

HOUSE BILL REPORT

E2SSB 5120

As Passed Legislature

Title: An act relating to child support.

Brief Description: Making adjustments to child support guidelines.

Sponsor(s): Senate Committee on Ways & Means (originally sponsored by Senators Nelson, Rasmussen, Thorsness, Stratton, Saling, McCaslin, Hayner, Erwin, L. Smith, Newhouse, Amondson, Johnson, Bailey, Gaspard, Vognild, Matson, West, Owen, Bauer, Snyder, Roach and Oke).

Brief History:

Reported by House Committee on:
Judiciary, April 5, 1991, DPA;
Passed House, April 18, 1991, 67-27;
Passed Legislature, 67-27.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *Do pass as amended.* Signed by 10 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Paris, Assistant Ranking Minority Member; Broback; Forner; Hargrove; Inslee; Mielke; H. Myers; and Scott.

Minority Report: *Do not pass.* Signed by 5 members: Representatives Padden, Ranking Minority Member; Belcher; R. Meyers; D. Sommers; and Tate.

Staff: Pat Shelledy (786-7149).

Background: Child support may be impacted by a number of factors including the child support schedule, modifications of decrees, parenting plans, availability of a family court and family court services, and enforcement of support. The following background sets forth the current law on aspects of the law impacting child support.

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 both parents with combined monthly net incomes up to \$7,000. For parents with combined monthly net incomes that exceed \$7,000, the court has discretion to set support above the presumptive amount of support set for parents with combined monthly net incomes of \$7,000 upon written findings of fact. The presumptive amounts vary depending upon the number of children and the children's ages.

The presumptive amount of support is not necessarily the child support amount the court will order the noncustodial parent to pay to the custodial parent. After determination of the basic support obligation, the court determines each parent's proportionate share of that obligation. Then the court determines each parent's proportionate share of any additional extraordinary expenses, such as day care, as well as any credits attributable to each parent, such as residential credits for time spent with the noncustodial parent. That amount is the "standard calculation." Then the court determines whether any reasons for deviation exist to raise or lower the standard calculation and then determines the amount of money the noncustodial parent must transfer to the custodial parent. The only time the presumptive amount of support established in the economic table will reflect the amount of support the noncustodial parent will pay to the custodial parent is when the noncustodial parent

contributes 100 percent of the combined monthly net income, no extraordinary expenses exist, no credits apply, and no reasons for deviation exist. The court must enter written findings of fact when deviating from the standard calculation.

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 the noncustodial's share of child support for time spent with the child, set caps on the amount of support that can be ordered, and establish reasons for deviation from the presumptive support amount.

POST-SECONDARY EDUCATION SUPPORT. Case law has developed over several years that provides when the court may order post-secondary educational support. Last year the legislature enacted provisions that partially modified the case law by limiting post-secondary educational support to age 23 absent exceptional circumstances, requiring the child to actively pursue a course of study and be in good academic standing, and by allowing payment of the support to be made directly to the educational institution or to the child if feasible.

REIMBURSEMENT AND VERIFICATION OF EXTRAORDINARY EXPENSES. The court must give notice to each parent that the court may order an accounting of how support is being spent to benefit the child. However, no substantive provision exists that establishes a mechanism for proving what extraordinary expenses are actually incurred, deadlines for payment of those expenses, and enforcement of the payments.

B. MODIFICATIONS OF PARENTING PLANS:

Generally, parents may not obtain a change in the parenting plan absent a substantial change in circumstances of the child or of the parent who has not asked 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.

D. VENUE IN DOMESTIC RELATIONS ACTIONS:

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

E. 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.

F. MODIFICATION OF CHILD SUPPORT:

The court may provide in a divorce decree for periodic adjustments of child support. The statute does not prescribe any basis for the modifications or the time periods of the periodic modifications.

A variety of rules apply to when a modification of child support may be awarded. Last year, the Legislature modified those provisions and provided that changes adopted 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 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. That provision only applies to the changes in the support schedule adopted last year.

Modifications of support apply prospectively only.

The chapter governing administrative orders does not have a provision governing modifications that is similar to the modification provisions governing decrees.

A party may commence a proceeding for the modification of child support with the filing of a petition, a supporting affidavit, and worksheets. The worksheets also provide the necessary financial information and are signed under penalty of perjury.

