

SUBSTITUTE SENATE BILL 5996

State of Washington 52nd Legislature 1991 1st Special Session

By Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Rasmussen and Johnson).

Read first time June 24, 1991.

1 AN ACT Relating to child support; amending RCW 26.09.010,
2 26.09.100, 26.09.170, 26.09.225, and 26.19.090; adding new sections to
3 chapter 26.19 RCW; creating a new section; repealing RCW 26.19.010,
4 26.19.040, 26.19.060, 26.19.070, and 26.19.110; providing effective
5 dates; and declaring an emergency.

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

7 **Sec. 1.** RCW 26.09.010 and 1989 c 375 s 1 are each amended to read
8 as follows:

9 (1) Except as otherwise specifically provided herein, the practice
10 in civil action shall govern all proceedings under this chapter, except
11 that trial by jury is dispensed with.

12 (2) A proceeding for dissolution of marriage, legal separation or
13 a declaration concerning the validity of a marriage shall be entitled
14 "In re the marriage of and" Such proceeding
15 (~~may~~) shall be filed in the superior court of the county where the

1 petitioner or respondent resides. Upon motion and hearing before the
2 superior court of the county where the proceeding is filed, the court
3 may waive venue in that county for good cause shown.

4 (3) In cases where there has been no prior proceeding in this state
5 involving the marital status of the parties or support obligations for
6 a minor child, a separate parenting and support proceeding between the
7 parents shall be entitled "In re the parenting and support of
8" Such proceeding shall be filed in the superior court of
9 the county where the petitioner or respondent resides. Upon motion and
10 hearing before the superior court of the county where the proceeding is
11 filed, the court may waive venue in that county for good cause shown.

12 (4) The initial pleading in all proceedings under this chapter
13 shall be denominated a petition. A responsive pleading shall be
14 denominated a response. Other pleadings, and all pleadings in other
15 matters under this chapter shall be denominated as provided in the
16 civil rules for superior court.

17 (5) In this chapter, "decree" includes "judgment".

18 (6) A decree of dissolution, of legal separation, or a declaration
19 concerning the validity of a marriage shall not be awarded to one of
20 the parties, but shall provide that it affects the status previously
21 existing between the parties in the manner decreed.

22 **Sec. 2.** RCW 26.09.100 and 1990 1st ex.s. c 2 s 1 are each amended
23 to read as follows:

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

1 (2) The court may require automatic periodic adjustments or
2 modifications of child support. That portion of any decree that
3 requires periodic adjustments or modifications of child support shall
4 use the provisions in chapter 26.19 RCW as the basis for the adjustment
5 or modification. Provisions in the decree for periodic adjustment or
6 modification shall not conflict with RCW 26.09.170 except that the
7 decree may require periodic adjustments or modifications of support
8 more frequently than the time periods established pursuant to RCW
9 26.09.170.

10 (3) Upon motion of a party and without a substantial change of
11 circumstances, the court shall declare that portion of a decree that
12 fails to comply with subsection (2) of this section void and shall
13 modify the decree to comply with subsection (2) of this section as to
14 installments accruing subsequent to entry of the court's order on the
15 motion for modification.

16 (4) The adjustment or modification provision may be modified by the
17 court due to economic hardship consistent with the provisions of RCW
18 26.09.170(4)(a).

19 **Sec. 3.** RCW 26.09.170 and 1990 1st ex.s. c 2 s 2 are each amended
20 to read as follows:

21 (1) Except as otherwise provided in subsection (7) of RCW
22 26.09.070, the provisions of any decree respecting maintenance or
23 support may be modified only as to installments accruing subsequent to
24 the motion for modification and, except as otherwise provided in
25 subsections (4), (5), ~~((and))~~ (8), and (9) of this section, only upon
26 a showing of a substantial change of circumstances. The provisions as
27 to property disposition may not be revoked or modified, unless the
28 court finds the existence of conditions that justify the reopening of
29 a judgment under the laws of this state.

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

5 (3) Unless otherwise agreed in writing or expressly provided in the
6 decree, provisions for the support of a child are terminated by
7 emancipation of the child or by the death of the parent obligated to
8 support the child.

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

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

14 (b) If a party requests an adjustment in an order for child support
15 which was based on guidelines which determined the amount of support
16 according to the child's age, and the child is no longer in the age
17 category on which the current support amount was based;

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

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

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

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

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

28 (6) An obligor's voluntary unemployment or voluntary
29 underemployment, by itself, is not a substantial change of
30 circumstances.

