction and an order for temporary maintenance or
28 support in such amounts and on such terms as are just and proper in the
29 circumstances. The court may in its discretion waive the filing of the
30 bond or the posting of security.

1 (5) Restraining orders issued under this section restraining the
2 person from molesting or disturbing another party or from entering a
3 party's home shall bear the legend: VIOLATION OF THIS ORDER WITH
4 ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.09
5 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

6 (6) The court may order that any temporary restraining order
7 granted under this section be forwarded by the clerk of the court on or
8 before the next judicial day to the appropriate law enforcement agency
9 specified in the order. Upon receipt of the order, the law enforcement
10 agency shall forthwith enter the order for one year into any computer-
11 based criminal intelligence information system available in this state
12 used by law enforcement agencies to list outstanding warrants. Entry
13 into the law enforcement information system constitutes notice to all
14 law enforcement agencies of the existence of the order. The order is
15 fully enforceable in any county in the state.

16 (7) A temporary order, temporary restraining order, or preliminary
17 injunction:

18 (a) Does not prejudice the rights of a party or any child which are
19 to be adjudicated at subsequent hearings in the proceeding;

20 (b) May be revoked or modified;

21 (c) Terminates when the final decree is entered, except as provided
22 under subsection (8) of this section, or when the petition for
23 dissolution, legal separation, or declaration of invalidity is
24 dismissed;

25 (d) May be entered in a proceeding for the modification of an
26 existing decree.

27 (8) Delinquent support payments accrued under an order for
28 temporary support remain collectible and are not extinguished when a
29 final decree is entered unless the decree contains specific language to
30 the contrary. A support debt under a temporary order owed to the state

1 for public assistance expenditures shall not be extinguished by the
2 final decree if:

3 (a) The obligor was given notice of the state's interest under
4 chapter 74.20A RCW; or

5 (b) The temporary order directs the obligor to make support
6 payments to the office of support enforcement or the Washington state
7 support registry.