

2 ESB 5086 - S AMD - 602
3 By Senator Roach

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

7 NEW SECTION. **Sec. 1.** The legislature recognizes the need and
8 value of postsecondary educational support for children of both married
9 and divorced families. The legislature encourages all parents to
10 assist their children, both financially and emotionally, with their
11 postsecondary education. The legislature declares determining the
12 amount of, if any, postsecondary support to be provided adult children
13 is primarily the responsibility of the parents regardless of their
14 marital status and should be the subject of judicial consideration only
15 when extraordinary circumstances exist. Consequently, the legislature
16 intends to modify the ruling in *Childers v. Childers*, 84 Wn. 2d 592
17 (1978) and cases which follow the *Childers* precedent.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.09 RCW
19 to read as follows:

20 A court shall not order either or both parents to pay support for
21 postsecondary education of a child over eighteen years of age unless
22 the court finds there are exceptional medical circumstances such as the
23 existence of the child's developmental or chronic functional
24 disability, in which case the court may enter an order for such amount
25 and under such circumstances as are reasonable, considering the
26 circumstances of all parties.

27 **Sec. 3.** RCW 26.09.170 and 1997 c 58 s 910 are each amended to read
28 as follows:

29 (1) Except as otherwise provided in subsection (7) of RCW
30 26.09.070, the provisions of any decree respecting maintenance or
31 support may be modified: (a) Only as to installments accruing
32 subsequent to the petition for modification or motion for adjustment
33 except motions to compel court-ordered adjustments, which shall be
34 effective as of the first date specified in the decree for implementing

1 the adjustment; and, (b) except as otherwise provided in subsections
2 (4), (5), (8), and (9) of this section, only upon a showing of a
3 substantial change of circumstances. The provisions as to property
4 disposition may not be revoked or modified, unless the court finds the
5 existence of conditions that justify the reopening of a judgment under
6 the laws of this state.

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

11 (3) Unless otherwise agreed in writing or expressly provided in the
12 decree, provisions for the support of a child are terminated by
13 emancipation of the child or by the death of the parent obligated to
14 support the child.

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

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

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

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

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

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

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

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

34 (6) An obligor's voluntary unemployment or voluntary
35 underemployment, by itself, is not a substantial change of
36 circumstances.

37 (7) The department of social and health services may file an action
38 to modify an order of child support if public assistance money is being
39 paid to or for the benefit of the child and the child support order is

1 twenty-five percent or more below the appropriate child support amount
2 set forth in the standard calculation as defined in RCW 26.19.011 and
3 reasons for the deviation are not set forth in the findings of fact or
4 order. The determination of twenty-five percent or more shall be based
5 on the current income of the parties and the department shall not be
6 required to show a substantial change of circumstances if the reasons
7 for the deviations were not set forth in the findings of fact or order.

8 (8)(a) All child support decrees may be adjusted once every twenty-
9 four months based upon changes in the income of the parents without a
10 showing of substantially changed circumstances. Either party may
11 initiate the adjustment by filing a motion and child support
12 worksheets.

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

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

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

30 (e) The department of social and health services may file an action
31 at any time to modify an order of child support in cases of
32 substantially changed circumstances if public assistance money is being
33 paid to or for the benefit of the child. The determination of the
34 existence of substantially changed circumstances by the department that
35 lead to the filing of an action to modify the order of child support is
36 not binding upon the court.

37 (9) An order of child support may be adjusted twenty-four months
38 from the date of the entry of the decree or the last adjustment or

1 modification, whichever is later, based upon changes in the economic
2 table or standards in chapter 26.19 RCW.

3 (10) A party may petition for modification of an existing order to
4 pay postsecondary child support based on the repeal of RCW 26.19.090
5 under chapter . . . , Laws of 1998 (this act) without showing a
6 substantial change of circumstances. In the case of an existing order
7 where the son or daughter is currently enrolled in an institution
8 providing postsecondary education, the modification order shall be
9 delayed one year or until the enrollment ends, whichever occurs first,
10 unless the petitioner makes a showing of a substantial change of
11 circumstances.

12 **Sec. 4.** RCW 26.09.225 and 1991 sp.s. c 28 s 3 are each amended to
13 read as follows:

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

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

23 (3) Educational records of postsecondary educational institutions
24 are limited to enrollment and academic records necessary to determine,
25 establish, or continue support ordered pursuant to RCW 26.19.090 before
26 the effective date of this section.

