
HOUSE BILL 2504

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Klippert, Haler, Overstreet, and Condotta

Read first time 01/20/14. Referred to Committee on Judiciary.

1 AN ACT Relating to prohibiting mandatory child support for
2 postsecondary education of adult children; amending RCW 26.09.170,
3 26.09.225, 26.19.035, and 26.19.075; adding a new section to chapter
4 26.09 RCW; creating a new section; and repealing RCW 26.19.090.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature recognizes the need and
7 value of postsecondary educational support for children of both married
8 and divorced families. The legislature encourages all parents to
9 assist their children, both financially and emotionally, with their
10 postsecondary education. The legislature declares that the
11 determination of a child's best interest with regard to postsecondary
12 educational support shall be the sole and exclusive prerogative of that
13 child's parents and, further, that it is the inalienable right of
14 parents to structure the kind, amount, and timing of such support,
15 based upon the parents' singular and superior knowledge of their
16 child's individuality, in a way that maximizes the child's individual
17 potential. The legislature hereby expressly disapproves of the ruling
18 in *Childers v. Childers*, 89 Wn.2d 592 (1978), and cases that have

1 followed the ruling in *Childers v. Childers*, as contrary to sound
2 public policy with regard to postsecondary educational support.

3 (2) Therefore, the legislature finds that ordering divorced parents
4 to financially assist toward postsecondary education is unduly
5 burdensome and infringes on the right of the divorced parent to choose
6 the level of assistance they would otherwise provide if they remained
7 married.

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

10 A court may not order either or both parents to pay support for
11 postsecondary education of a child over eighteen years of age.

12 **Sec. 3.** RCW 26.09.170 and 2010 c 279 s 1 are each amended to read
13 as follows:

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

25 (2) Unless otherwise agreed in writing or expressly provided in the
26 decree the obligation to pay future maintenance is terminated upon the
27 death of either party or the remarriage of the party receiving
28 maintenance or registration of a new domestic partnership of the party
29 receiving maintenance.

30 (3) Unless otherwise agreed in writing or expressly provided in the
31 decree, provisions for the support of a child are terminated by
32 emancipation of the child or by the death of the parent obligated to
33 support the child.

34 (4) Unless expressly provided by an order of the superior court or
35 a court of comparable jurisdiction, provisions for the support of a
36 child are terminated upon the marriage or registration of a domestic

1 partnership to each other of parties to a paternity order, or upon the
2 remarriage or registration of a domestic partnership to each other of
3 parties to a decree of dissolution. The remaining provisions of the
4 order, including provisions establishing paternity, remain in effect.

5 (5)(a) A party to an order of child support may petition for a
6 modification based upon a showing of substantially changed
7 circumstances at any time.

8 (b) An obligor's voluntary unemployment or voluntary
9 underemployment, by itself, is not a substantial change of
10 circumstances.

11 (6) An order of child support may be modified one year or more
12 after it has been entered without a showing of substantially changed
13 circumstances:

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

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

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

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

25 (7)(a) If twenty-four months have passed from the date of the entry
26 of the order or the last adjustment or modification, whichever is
27 later, the order may be adjusted without a showing of substantially
28 changed circumstances based upon:

29 (i) Changes in the income of the parents; or

30 (ii) Changes in the economic table or standards in chapter 26.19
31 RCW.

32 (b) Either party may initiate the adjustment by filing a motion and
33 child support worksheets.

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

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

4 (8)(a) The department of social and health services may file an
5 action to modify or adjust an order of child support if public
6 assistance money is being paid to or for the benefit of the child and
7 the child support order is at least twenty-five percent above or below
8 the appropriate child support amount set forth in the standard
9 calculation as defined in RCW 26.19.011 and reasons for the deviation
10 are not set forth in the findings of fact or order.

11 (b) The department of social and health services may file an action
12 to modify or adjust an order of child support in a nonassistance case
13 if:

14 (i) The child support order is at least twenty-five percent above
15 or below the appropriate child support amount set forth in the standard
16 calculation as defined in RCW 26.19.011;

17 (ii) The department has determined the case meets the department's
18 review criteria; and

19 (iii) A party to the order or another state or jurisdiction has
20 requested a review.