1 (7) The department of social and health services may file an action
2 to modify an order of child support if public assistance money is being
3 paid to or for the benefit of the child and the child support order is
4 twenty-five percent or more below the appropriate child support amount
5 set forth in the standard calculation as defined in (~~section 4(2) of~~
6 ~~this act~~) section 5 of this act and reasons for the deviation are not
7 set forth in the findings of fact or order. The determination of
8 twenty-five percent or more shall be based on the current income of the
9 parties and the department shall not be required to show a substantial
10 change of circumstances if the reasons for the deviations were not set
11 forth in the findings of fact or order.

12 (8)(a) Except as provided in (b) and (c) of this subsection, all
13 child support decrees may be adjusted once every twenty-four months
14 based upon changes in the income of the parents without a showing of
15 substantially changed circumstances. Either party may initiate the
16 modification pursuant to procedures of RCW 26.09.175.

17 (b) Parents whose decrees are entered before (~~the effective date~~
18 ~~of this act~~) July 1, 1990, may petition the court for a modification
19 after twelve months has expired from the entry of the decree or the
20 most recent modification setting child support, whichever is later.
21 However, if a party is granted relief under this provision, twenty-four
22 months must pass before another petition for modification may be filed
23 pursuant to (a) of this subsection.

24 (c) A party may petition for modification in cases of substantially
25 changed circumstances, under subsection (1) of this section, at any
26 time. However, if relief is granted under subsection (1) of this
27 section, twenty-four months must pass before a petition for
28 modification under (a) of this subsection may be filed.

29 (d) If, pursuant to (a) of this subsection, the court modifies a
30 child support obligation by more than thirty percent and the change

1 would cause significant hardship, the court may implement the change in
2 two equal increments, one at the time of the entry of the order and the
3 second six months from the entry of the order. Twenty-four months must
4 pass following the second change before a petition for modification
5 under (a) of this subsection may be filed.

6 (e) A parent who is receiving transfer payments who receives a wage
7 or salary increase may not bring a modification action pursuant to (a)
8 of this subsection alleging that increase constitutes a substantial
9 change of circumstances under subsection (1) of this section.

10 (9) An order of child support may be modified twenty-four months
11 from the date of the entry of the decree or the last modification,
12 whichever is later, based upon changes in the economic table or
13 standards in chapter 26.19 RCW.

14 **Sec. 4.** RCW 26.09.225 and 1990 1st ex.s. c 2 s 18 are each amended
15 to read as follows:

16 (1) Each parent shall have full and equal access to the education
17 and health care records of the child absent a court order to the
18 contrary. Neither parent may veto the access requested by the other
19 parent.

20 (2) Educational records include academic, attendance, and
21 disciplinary records of public and private schools in all grades
22 kindergarten through twelve and any form of alternative school for all
23 periods for which child support is paid or the child is the dependent
24 in fact of the parent requesting access to the records.

25 (3) Educational records of postsecondary educational institutions
26 include enrollment and academic records necessary to determine,
27 establish, or continue support ordered pursuant to RCW 26.19.090.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 26.19 RCW
2 to read as follows:

3 DEFINITIONS. Unless the context clearly requires otherwise, the
4 definitions in this section apply throughout this chapter.

5 (1) "Basic child support obligation" means the monthly child
6 support obligation determined from the economic table based on the
7 parties' combined monthly net income and the number of children for
8 whom support is owed.

9 (2) "Child support schedule" means the standards, economic table,
10 worksheets, and instructions, as defined in this chapter.

11 (3) "Court" means a superior court judge, court commissioner, and
12 presiding and reviewing officers who administratively determine or
13 enforce child support orders.

14 (4) "Deviation" means a child support amount that differs from the
15 standard calculation.

16 (5) "Economic table" means the child support table for the basic
17 support obligation provided in RCW 26.19.020.

18 (6) "Instructions" means the instructions developed by the office
19 of the administrator for the courts pursuant to RCW 26.19.050 for use
20 in completing the worksheets.

21 (7) "Standards" means the standards for determination of child
22 support as provided in this chapter.

23 (8) "Standard calculation" means the presumptive amount of child
24 support owed as determined from the child support schedule before the
25 court considers any reasons for deviation.

