

HOUSE BILL REPORT

HB 1478

As Reported By House Committee On:

Law & Justice

Title: An act relating to child support.

Brief Description: Revising methods for calculating child support.

Sponsors: Representatives Mielke, Hymes, Skinner, Ballasiotes, Campbell, Chappell, Boldt, Chandler, Cooke, Sheahan, Thompson, Schoesler, McMorris, Buck, Radcliff, Stevens, Sherstad, Huff, Johnson, L. Thomas and McMahan.

Brief History:

Committee Activity:

Law & Justice: 2/15/95, 2/28/95 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Sheahan and Smith.

Minority Report: Do not pass. Signed by 5 members: Representatives Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Cody; Thibaudeau and Veloria.

Staff: Pat Shelledy (786-7149).

Background:

Introduction.

Child support is determined by reference to a child support schedule. The schedule includes an economic table that establishes a presumptive amount of child support based on the combined monthly net income of both parents. To calculate net income, each parent fills out work sheets identifying his or her sources of income and deductions from that income. Once the combined monthly net income is determined, then the total monthly support obligation is established by reference to the table amounts for the number of children in the family and the children's ages. This

amount is referred to as the "basic child support obligation." Each parent's respective share of the total basic child support obligation is based on that parent's proportionate share of the combined monthly net income.

After the court determines the basic support obligation, the court considers additional expenses such as day care. Each parent's share of the additional expenses is based on the parent's share of the basic support obligation. After the court determines that presumptive amount, termed the "standard calculation," the court may consider any reasons to deviate from the standard calculation.

Each parent's support obligation is then established. One parent, who is the "noncustodial parent" or the "non-primary residential parent," is usually required to make a "support transfer payment" or a child support payment to the "custodial parent" or "primary residential parent."

Legislative intent.

The legislative intent section of the child support schedule provides that child support orders should be adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living.

Health care expenses.

Ordinary health care expenses are included in the economic table. The table assumes that 5 percent of the monthly amount due is spent on ordinary health care. Monthly health care expenses that exceed 5 percent of the support obligation are considered extraordinary. Extraordinary expenses are shared by the parties according to their proportionate share of the support obligation.

Consideration of income.

Overtime, income from second jobs, and bonuses are considered in the calculation of gross income.

Some expenses may be deducted from gross income. Up to \$2,000 per year in voluntary pension payments may be deducted if: (1) they are actually made; and (2) the parent made the contributions for the two tax years preceding the earlier of the tax year in which the parties separated or filed for divorce.

Court-ordered spousal maintenance to the extent actually paid may be deducted from gross income. Normal business expenses and self-employment taxes for self-employed persons may also be deducted from gross income. A parent must justify those expenses if the other parent contests the expenses.

The court must impute income to a parent who is voluntarily unemployed or voluntarily underemployed. The court considers various factors to make that determination. A court may not impute income to a parent who is employed on a full-time basis unless the court finds that the parent is purposely underemployed to reduce the parent's child support obligation.

Deviations from the standard calculation.

The court may deviate from the standard calculation for a variety of reasons. The list of deviations is not an exclusive list. The court must first calculate the standard obligation for each parent before considering reasons for deviation. The court must enter findings that specify the reasons for granting or denying a requested deviation. The court must exercise discretion when considering to what extent the factors should affect the support obligation.

Agreement of the parties is not by itself adequate reason to deviate.

a. Income of a new spouse:

The court may deviate after considering the income of a new spouse who is married to the parent asking for the deviation if that parent is asking for a deviation based on any other reason. Income of a new spouse is not a sufficient reason to deviate by itself. The same rule applies to consideration of income of other adults in the household. All income and resources of the parents before the court must be disclosed and considered.

b. Nonrecurring income:

The court may deviate from the standard calculation if the court finds that a particular source of income is nonrecurring, including overtime, bonuses, or income from second jobs. Deviations must be based on a review of the nonrecurring income received in the previous two calendar years.

c. Debt and high expenses:

The court may deviate after considering extraordinary debt not voluntarily incurred.

d. Residential credits:

The court may deviate if the child spends a significant amount of time with the parent who is obligated to make the support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds to meet basic needs of the child in the household receiving support, or if the child is receiving aid to families with dependent children. The court must consider the increased expenses to the

parent making the transfer payment by having the child spend a significant amount of time with that parent. The court must also consider any decreased expenses to the parent receiving support.

e. Children from other relationships:

The court may deviate from the standard calculation when either or both parents have children from other relationships to whom the parent owes a duty of support and actually pays support. The child support schedule is first applied to the parents and children of the family before the court to determine the presumptive amount of support. The other children are not included in the economic table to determine the number of children to whom the parents owe support. Then the court may deviate after considering the total circumstances of both households. All child support paid, received, and owed must be disclosed and considered.

Accounting of expenses.

No specific provision exists that requires the parent who receives a transfer payment to account to the parent that makes the transfer payment of how the child support received is spent.

