

2 SB 5508 - S AMD

3 By Senators Hargrove, Rinehart and A. Smith

4 ADOPTED 3/13/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 13.34.070 and 1990 c 246 s 2 are each amended to read
8 as follows:

9 (1) Upon the filing of the petition, the clerk of the court shall
10 issue a summons, one directed to the child, if the child is twelve or
11 more years of age, and another to the parents, guardian, or custodian,
12 and such other persons as appear to the court to be proper or necessary
13 parties to the proceedings, requiring them to appear personally before
14 the court at the time fixed to hear the petition. If the child is
15 developmentally disabled and not living at home, the notice shall be
16 given to the child's custodian as well as to the child's parent. The
17 developmentally disabled child shall not be required to appear unless
18 requested by the court. Where the custodian is summoned, the parent or
19 guardian or both shall also be served with a summons. The fact-finding
20 hearing on the petition shall be held no later than seventy-five days
21 after the filing of the petition, unless exceptional reasons for a
22 continuance are found. The party requesting the continuance shall have
23 the burden of proving by a preponderance of the evidence that
24 exceptional circumstances do exist. To ensure that the hearing on the
25 petition occurs within the seventy-five day time limit, the court shall
26 schedule and hear the matter on an expedited basis.

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

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

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

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

4 (~~(5)~~) (6) If it appears from affidavit or sworn statement
5 presented to the judge that there is probable cause for the issuance of
6 a warrant of arrest or that the child needs to be taken into custody
7 pursuant to RCW 13.34.050, the judge may endorse upon the summons an
8 order that an officer serving the summons shall at once take the child
9 into custody and take him to the place of shelter designated by the
10 court.

11 (~~(6)~~) (7) If the person summoned as provided in this section is
12 subject to an order of the court pursuant to subsection (~~(4) or~~) (5)
13 or (6) of this section, and if the person fails to abide by the order,
14 he may be proceeded against as for contempt of court. The order
15 endorsed upon the summons shall conspicuously display the following
16 legend:

17 NOTICE:
18 VIOLATION OF THIS ORDER
19 IS SUBJECT TO PROCEEDING
20 FOR CONTEMPT OF COURT
21 PURSUANT TO RCW 13.34.070.

22 (~~(7)~~) (8) If a party to be served with a summons can be found
23 within the state, the summons shall be served upon the party personally
24 as soon as possible following the filing of the petition, but in no
25 case later than fifteen court days before the fact-finding hearing, or
26 such time as set by the court. If the party is within the state and
27 cannot be personally served, but the party's address is known or can
28 with reasonable diligence be ascertained, the summons may be served
29 upon the party by mailing a copy thereof by certified mail as soon as
30 possible following the filing of the petition, but in no case later
31 than fifteen court days before the hearing, or such time as set by the
32 court. If a party other than the child is without the state but can be
33 found or the address is known, or can with reasonable diligence be
34 ascertained, service of the summons may be made either by delivering a
35 copy thereof to the party personally or by mailing a copy thereof to
36 the party by certified mail at least ten court days before the fact-
37 finding hearing, or such time as set by the court.

1 ~~((+8+))~~ (9) Service of summons may be made under the direction of
2 the court by any person eighteen years of age or older who is not a
3 party to the proceedings or by any law enforcement officer, probation
4 counselor, or department of social and health services social worker.

5 ~~((+9+))~~ (10) In any proceeding brought under this chapter where the
6 court knows or has reason to know that the child involved is a member
7 of an Indian tribe, notice of the pendency of the proceeding shall also
8 be sent by registered mail, return receipt requested, to the child's
9 tribe. If the identity or location of the tribe cannot be determined,
10 such notice shall be transmitted to the secretary of the interior of
11 the United States.