26 (9) "Support transfer payment" means the amount of money the court
27 orders one parent to pay to another parent or custodian for child
28 support after determination of the standard calculation and deviations.
29 If certain expenses or credits are expected to fluctuate and the order
30 states a formula or percentage to determine the additional amount or

1 credit on an ongoing basis, the term "support transfer payment" does
2 not mean the additional amount or credit.

3 (10) "Worksheets" means the forms developed by the office of the
4 administrator for the courts pursuant to RCW 26.19.050 for use in
5 determining the amount of child support.

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

8 STANDARDS FOR DETERMINATION OF INCOME. (1) **Consideration of all**
9 **income.** All income and resources of each parent's household shall be
10 disclosed and considered by the court when the court determines the
11 child support obligation of each parent. Only the income of the
12 parents of the children whose support is at issue shall be calculated
13 for purposes of calculating the basic support obligation. Income and
14 resources of any other person shall not be included in calculating the
15 basic support obligation.

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

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

- 23 (a) Salaries;
- 24 (b) Wages;
- 25 (c) Commissions;
- 26 (d) Deferred compensation;
- 27 (e) Overtime;
- 28 (f) Contract-related benefits;
- 29 (g) Income from second jobs;

- 1 (h) Dividends;
- 2 (i) Interest;
- 3 (j) Trust income;
- 4 (k) Severance pay;
- 5 (l) Annuities;
- 6 (m) Capital gains;
- 7 (n) Pension retirement benefits;
- 8 (o) Workers' compensation;
- 9 (p) Unemployment benefits;
- 10 (q) Spousal maintenance actually received;
- 11 (r) Bonuses;
- 12 (s) Social security benefits; and
- 13 (t) Disability insurance benefits.

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

- 17 (a) Income of a new spouse or income of other adults in the
18 household;
- 19 (b) Child support received from other relationships;
- 20 (c) Gifts and prizes;
- 21 (d) Aid to families with dependent children;
- 22 (e) Supplemental security income;
- 23 (f) General assistance; and
- 24 (g) Food stamps.

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

28 (5) **Determination of net income.** The following expenses shall be
29 disclosed and deducted from gross monthly income to calculate net
30 monthly income:

- 1 (a) Federal and state income taxes;
- 2 (b) Federal insurance contributions act deductions;
- 3 (c) Mandatory pension plan payments;
- 4 (d) Mandatory union or professional dues;
- 5 (e) State industrial insurance premiums;
- 6 (f) Court-ordered spousal maintenance to the extent actually paid;
- 7 (g) Up to two thousand dollars per year in voluntary pension
- 8 payments actually made if the contributions were made for the two tax
- 9 years preceding the earlier of the (i) tax year in which the parties
- 10 separated with intent to live separate and apart or (ii) tax year in
- 11 which the parties filed for dissolution; and
- 12 (h) Normal business expenses and self-employment taxes for self-
- 13 employed persons. Justification shall be required for any business
- 14 expense deduction about which there is disagreement.

15 Items deducted from gross income under this subsection shall not be

16 a reason to deviate from the standard calculation.

17 (6) **Imputation of income.** The court shall impute income to a

18 parent when the parent is voluntarily unemployed or voluntarily

19 underemployed. The court shall determine whether the parent is

20 voluntarily underemployed or voluntarily unemployed based upon that

21 parent's work history, education, health, and age, or any other

22 relevant factors. A parent will not be deemed underemployed if that

23 parent is gainfully employed on a full-time basis. Income shall not be

24 imputed for an unemployable parent. In the absence of information to

25 the contrary, a parent's imputed income shall be based on the median

26 income of year-round full-time workers as derived from the United

27 States bureau of census, current populations reports, or such

28 replacement report as published by the bureau of census.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 26.19 RCW
2 to read as follows:

3 STANDARDS FOR DEVIATION FROM THE STANDARD CALCULATION. (1) Reasons
4 for deviation from the standard calculation include but are not limited
5 to the following:

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

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

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

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

16 (iv) Gifts;

17 (v) Prizes;

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

21 (vii) Extraordinary income of a child; or

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

25 (b) **Nonrecurring income.** The court may deviate from the standard
26 calculation based on a finding that a particular source of income
27 included in the calculation of the basic support obligation is not a
28 recurring source of income. Depending on the circumstances,
29 nonrecurring income may include overtime, contract-related benefits,
30 bonuses, or income from second jobs. Deviations for nonrecurring

1 income shall be based on a review of the nonrecurring income received
2 in the previous two calendar years.

