

HOUSE BILL REPORT

HB 1670

As Reported By House Committee On:

Law & Justice

Title: An act relating to restricting child support for postsecondary education of adult children.

Brief Description: Restricting child support for postsecondary education of adult children.

Sponsors: Representatives Sheahan, Lambert, Appelwick, Romero, Keiser, Wolfe, Mitchell, Gombosky, Blalock and Scott.

Brief History:

Committee Activity:

Law & Justice: 2/25/97, 3/5/97 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney; Lambert; Lantz; Radcliff and Skinner.

Minority Report: Do not pass. Signed by 2 members: Representatives Carrell and Sherstad.

Staff: Trudes Hutcheson (786-7384).

Background: A court generally establishes a child support order using Washington's child support schedule. Unless the parents agree in writing or the court decree orders otherwise, provisions for child support are terminated by emancipation of the child. Emancipation generally occurs when the child reaches majority, or earlier if some event terminates the child's economic dependence. In Washington, the age of majority is 18.

Washington's current child support schedule gives the court the discretion to order parents to pay postsecondary educational support. This is probably a codification of early case law. In 1978, the state supreme court held that judges have the discretion

to order a parent to pay postsecondary educational support when the child is over the age of 18 but remains dependent. *Childers v. Childers*.

The child support schedule establishes factors the court must consider when determining whether postsecondary educational support should be ordered and how long it should continue. Those factors are (1) the age of the child; (2) the child's needs; (3) the expectations of the parties for their children when the parents were together; (4) the child's prospects, desires, aptitudes, abilities, or disabilities; (5) the nature of the education sought; (6) the parents' level of education, standard of living, and current and future resources; and (7) the amount and type of support the child would have been afforded had the parents stayed together.

The court cannot order the payment of postsecondary educational expenses beyond the child's 23rd birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities. The child has the obligation to enroll in an accredited academic or vocational school, actively pursue a course of study, be in good academic standing, and make all academic records and grades available to both parents. Payments should be made directly to the educational institution if feasible, or to the child.

Summary of Substitute Bill: The court may not order either or both parents to pay postsecondary educational support if both parents agree not to pay. The court may not enter an initial order of child support if the child is not dependent at the time the petition is filed.

If the parents have other dependent children, the court shall ensure that adequate provision is made for the dependent children in determining whether and for how long to award postsecondary educational support. Unless the parents agree otherwise, the court may not order postsecondary educational support beyond the child's 23rd birthday, beyond the child's completion of a four-year undergraduate degree, or during periods of nonenrollment. Regularly scheduled summer and vacation breaks are not periods of nonenrollment.

Postsecondary educational support may not exceed the highest cost for tuition, books, fees, education supplies, and dormitory room and board (when the child will actually incur room and board expenses) for a resident student attending a state public university. The court may order postsecondary educational support in excess of that amount if (a) the parents agree; or (b) the child wishes to attend a private university and the parents have agreed to that decision, or either or both parents attended a private university, and either or both parents have the financial capability to pay for an education at a private university.

The child has an obligation to seek financial aid, and the court must consider any aid the child obtains when determining postsecondary educational support.

The court has the discretion in apportioning the support between the parents on the basis of their net income. The court may adjust the support to consider the child's own earnings that are in excess of the amount necessary to support the child during periods of nonenrollment. The court may also require the child to contribute to his or her own educational expenses depending upon the child's abilities and academic schedule.

The court may require the child to notify each parent in writing about the child's academic plans, progress, and changes. The court may terminate or suspend postsecondary educational support if the child willfully fails to provide the required information about the child's academic records, grades, and other records.

The child is required to complete the period of enrollment for which postsecondary educational support has been paid. The parents have no further obligation to pay postsecondary educational support until the child makes up the incomplete period.

The provisions apply prospectively only.

Substitute Bill Compared to Original Bill: Under the original bill, the court cannot order postsecondary educational support if the parents agree not to pay or if the child is emancipated. The court cannot award an amount in excess of the costs of in-state tuition and fees unless (a) the parties agree otherwise; or (b) the child wants to attend a private university and the parents agree, or one or both parents attended a private university, or one or both have the financial capability to pay for it. Under the original bill, the court is required to adjust the support amount based on financial aid available to the child. The court is required to apportion the support between the parents in the same manner as the basic child support. The original bill also required the court to take into consideration minor children to whom the parents have a duty to support under a child support order.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill represents a rational compromise between prohibiting postsecondary educational child support and current law. It addresses some problems but still allows some room for discretion. The child's academic hopes should not be taken away just because a marriage fails. Children of divorced parents are more at a disadvantage than children of married parents.

Testimony Against: This bill simply adds more criteria to current law, and courts will not follow these criteria. It is too cumbersome and does not give the parent the opportunity to make his or her own decisions with respect to the child's education.

Testified: Representative Wolfe, prime sponsor; Representative Lambert (pro); Judy Turpin, Northwest Women's Law Center (pro); Kurt Wharton, citizen (con); Bob Hoyden, Washington Families for Noncustodial Rights (con); George Le Clerc, Children's Alliance (pro); and Sandra Sebbas, citizen (con).