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

14 In ~~((any case in which))~~ an action brought under this chapter, the
15 court ~~((shall find the child dependent, it may in the same or
16 subsequent proceeding upon the parent or parents, guardian, or other
17 person having custody of said child, being duly summoned or voluntarily
18 appearing, proceed to))~~ may inquire into the ability of ((such persons
19 or person able)) the parent or parents of the child to pay child
20 support ((the child or contribute thereto, the court)) and may enter
21 ((such)) an order ((or decree as shall be according to equity in the
22 premises, and)) of child support as set forth in chapter 26.19 RCW.
23 The court may enforce the same by execution, or in any way in which a
24 court of equity may enforce its decrees. All child support orders
25 entered pursuant to this chapter shall be in compliance with the
26 provisions of RCW 26.23.050.

27 **Sec. 3.** RCW 13.34.180 and 1990 c 246 s 7 are each amended to read
28 as follows:

29 A petition seeking termination of a parent and child relationship
30 may be filed in juvenile court by any party to the dependency
31 proceedings concerning that child. Such petition shall conform to the
32 requirements of RCW 13.34.040, shall be served upon the parties as
33 provided in RCW 13.34.070~~((+7+))~~(8), and shall allege:

34 (1) That the child has been found to be a dependent child under RCW
35 13.34.030(2); and

36 (2) That the court has entered a dispositional order pursuant to
37 RCW 13.34.130; and

1 (3) That the child has been removed or will, at the time of the
2 hearing, have been removed from the custody of the parent for a period
3 of at least six months pursuant to a finding of dependency under RCW
4 13.34.030(2); and

5 (4) That the services ordered under RCW 13.34.130 have been offered
6 or provided and all necessary services, reasonably available, capable
7 of correcting the parental deficiencies within the foreseeable future
8 have been offered or provided; and

9 (5) That there is little likelihood that conditions will be
10 remedied so that the child can be returned to the parent in the near
11 future; and

12 (6) That continuation of the parent and child relationship clearly
13 diminishes the child's prospects for early integration into a stable
14 and permanent home;

15 (7) In lieu of the allegations in subsections (1) through (6) of
16 this section, the petition may allege that the child was found under
17 such circumstances that the whereabouts of the child's parent are
18 unknown and no person has acknowledged paternity or maternity and
19 requested custody of the child within two months after the child was
20 found.

21 Notice of rights shall be served upon the parent, guardian, or
22 legal custodian with the petition and shall be in substantially the
23 following form:

24 "NOTICE

25 A petition for termination of parental rights has been filed
26 against you. You have important legal rights and you must take
27 steps to protect your interests. This petition could result in
28 permanent loss of your parental rights.

29 1. You have the right to a fact-finding hearing before
30 a judge.

31 2. You have the right to have a lawyer represent you at
32 the hearing. A lawyer can look at the files in your case, talk
33 to the department of social and health services and other
34 agencies, tell you about the law, help you understand your
35 rights, and help you at hearings. If you cannot afford a
36 lawyer, the court will appoint one to represent you. To get a
37 court-appointed lawyer you must contact: (explain local
38 procedure) .

1 3. At the hearing, you have the right to speak on your
2 own behalf, to introduce evidence, to examine witnesses, and to
3 receive a decision based solely on the evidence presented to
4 the judge.

5 You should be present at this hearing.

6 You may call (insert agency) for more information
7 about your child. The agency's name and telephone number are
8 (insert name and telephone number) ."

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

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

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

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

- 25 (a) Salaries;
- 26 (b) Wages;
- 27 (c) Commissions;
- 28 (d) Deferred compensation;
- 29 (e) Overtime;
- 30 (f) Contract-related benefits;
- 31 (g) Income from second jobs;
- 32 (h) Dividends;
- 33 (i) Interest;
- 34 (j) Trust income;
- 35 (k) Severance pay;
- 36 (l) Annuities;
- 37 (m) Capital gains;

- 1 (n) Pension retirement benefits;
- 2 (o) Workers' compensation;
- 3 (p) Unemployment benefits;
- 4 (q) Spousal maintenance actually received;
- 5 (r) Bonuses;
- 6 (s) Social security benefits; and
- 7 (t) Disability insurance benefits.

