
SENATE BILL 6640

State of Washington

61st Legislature

2010 Regular Session

By Senators Hargrove and Stevens; by request of Department of Social and Health Services

Read first time 01/20/10. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to updating provisions concerning the modification,
2 review, and adjustment of child support orders to improve access to
3 justice and to ensure compliance with federal requirements; and
4 amending RCW 26.09.170 and 26.09.175.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 26.09.170 and 2008 c 6 s 1017 are each amended to read
7 as follows:

8 (1) Except as otherwise provided in (~~subsection (7) of~~) RCW
9 26.09.070(7), the provisions of any decree respecting maintenance or
10 support may be modified: (a) Only as to installments accruing
11 subsequent to the petition for modification or motion for adjustment
12 except motions to compel court-ordered adjustments, which shall be
13 effective as of the first date specified in the decree for implementing
14 the adjustment; and, (b) except as otherwise provided in subsections
15 (5), (6), (9), and (10) of this section, only upon a showing of a
16 substantial change of circumstances. The provisions as to property
17 disposition may not be revoked or modified, unless the court finds the
18 existence of conditions that justify the reopening of a judgment under
19 the laws of this state.

1 (2) Unless otherwise agreed in writing or expressly provided in the
2 decree the obligation to pay future maintenance is terminated upon the
3 death of either party or the remarriage of the party receiving
4 maintenance or registration of a new domestic partnership of the party
5 receiving maintenance.

6 (3) Unless otherwise agreed in writing or expressly provided in the
7 decree, provisions for the support of a child are terminated by
8 emancipation of the child or by the death of the parent obligated to
9 support the child.

10 (4) Unless expressly provided by an order of the superior court or
11 a court of comparable jurisdiction, the support provisions of the order
12 are terminated upon the marriage or registration of a domestic
13 partnership to each other of parties to a paternity order, or upon
14 remarriage or registration of a domestic partnership to each other of
15 parties to a decree of dissolution. The remaining provisions of the
16 order, including provisions establishing paternity, remain in effect.

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

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

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

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

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

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

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

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

36 (7) An obligor's voluntary unemployment or voluntary
37 underemployment, by itself, is not a substantial change of
38 circumstances.

1 (8)(a) The department of social and health services may file an
2 action to modify or adjust an order of child support if public
3 assistance money is being paid to or for the benefit of the child (~~and
4 the child support order is twenty five percent or more below the
5 appropriate child support amount set forth in the standard calculation
6 as defined in RCW 26.19.011 and reasons for the deviation are not set
7 forth in the findings of fact or order. The determination of twenty-
8 five percent or more shall be based on the current income of the
9 parties and the department shall not be required to show a substantial
10 change of circumstances if the reasons for the deviations were not set
11 forth in the findings of fact or order~~).

12 (b) The department of social and health services may file an action
13 to modify or adjust an order of child support in a nonassistance case
14 when services have been requested by another state or jurisdiction.

15 (c) The department of social and health services may also file an
16 action to modify or adjust an order of child support in a nonassistance
17 case when services have been requested by a party to the order, and the
18 department has determined that the case meets the review criteria as
19 set forth by rule.

20 (d) The department has rule-making authority to enact rules
21 consistent with 42 U.S.C. Sec. 666(a)(10)(C) and to implement
22 regulations required under Parts 45 C.F.R. 302, 303, 304, 305, and 308.

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

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

33 (c) If, pursuant to (a) of this subsection or subsection (10) of
34 this section, the court adjusts or modifies a child support obligation
35 by more than thirty percent and the change would cause significant
36 hardship, the court may implement the change in two equal increments,
37 one at the time of the entry of the order and the second six months

1 from the entry of the order. Twenty-four months must pass following
2 the second change before a motion for an adjustment under (a) of this
3 subsection may be filed.

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

8 (e) The department of social and health services may file an action
9 at any time to modify an order of child support in cases of
10 substantially changed circumstances ((if)) whether or not public
11 assistance money is being paid to or for the benefit of the child. The
12 determination of the existence of substantially changed circumstances
13 by the department that lead to the filing of an action to modify the
14 order of child support is not binding upon the court.