Educational expenses.

Parents are obligated to pay for the educational expenses of their children. Under certain circumstances, the parents may also be ordered to contribute to postsecondary educational expenses of children over age 18.

Day-care and special child rearing expenses.

Day-care and special child rearing expenses are not included in the economic table. They are shared by the parents in the same proportion as the parents' respective share of the basic support obligation. An obligor may be required to include payment of those expenses as part of the monthly payments.

Mediation of disputes.

In any divorce action, the court may require the parties to mediate contested issues.

If approved by a majority vote of the superior court judges of a county that has authorized arbitration, all actions that solely involve the establishment, termination, or modification of child support are subject to mandatory arbitration.

Summary of Substitute Bill:

Legislative intent.

The legislative intent section of the child support schedule is changed. The Legislature still intends that child support orders are adequate to meet a child's basic needs and to provide additional support commensurate with the parents' income and resources. Reference to the parents' standard of living is deleted and replaced with a statement that the Legislature recognizes that all parties to a divorce may by necessity suffer a reduced standard of living as a result of a divorce.

Health care expenses.

Ordinary health care expenses are no longer included in the economic table. The table's amounts are lowered by 5 percent accordingly.

Consideration of income.

Overtime, whether mandatory or voluntary, is excluded from gross income. If the parent has one full-time job that requires the parent to work a minimum of 40 hours per week, income derived from a second job or additional jobs other than the full time job must be excluded from gross income.

Only spousal maintenance that is paid to a former ex-spouse may be deducted from gross income, not spousal maintenance being paid to the spouse before the court.

The restriction on deducting up to \$2,000 in voluntary pension benefits is removed. A parent may deduct up to \$2,000 in voluntary pension or retirement payments, if the payment is actually made.

Normal business expenses that may be deducted from gross income for federal income tax purposes under the Internal Revenue Code may be deducted from gross income. Business expenses include unreimbursed business expenses appropriate to a party's particular occupation. This provision is not limited to self-employed parents, but must also be applied to parents who incur business expenses in the normal course of employment.

A court may not impute income to a parent who is receiving unemployment compensation or disability benefits.

Deviations from the standard calculation.

A number of general provisions regarding deviations are deleted. Requirements deleted are that: (1) the court enter findings that specify the reasons granting or denying a deviation; however, this requirement is also located in another section of the chapter and is not deleted; (2) the court must calculate the standard calculation

first; (3) the court must exercise discretion when considering deviations; (4) agreement of the parties is not by itself a reason to deviate; and (5) all income and resources of the parties before the court, new spouses, and other adults in the household must be disclosed. Another provision in the chapter provides that all income and resources of each parent's household shall be disclosed and considered.

a. Income of new spouses or other adults in the household:

Existing law is deleted that specifically allows a court to consider the income of a new spouse under certain circumstances. Also deleted is the provision that the income of a new spouse, by itself, is not a sufficient basis for deviation. The comparable provision regarding consideration of the income of other adults in the household is also deleted.

b. Nonrecurring income:

Income is nonrecurring if it did not occur in each of the two preceding tax years. If it did occur in that time period, the lowest annual amount earned shall be included in gross income. Specific reference to certain sources of nonrecurring income is deleted.

c. Debt and high expenses:

The court may deviate after considering an obligation imposed on one parent in the divorce for payment of substantial debt of the community voluntarily incurred before the parties were separated.

d. Residential credits:

The court must grant a nonresidential parent a day-for-day credit against the standard calculation for residential time the child spends with that parent. Residential credit will not be granted if the child is receiving aid to families with dependent children.

e. Children from other relationships:

The basic support obligation for a parent making the support transfer payment who has children from other relationships, whether natural or adoptive, must be computed based on the total number of children to whom that parents owe a duty of support if the parent is actually supporting them. When the court calculates the parent's obligation to children from other relationships the court must consider the income of the other parent who also owes a duty of support to those children, but only if that parent resides in the same household as the parent before the court.

Accounting of expenses.

A parent making the transfer payment may file a motion for an accounting of how the child support is being spent by the receiving parent.

Before a parent may file the motion, the parent must meet the following threshold:

1. The parent must be obligated to pay at least 50 percent of the basic child support obligation;
2. The parent must be obligated to pay at least \$300 per month for one child; at least \$500 per month for two children; and at least \$600 per month for three or more children; and
3. The parent must be current in all child support payments.

The moving parent must file an affidavit that demonstrates that the parent receiving support is not spending a substantial portion of the support for the direct or indirect benefit of the child.

If the court finds at a preliminary hearing on the motion that there is reasonable cause to believe that the parent receiving support is not spending a substantial portion of the support for the direct or indirect benefit of the child, the court may set a show cause hearing on the motion or order the parents to mediate any dispute. The parent receiving support may be required to produce documentation at the show cause hearing to help the court resolve the dispute. The parent may not be required to produce documentation for expenditures for more than six months prior to the time the motion is filed.