21 (c) The determination of twenty-five percent or more shall be based
22 on the current income of the parties and the department shall not be
23 required to show a substantial change of circumstances if the reasons
24 for the deviations were not set forth in the findings of fact or order.

25 (9) The department of social and health services may file an action
26 to modify or adjust an order of child support under subsections (5)
27 through (7) of this section if:

28 (a) Public assistance money is being paid to or for the benefit of
29 the child;

30 (b) A party to the order in a nonassistance case has requested a
31 review; or

32 (c) Another state or jurisdiction has requested a modification of
33 the order.

34 (10) If testimony other than affidavit is required in any
35 proceeding under this section, a court of this state shall permit a
36 party or witness to be deposed or to testify under penalty of perjury
37 by telephone, audiovisual means, or other electronic means, unless good
38 cause is shown.

1 (11) After the effective date of this section, a party may petition
2 for modification of an existing order to pay postsecondary child
3 support ordered under RCW 26.19.090 without showing a substantial
4 change of circumstances.

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

7 (1) Each parent shall have full and equal access to the education
8 and health care records of the child absent a court order to the
9 contrary. Neither parent may veto the access requested by the other
10 parent.

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

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

20 **Sec. 5.** RCW 26.19.035 and 2005 c 282 s 36 are each amended to read
21 as follows:

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

24 (a) In each county of the state;

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

27 (c) In all proceedings in which child support is determined or
28 modified;

29 (d) In setting temporary and permanent support;

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

32 (f)(i) In addition to proceedings in which child support is
33 determined for minors, to adult children who are dependent on their
34 parents and for whom support is ordered pursuant to RCW 26.09.100.

35 (ii) A court may not order either or both parents to pay support
36 for postsecondary education of a child over eighteen years of age.

1 (iii) The provisions of this chapter for determining child support
2 and reasons for deviation from the standard calculation shall be
3 applied in the same manner by the court, presiding officers, and
4 reviewing officers.

5 (iv) The child support schedule may not be utilized to order
6 postsecondary educational support of a child.

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

18 **(3) Completion of worksheets.** Worksheets in the form developed by
19 the administrative office of the courts shall be completed under
20 penalty of perjury and filed in every proceeding in which child support
21 is determined. The court shall not accept incomplete worksheets or
22 worksheets that vary from the worksheets developed by the
23 administrative office of the courts.

24 **(4) Court review of the worksheets and order.** The court shall
25 review the worksheets and the order setting support for the adequacy of
26 the reasons set forth for any deviation or denial of any request for
27 deviation and for the adequacy of the amount of support ordered. Each
28 order shall state the amount of child support calculated using the
29 standard calculation and the amount of child support actually ordered.
30 Worksheets shall be attached to the decree or order or if filed
31 separately shall be initialed or signed by the judge and filed with the
32 order.

33 **Sec. 6.** RCW 26.19.075 and 2009 c 84 s 4 are each amended to read
34 as follows:

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

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

3 (i) Income of a new spouse or new domestic partner if the parent
4 who is married to the new spouse or in a partnership with a new
5 domestic partner is asking for a deviation based on any other reason.
6 Income of a new spouse or new domestic partner is not, by itself, a
7 sufficient reason for deviation;

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

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

13 (iv) Gifts;

14 (v) Prizes;

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

18 (vii) Extraordinary income of a child;

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

22 (ix) Income that has been excluded under RCW 26.19.071(4)((+h+))
23 (i) if the person earning that income asks for a deviation for any
24 other reason.

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

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

35 (i) Extraordinary debt not voluntarily incurred;

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

38 (iii) Special needs of disabled children;

1 (iv) Special medical, educational, or psychological needs of the
2 children. Special educational needs may 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

1 be based on consideration of the total circumstances of both
2 households. All child support obligations paid, received, and owed for
3 all children shall be disclosed and considered.

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

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

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

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

22 NEW SECTION. **Sec. 7.** RCW 26.19.090 (Standards for postsecondary
23 educational support awards) and 1991 sp.s. c 28 s 7 & 1990 1st ex.s. c
24 2 s 9 are each repealed.

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