15 (10) An order of child support may be adjusted twenty-four months
16 from the date of the entry of the decree or the last adjustment or
17 modification, whichever is later, based upon changes in the economic
18 table or standards in chapter 26.19 RCW.

19 (11) If testimony other than affidavit is required in any
20 proceeding under this section, a court of this state shall permit a
21 party or witness to be deposed or to testify under penalty of perjury
22 by telephone, audiovisual means, or other electronic means, unless good
23 cause is shown.

24 **Sec. 2.** RCW 26.09.175 and 2002 c 199 s 2 are each amended to read
25 as follows:

26 (1) A proceeding for the modification of an order of child support
27 shall commence with the filing of a petition and worksheets. The
28 petition shall be in the form prescribed by the administrator for the
29 courts. There shall be a fee of twenty dollars for the filing of a
30 petition for modification of dissolution.

31 (2)(a) The petitioner shall serve upon the other party the summons,
32 a copy of the petition, and the worksheets in the form prescribed by
33 the administrator for the courts. If the modification proceeding is
34 the first action filed in this state, service shall be made by personal
35 service. If the decree to be modified was entered in this state,
36 service shall be by personal service or by any form of mail requiring
37 a return receipt. Proof of service shall be filed with the court.

1 (b) If the support obligation has been assigned to the state
2 pursuant to RCW 74.20.330 or the state has a subrogated interest under
3 RCW 74.20A.030, the summons, petition, and worksheets shall also be
4 served on the attorney general; except that notice shall be given to
5 the office of the prosecuting attorney for the county in which the
6 action is filed in lieu of the office of the attorney general in those
7 counties and in the types of cases as designated by the office of the
8 attorney general by letter sent to the presiding superior court judge
9 of that county. ~~((Proof of service shall be filed with the court.))~~

10 ~~((The))~~ (a) As authorized under RCW 26.09.170, the department
11 of social and health services may file an action to modify an order of
12 child support if public assistance money is being paid to or for the
13 benefit of the child.

14 (b) The department of social and health services may file an action
15 to modify an order of child support in a nonassistance case when
16 services have been requested by another state or jurisdiction, and the
17 department has determined that the case meets the review criteria as
18 set forth by rule.

19 (c) The department of social and health services may also file an
20 action to modify an order of child support in a nonassistance case when
21 services have been requested by a party to the order, and the
22 department has determined that the case meets the review criteria as
23 set forth by rule.

24 (d) The department has rule-making authority to enact rules
25 consistent with 42 U.S.C. Sec. 666(a)(10)(C) and to implement
26 regulations required under Parts 45 C.F.R. 302, 303, 304, 305, and 308.

27 (4) A responding party's answer and worksheets shall be served and
28 the answer filed within twenty days after service of the petition or
29 sixty days if served out of state. ~~((The))~~ A responding party's
30 failure to file an answer within the time required shall result in
31 entry of a default judgment for the petitioner.

32 ~~((+4))~~ (5) At any time after responsive pleadings are filed,
33 ~~((either))~~ any party may schedule the matter for hearing.

34 ~~((+5))~~ (6) Unless ~~((both))~~ all parties stipulate to arbitration or
35 the presiding judge authorizes oral testimony pursuant to subsection
36 ~~((+6))~~ (7) of this section, a petition for modification of an order of
37 child support shall be heard by the court on affidavits, the petition,
38 answer, and worksheets only.

1 (~~(6)~~) (7) A party seeking authority to present oral testimony on
2 the petition to modify a support order shall file an appropriate motion
3 not later than ten days after the time of notice of hearing.
4 Affidavits and exhibits setting forth the reasons oral testimony is
5 necessary to a just adjudication of the issues shall accompany the
6 petition. The affidavits and exhibits must demonstrate the
7 extraordinary features of the case. Factors which may be considered
8 include, but are not limited to: (a) Substantial questions of
9 credibility on a major issue; (b) insufficient or inconsistent
10 discovery materials not correctable by further discovery; or (c)
11 particularly complex circumstances requiring expert testimony.

12 (8) If testimony other than affidavit is required in any proceeding
13 under this section, a court of this state shall permit a party or
14 witness to be deposed or to testify under penalty of perjury by
15 telephone, audiovisual means, or other electronic means, unless good
16 cause is shown.

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