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

- 11 (a) Income of a new spouse or income of other adults in the
12 household;
- 13 (b) Child support received from other relationships;
- 14 (c) Gifts and prizes;
- 15 (d) Aid to families with dependent children;
- 16 (e) Supplemental security income;
- 17 (f) General assistance; and
- 18 (g) Food stamps.

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

22 (5) **Determination of net income.** The following expenses shall be
23 disclosed and deducted from gross monthly income to calculate net
24 monthly income:

- 25 (a) Federal and state income taxes;
- 26 (b) Federal insurance contributions act deductions;
- 27 (c) Mandatory pension plan payments;
- 28 (d) Mandatory union or professional dues;
- 29 (e) State industrial insurance premiums;
- 30 (f) Court-ordered spousal maintenance to the extent actually paid;
- 31 (g) Up to two thousand dollars per year in voluntary pension
32 payments actually made if the contributions were made for the two tax
33 years preceding the earlier of the (i) tax year in which the parties
34 separated with intent to live separate and apart or (ii) tax year in
35 which the parties filed for dissolution; and
- 36 (h) Normal business expenses and self-employment taxes for self-
37 employed persons. Justification shall be required for any business
38 expense deduction about which there is disagreement.

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

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

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

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

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

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

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

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

34 (iv) Gifts;

35 (v) Prizes;

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

1 (vii) Extraordinary income of a child; or
2 (viii) Tax planning considerations. A deviation for tax planning
3 may be granted only if the child would not receive a lesser economic
4 benefit due to the tax planning.

5 (b) **Nonrecurring income.** The court may deviate from the standard
6 calculation based on a finding that a particular source of income
7 included in the calculation of the basic support obligation is not a
8 recurring source of income. Depending on the circumstances,
9 nonrecurring income may include overtime, contract-related benefits,
10 bonuses, or income from second jobs. Deviations for nonrecurring
11 income shall be based on a review of the nonrecurring income received
12 in the previous two calendar years.

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

15 (i) Extraordinary debt not voluntarily incurred;
16 (ii) A significant disparity in the living costs of the parents due
17 to conditions beyond their control;

18 (iii) Special needs of disabled children; ((or))

19 (iv) Special medical, educational, or psychological needs of the
20 children; or

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

25 (d) **Residential schedule.** The court may deviate from the standard
26 calculation if the child spends a significant amount of time with the
27 parent who is obligated to make a support transfer payment. The court
28 may not deviate on that basis if the deviation will result in
29 insufficient funds in the household receiving the support to meet the
30 basic needs of the child or if the child is receiving aid to families
31 with dependent children. When determining the amount of the deviation,
32 the court shall consider evidence concerning the increased expenses to
33 a parent making support transfer payments resulting from the
34 significant amount of time spent with that parent and shall consider
35 the decreased expenses, if any, to the party receiving the support
36 resulting from the significant amount of time the child spends with the
37 parent making the support transfer payment.

38 (e) **Children from other relationships.** The court may deviate from
39 the standard calculation when either or both of the parents before the

1 court have children from other relationships to whom the parent owes a
2 duty of support.

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

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

9 (iii) When considering a deviation from the standard calculation
10 for children from other relationships, the court may consider only
11 other children to whom the parent owes a duty of support. The court
12 may consider court-ordered payments of child support for children from
13 other relationships only to the extent that the support is actually
14 paid.

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

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

28 (3) The court shall enter findings that specify reasons for any
29 deviation or any denial of a party's request for any deviation from the
30 standard calculation made by the court. The court shall not consider
31 reasons for deviation until the court determines the standard
32 calculation for each parent.

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

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

1 NEW SECTION. **Sec. 6.** RCW 13.34.162 and 1988 c 275 s 15 are each
2 repealed."

3 SB 5508 - S AMD

4 By Senators Hargrove, Rinehart and A. Smith

5 ADOPED 3/13/93

6 On page 1, line 1 of the title, after "cases;" strike the remainder
7 of the title and insert "amending RCW 13.34.070, 13.34.160, 13.34.180,
8 26.19.071, and 26.19.075; and repealing RCW 13.34.162."

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