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

Parents may not condition one part of a parenting plan upon another. A parent who attempts to do so may be punished with contempt.

H. FAMILY COURTS AND FAMILY COURT SERVICES:

Although existing law allows counties to implement family courts and family court services, only some counties have family courts, and fewer offer family court services.

I. ENFORCEMENT OF SUPPORT ISSUES:

Numerous provisions exist regarding enforcement of child support. Both private parties and the State may enforce support. The mechanisms and laws governing private parties and the State overlap but are not identical. Remedies include wage assignment orders or payroll deductions against the obligor's wages.

The law currently is unclear what the employer's responsibilities are regarding compliance with a wage assignment order when the employee has left employment. A number of sanctions against employers who fail to comply with the wage assignment orders or who punish an employees subject to a wage assignment order are specified in one chapter on enforcement of support but not in the other. The law governing private parties' enforcement of support currently provides that employers must withhold and deliver withheld earnings to the support registry at each regular pay interval but not sooner than 20 days after receipt of the wage assignment order.

Under the Uniform Enforcement of Support Act, an obligee may register a foreign support order in a Washington court. The prosecuting attorney may act on behalf of the obligee under that act. The act does not provide that the prosecuting attorney or the attorney general may register a foreign support order for modifications and enforcement of support for either party.

Certain federal laws and regulations govern the distribution of support money collected by the Office of Support Enforcement. Recent lawsuits have resulted in settlements in which the state has agreed to distribute support money collected to the custodian before the debt owed to the State when the custodian stops receiving public assistance.

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. Federal law also provides that the court may approve an agreement between the parties as an alternative to wage withholding under certain conditions.

The State may have a subrogated interest or an assigned interest in the child support award. Current law does not provide for service of process upon the state in

modification actions. Current law does provide for service upon the state in modification actions when the support obligation has been assigned to the state but only when the State has filed notice of the assignment with the court. Current law also does not specifically provide for notice to the state before the entry of any final decree or temporary order involving child support or maintenance even if the State has an assigned or subrogated interest.

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 begin helping either parent with motions for modification of support. The State must not represent either party or the child but just the interests of 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. The State may represent the best interests of the child on the issue of parentage if no conflict exists and may act as a guardian ad litem on behalf of the child. The parents have a right to ask for a guardian ad litem for the child when a conflict exists.

A parent responsible for paying support must contest a notice of financial responsibility issued by the state within 20 days from the date of service of the notice. If the parent fails to contest the notice within 20 days the obligation becomes final unless the parent petitions the State and demonstrates good cause for failure to make a timely application.

No specific provision exists regarding the ability of the Office of Support Enforcement to collect against the earnings of the responsible parent that are located in the state when the parent is outside the state.

Summary of 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.

INTENT SECTION. The intent section is amended to provide that all parties to the divorce may by necessity suffer a reduced standard of living as a result of the divorce and that the court should consider the parent's own income and resources when determining support.

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.

CAP AT THE UPPER END OF THE TABLE. The table provides presumptive amounts of support for combined monthly net incomes through \$5,000. The table also provides for advisory amounts of support for combined monthly net incomes through \$7,000. The amounts of support set on the table for incomes between \$5,000 and \$7,000 are advisory only and not presumptive. If parents have combined monthly net incomes that exceed \$5,000, child support must not be set at an amount lower than the presumptive amount of support set at \$5,000 unless the court deviates. Child support for parents with combined monthly net income that exceeds \$7,000 may be set at the advisory amount of support for parents with combined monthly net income between \$5,000 and \$7,000 or the court may exceed the advisory amount of support set at \$7,000 in the court's discretion but must enter written findings of fact.

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 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. As in current law, good cause includes day-care expenses, larger families, and special needs.

TREATMENT OF EXTRAORDINARY EXPENSES. As provided in current law, day-care expenses, extraordinary 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 and non 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, education, health, age, and other relevant factors 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 and contract related non cash benefits that lower living expenses; gifts; prizes; and income derived from a second job or additional jobs if the parent has at least one 40 hour-per-week job.

INCOME OF A NEW SPOUSE OR COHABITANT. The income of a new spouse or a cohabitant must not be included in gross income. The income of a new spouse or cohabitant may not be a basis for deviation by itself. However, if a parent asks for a deviation upon any other ground, then the court may consider the income of the new spouse or cohabitant.