If the court finds at the preliminary hearing that the motion does not establish reasonable cause to believe that a substantial portion of the support is not directly or indirectly benefiting the child, the court shall order the parent filing the motion to pay costs and statutory attorneys' fees to the nonmoving parent.

The court may award reasonable attorneys' fees to the nonmoving parent if the court determines that the motion is brought in bad faith, for harassment, or frivolously, or was based on material statements of fact that were false.

If the court finds that the parent is not spending the support for the direct or indirect benefit of the child, the court must order the parent to spend the support on behalf of the child. The court may order the payments to be paid to a protective payee for the child's benefit.

A motion for an accounting of child support may not be filed more than once a year.

Education trust account.

The court may order that a specific portion of the child support payment be placed in an education trust account if the combined monthly net income of the parents exceeds \$5,000. The money may only be used for the purpose of educational expenses incurred for the child to attend an accredited educational institution. The court may not create an education trust account unless the court finds that diversion of funds to the account will not affect the basic needs of the child or the child's ability to sustain a reasonable standard of living.

Day-care and special child rearing expenses.

An obligor who pays for day-care or other special expenses that are not actually incurred is entitled to reimbursement from the obligee. Reimbursement may be a credit against future payments if both parties agree.

Mediation of disputes.

Modification of child support is subject to binding arbitration, except when one of the parties requests that the issue be handled by mediation, or both parties agree to resolve the dispute under normal court procedures.

Substitute Bill Compared to Original Bill: Reference to the parents' resources is added back into the intent section. Bonuses are added back into consideration of gross income. Technical amendments are made.

Current law's requirement is restored that voluntary retirement payments must be actually made before they can be deducted from gross income. An additional definition of permissible business deductions is added. A provision is added providing that spousal maintenance may only be deducted if it is paid to a former ex-spouse.

A higher standard of proof regarding imputation of income is stricken, and current law is restored. A provision in the underlying bill is stricken regarding consideration of the custodial spouse's new spouse's income. A definition of what constitutes nonrecurring income is added. A provision is added that a substantial debt that forms the basis for a deduction from gross income must be a community debt.

The deviation provision granting obligors a deviation for support of children from other relationships is amended to delete stepchildren. A provision is added deleting ordinary health care expenses removed from the economic table, and the table is lowered by 5 percent accordingly. A provision is added to provide that an obligor is entitled to reimbursement if the obligor pays for day-care or other extraordinary expenses that are not actually incurred.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: A variety of provisions in the child support schedule are unfair and result in child support awards that are too high. Income from overtime, some second jobs, and bonuses should be excluded from gross income. The court should not be allowed to impute income to a parent who receives unemployment or disability benefits. If a parent is ordered to pay a significant debt incurred before the marriage dissolved, the parent should be entitled to a deviation to reduce support.

Courts rarely grant residential credits to an obligor under the current standard. Residential credits should be granted on a day-per-day basis. If the obligor has children from other relationships, those children should be counted in the calculation for the obligor's support obligation. The parent who receives support should be required to account for the expenditures to ensure that the support is actually being spent on the child. Excessive child support demands restrict the parents' opportunity to spend time with their children, strains the parents' relationship with the children, and reduces compliance with payment of support.

Testimony Against: The court should be able to consider all sources of income to a parent, including overtime, second jobs, and bonuses. Excluding various sources of income from the gross income calculation increases the opportunity for deception.

Current law does not prevent the court from deducting legitimate business expenses. Only including income of a new spouse of the custodial parent and not the noncustodial parent for purposes of a deviation is unbalanced. Granting a day-for-day residential credit is unrealistic and does not recognize that the custodial parent has fixed expenses that won't be reduced when the child is staying with the noncustodial parent. Removal of consideration of all income may jeopardize federal funding.

The Division of Child Support will have difficulty administering the education trust account provisions.

Testified: Bob Hoyden, and Michele Delo, Washington Families for Noncustodial Rights (pro); Ken Valz, citizen (pro); Jeff Sherrer, citizen (pro); Charles Bright, citizen (pro); Genie and Dave Saline, Washington Families for Noncustodial Rights (pro); Geoff Fanning, Washington Families for Noncustodial Rights (pro); Jamaica Filgo, Washington Families for Noncustodial Rights (pro); Doug Martin, citizen (pro); Howard Langeveld, Washington Families for Noncustodial Rights (pro); Charles Accetturo, citizen (pro); Gary Marsell, Washington Families for Noncustodial Rights (pro); Nancy Hawkins, Northwest Women's Law Center (con); Meg Sollenberger, Department of Social and Health Services, Division of Child Support

(con); Charles Snyder, Washington Superior Court Judges Association (con); Lonnie Johns-Brown, Washington State Chapter, National Organization of Women (con); and Tony Lee, Children's Alliance (con).