

# HOUSE BILL REPORT

## ESB 5086

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### As Reported By House Committee On:

Law & Justice

**Title:** An act relating to prohibiting mandatory child support for postsecondary education of adult children.

**Brief Description:** Prohibiting mandatory child support for postsecondary education of adult children.

**Sponsors:** Senators Roach, McDonald, Schow, Swecker, Johnson, McCaslin, Oke and Long.

### Brief History:

#### Committee Activity:

Law & Justice: 3/28/97, 4/4/97 [DPA].

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## HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Radcliff; Sherstad and Skinner.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney; Lambert and Lantz.

**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 lists the following factors the court must consider when determining whether postsecondary educational support should be ordered and how long it should continue: (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.

Except under certain circumstances, a parent may seek to modify an existing child support order only upon a showing of a substantial change of circumstances.

**Summary of Amended 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.

**Amended Bill Compared to Engrossed Bill:** The engrossed bill prohibited postsecondary educational support of a child over the age of 18 unless the court finds there are exceptional medical circumstances. The engrossed bill repealed the existing postsecondary educational support provisions in the Revised Code of Washington.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The current law is discriminatory to noncustodial divorced parents, because it treats them differently than married parents of adult college-bound children. The current system does not allow the parent to negotiate certain issues with the child, such as the child's living expenses and the child's own contributions. Parents are not able to hold the children financially accountable, and children who don't have to work through college will have no work ethic. Parents would rather give their support out of love and not by a court order. Children of divorced parents are not victims.

**Testimony Against:** Children of divorced parents have lower academic achievement and lower performance in school. The law should focus on the children, and it

should be a tool to help children succeed through education. The current law allows parents to go to court, and the judge hears both sides of the parents' stories. Laws are necessary to require this type of support because of the level of conflict between divorced parents. It is not fair to put children in years of debt to pay for their education when the parents are able to help out.

**Testified:** Senator Roach, prime sponsor; Susan Dovre, citizen (pro); Ronald Olson, citizen (pro); Dick Dary, citizen (pro); Bob Hoyden, Washington Families for Noncustodial Rights (pro); Mike Kress, citizen (pro); Robin Yates, citizen (pro); Rosie McKinlay, citizen (pro); Frank Shaw, citizen (pro); George LeClair, Children's Alliance (con); Patricia Morgan, Washington State Bar Association, Family Law Section (con); Lisa Addicott, Association for Child Enforcement of Support (ACES) (con); Judy Turpin, American Association of University Women and Northwest Women's Law Center (con); and Paul Oldenkamp, Association for Child Enforcement of Support (ACES) (con).