27 **Sec. 5.** RCW 26.18.210 and 1990 1st ex.s. c 2 s 22 are each amended
28 to read as follows:

29 (1) The administrator for the courts shall develop a child support
30 order summary report form to provide for the reporting of summary
31 information in every case in which a child support order is entered or
32 modified either judicially or administratively. The administrator for
33 the courts shall attempt to the greatest extent possible to make the
34 form simple and understandable by the parties. The form shall indicate
35 the following:

- 36 (a) The county in which the order was entered and the cause number;
37 (b) Whether it was a judicial or administrative order;

1 (c) Whether the order is an original order or from a modification;
2 (d) The number of children of the parties and the children's ages;
3 (e) The combined monthly net income of parties;
4 (f) The monthly net income of the father as determined by the
5 court;
6 (g) The monthly net income of the mother as determined by the
7 court;
8 (h) The basic child support obligation for each child as determined
9 from the economic table;
10 (i) Whether or not the court deviated from the child support for
11 each child;
12 (j) The reason or reasons stated by the court for the deviation;
13 (k) The amount of child support after the deviation;
14 (l) Any amount awarded for day care;
15 (m) Any other extraordinary amounts in the order;
16 (n) (~~Any amount ordered for postsecondary education;~~
17 ~~(o))~~) The total amount of support ordered;
18 (~~(p))~~) (o) In the case of a modification, the amount of support in
19 the previous order;
20 (~~(q))~~) (p) If the change in support was in excess of thirty
21 percent, whether the change was phased in;
22 (~~(r))~~) (q) The amount of the transfer payment ordered;
23 (~~(s))~~) (r) Which parent was ordered to make the transfer payment;
24 and
25 (~~(t))~~) (s) The date of the entry of the order.
26 (2) The administrator for the courts shall make the form available
27 to the parties.

28 **Sec. 6.** RCW 26.19.035 and 1992 c 229 s 6 are each amended to read
29 as follows:

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

32 (a) In each county of the state;

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

35 (c) In all proceedings in which child support is determined or
36 modified;

37 (d) In setting temporary and permanent support;

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

3 (f) In addition to proceedings in which child support is determined
4 for minors, to adult children who are dependent on their parents and
5 for whom support is ordered pursuant to RCW 26.09.100. A court shall
6 not order either or both parents to pay support for postsecondary
7 education of a child over eighteen years of age.

8 The provisions of this chapter for determining child support and
9 reasons for deviation from the standard calculation shall be applied in
10 the same manner by the court, presiding officers, and reviewing
11 officers.

12 The child support schedule shall not be utilized to order
13 postsecondary educational support of a child.

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

25 (3) **Completion of worksheets.** Worksheets in the form developed by
26 the office of the administrator for the courts shall be completed under
27 penalty of perjury and filed in every proceeding in which child support
28 is determined. The court shall not accept incomplete worksheets or
29 worksheets that vary from the worksheets developed by the office of the
30 administrator for the courts.

31 (4) **Court review of the worksheets and order.** The court shall
32 review the worksheets and the order setting support for the adequacy of
33 the reasons set forth for any deviation or denial of any request for
34 deviation and for the adequacy of the amount of support ordered. Each
35 order shall state the amount of child support calculated using the
36 standard calculation and the amount of child support actually ordered.
37 Worksheets shall be attached to the decree or order or if filed
38 separately shall be initialed or signed by the judge and filed with the
39 order.

1 **Sec. 7.** RCW 26.19.075 and 1997 c 59 s 5 are each amended to read
2 as follows:

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

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

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

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

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

15 (iv) Gifts;

16 (v) Prizes;

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

20 (vii) Extraordinary income of a child; or

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

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

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

34 (i) Extraordinary debt not voluntarily incurred;

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

37 (iii) Special needs of disabled children;

1 (iv) Special medical, educational, or psychological needs of the
2 children. Special educational needs shall not be construed to include
3 postsecondary education of a child; or

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

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

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

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

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

31 (iii) When considering a deviation from the standard calculation
32 for children from other relationships, the court may consider only
33 other children to whom the parent owes a duty of support. The court
34 may consider court-ordered payments of child support for children from
35 other relationships only to the extent that the support is actually
36 paid.

37 (iv) When the court has determined that either or both parents have
38 children from other relationships, deviations under this section shall
39 be based on consideration of the total circumstances of both

1 households. All child support obligations paid, received, and owed for
2 all children shall be disclosed and considered.

3 (2) All income and resources of the parties before the court, new
4 spouses, and other adults in the households shall be disclosed and
5 considered as provided in this section. The presumptive amount of
6 support shall be determined according to the child support schedule.
7 Unless specific reasons for deviation are set forth in the written
8 findings of fact and are supported by the evidence, the court shall
9 order each parent to pay the amount of support determined by using the
10 standard calculation.

11 (3) The court shall enter findings that specify reasons for any
12 deviation or any denial of a party's request for any deviation from the
13 standard calculation made by the court. The court shall not consider
14 reasons for deviation until the court determines the standard
15 calculation for each parent.

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

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

21 NEW SECTION. Sec. 8. RCW 26.19.090 and 1991 sp.s. c 28 s 7 & 1990
22 1st ex.s. c 2 s 9 are each repealed."

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24 By Senator Roach

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26 On page 1, line 2 of the title, after "children;" strike the
27 remainder of the title and insert "amending RCW 26.09.170, 26.09.225,
28 26.18.210, 26.19.035, and 26.19.075; adding a new section to chapter
29 26.09 RCW; creating a new section; and repealing RCW 26.19.090."

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