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

5 (i) Extraordinary debt not voluntarily incurred;

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

8 (iii) Special needs of disabled children; or

9 (iv) Special medical, educational, or psychological needs of the
10 children.

11 (d) **Residential schedule.** The court may deviate from the standard
12 calculation if the child spends a significant amount of time with the
13 parent who is obligated to make a support transfer payment. The court
14 may not deviate on that basis if the deviation will result in
15 insufficient funds in the house receiving the support to meet the basic
16 needs of the child or if the child is receiving aid to families with
17 dependent children. When determining the amount of the deviation, the
18 court shall consider evidence concerning the increased expenses to a
19 parent making support transfer payments resulting from the significant
20 amount of time spent with that parent and shall consider the decreased
21 expenses, if any, to the party receiving the support resulting from the
22 significant amount of time the child spends with the parent making the
23 support transfer payment.

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

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

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

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

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

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

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

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

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

3 **Sec. 8.** RCW 26.19.090 and 1990 1st ex.s. c 2 s 9 are each amended
4 to read as follows:

5 STANDARDS FOR POSTSECONDARY EDUCATIONAL SUPPORT AWARDS. (1) The
6 child support schedule shall be advisory and not mandatory for
7 postsecondary educational support.

8 (2) When considering whether to order support for postsecondary
9 educational expenses, the court shall determine whether the child is in
10 fact dependent and is relying upon the parents for the reasonable
11 necessities of life. The court shall exercise its discretion when
12 determining whether and for how long to award postsecondary educational
13 support based upon consideration of factors that include but are not
14 limited to the following: Age of the child; the child's needs; the
15 expectations of the parties for their children when the parents were
16 together; the child's prospects, desires, aptitudes, abilities or
17 disabilities; the nature of the postsecondary education sought; and the
18 parents' level of education, standard of living, and current and future
19 resources. Also to be considered are the amount and type of support
20 that the child would have been afforded if the parents had stayed
21 together.

22 (3) The child must be enrolled in an accredited academic or
23 vocational school, actively pursuing a course of study commensurate
24 with the child's vocational goals, and must be in good academic
25 standing as defined by the institution ((or)). The child shall also
26 make available all academic records and grades to both parents as a
27 condition of receiving postsecondary educational support. Each parent
28 shall have full and equal access to the postsecondary education records
29 as provided in RCW 26.09.225. The court-ordered postsecondary

1 educational support ((may)) shall be automatically suspended during the
2 period or periods the child fails to comply with these conditions.
3 ((The court in its discretion may order that the payment be made
4 directly to the parent who has been receiving the transfer payments, to
5 the educational institution if feasible, or to the child.)) The court
6 shall not order the payment of postsecondary educational expenses
7 beyond the child's twenty-third birthday, except for exceptional
8 circumstances, such as mental, physical, or emotional disabilities.
9 (4) The court shall direct that either or both parents' payments for
10 postsecondary educational expenses be made directly to the educational
11 institution if feasible. If direct payments are not feasible, then the
12 court in its discretion may order that either or both parents' payments
13 be made directly to the child if the child does not reside with either
14 parent. If the child resides with one of the parents the court may
15 direct that the parent making the support transfer payments make the
16 payments to the child or to the parent who has been receiving the
17 support transfer payments.

18 NEW SECTION. Sec. 9. The following acts or parts of acts are
19 each repealed:

20 (1) RCW 26.19.010 and 1988 c 275 s 2;

21 (2) RCW 26.19.040 and 1990 1st ex.s. c 2 s 20, 1988 c 275 s 5, &
22 1987 c 440 s 2;

23 (3) RCW 26.19.060 and 1988 c 275 s 7;

24 (4) RCW 26.19.070 and 1990 1st ex.s. c 2 s 6; and

25 (5) RCW 26.19.110 and 1990 1st ex.s. c 2 s 12.

26 NEW SECTION. Sec. 10. If any provision of this act or its
27 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 11.** (1) Sections 2 through 10 of this act are
4 necessary for the immediate preservation of the public peace, health,
5 or safety, or support of the state government and its existing public
6 institutions, and shall take effect September 1, 1991.

7 (2) Section 1 of this act shall take effect July 1, 1992.

8 NEW SECTION. **Sec. 12.** Captions as used in this act do not
9 constitute any part of the law.