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 maximum amount of support that may be awarded for tuition is limited to an amount a state resident would pay to attend a state four

year university. 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. The law is clarified to provide that both parents may owe post-secondary educational expenses.

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. If the Office of Support Enforcement uses wage assignments as a collection mechanism for extraordinary expenses, the office must request documentation from both parents before proceeding. If the obligor fails to respond to the request within 30 days the office may proceed with the wage assignment order if the office has received documentation from the obligee. This provision is subject to funding in the budget.

The Office of Support Enforcement must also obtain documentation of variable costs prior to issuing a notice of support owed to the obligor.

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. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. ENFORCEMENT OF SUPPORT ISSUES:

Numerous changes are made to enforcement of support provisions.

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. An employer may respond to a wage assignment order prior to the expiration of 20 days.

Numerous changes in the laws governing the Office of Support Enforcement are modified to comply with federal law, as well as other provisions to assist the agency in support enforcement actions.

The office may register foreign support orders for modifications and enforcement of support for either party.

The office must begin immediate wage withholding unless the court approves an alternate payment plan. A mechanism for approval of alternate plans is developed.

The role of the office is clarified to provide that the office does not represent either parent or the child, but represents the state of Washington.

The Legislature will review the child support schedule every four years to ensure that the schedule provides adequate support awards.

The office must distribute collected support owed to the custodian before the satisfying the debt owed to the state when the custodian stops receiving public assistance.

The office must use payroll deductions to collect unemployment benefits as well as earnings.

The State is entitled to service of process in actions where the State has a subrogated interest in the child support. The State does not have to file notice of the interest with the court. The State is entitled to 20 days notice of a modification action when the State has an interest however, the State is not entitled to terms if the parties fail to serve the State unless the State proves that the parties were aware of the interest of the state and intentionally did not serve the State.

A responsible parent who receives notice of support owed may contest the amount within one year of the date of service without penalty. More detailed procedures are established for advising the responsible parent of the parent's right to contest the determination of support.

Provisions governing modifications of administrative orders are adopted. The provisions are similar to existing provisions governing modifications of decrees.

The office may take action to collect the earnings of a parent who live out of the state but has earnings within the state.

Fiscal Note: Available.

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

Testimony For: The support schedule set amounts of support too high. The local table is adopted in most of the counties now and should be the basis for the economic table, or lower. The standard should be what it costs to raise a child. The economic data is erroneous. The law is unfair to fathers and is punitive. A number of second families are suffering economically due to support going to the first family. A number of changes are necessary to make the schedule more fair.

Testimony Against: The best available data shows that actual payments for child support are much lower than amounts claimed by proponents of lowering support amounts. The amounts of support as demonstrated from the actual data on real cases demonstrates that support is not too high. Suggested reductions in support would result in awards that would be less than amounts under the 1981 schedule and would be less than the cost of inflation.

Witnesses: Senator Nelson, prime sponsor (pro); Bob Hoyden, POPS (with comments); Brent Whiting, POPS (with comments); Jan Morford, POPS (with comments); Lonnie Johns Brown, NOW (con); Sharon Dodge, Need for Support Enforcement (con); Delphine Lucas, citizen (con); Nancy Hawkins, Northwest

Women's Law Center (con); David Spangler, citizen (con); Kim Prochnau, Washington State Bar Association Family Law Center (con in part, pro in part, neutral in part); Elizabeth Jones, citizen (con); Lisa Jones, citizen (con); Jerry Short, POPS (pro); Mark and Alice Althuser, citizens (pro); Anne Simons, Washington Women United (con); Merlin Forney, POPS; Pamela Roberts, POPS (pro); Robert Liesik, POPS (pro); Liz Hennick, citizen (con); Robert Santos-Cucalon, POPS; Dave Hogan, DSHS (con); Bill Harrington, Fathers' Rights (pro); Denise Clifford, POPS (pro); Ron Main, King County Executive's Office (con); Denise Hoosier, POPS (pro); Gary Williams, POPS (pro); Cynthia Cofield, citizen (pro); Gary Huff, citizen (pro); Don Webb, citizen (pro); Colleen Grady, family law attorney (pro); and Pat Luders, citizen (pro).