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HOUSE BILL 1694

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Kirby and Goodman

Read first time 02/06/13. Referred to Committee on Judiciary.

1            AN ACT Relating to establishing a residential schedule adjustment  
2 for determinations of child support obligations; amending RCW  
3 26.19.075, 26.09.170, and 26.19.050; and adding new sections to chapter  
4 26.19 RCW.

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

6            **Sec. 1.** RCW 26.19.075 and 2009 c 84 s 4 are each amended to read  
7 as follows:

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

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

12            (i) Income of a new spouse or new domestic partner if the parent  
13 who is married to the new spouse or in a partnership with a new  
14 domestic partner is asking for a deviation based on any other reason.  
15 Income of a new spouse or new domestic partner is not, by itself, a  
16 sufficient reason for deviation;

17            (ii) Income of other adults in the household if the parent who is  
18 living with the other adult is asking for a deviation based on any

1 other reason. Income of the other adults in the household is not, by  
2 itself, a sufficient reason for deviation;

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

4 (iv) Gifts;

5 (v) Prizes;

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

9 (vii) Extraordinary income of a child;

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

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

16 (b) **Nonrecurring income.** The court may deviate from the standard  
17 calculation based on a finding that a particular source of income  
18 included in the calculation of the basic support obligation is not a  
19 recurring source of income. Depending on the circumstances,  
20 nonrecurring income may include overtime, contract-related benefits,  
21 bonuses, or income from second jobs. Deviations for nonrecurring  
22 income shall be based on a review of the nonrecurring income received  
23 in the previous two calendar years.

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

26 (i) Extraordinary debt not voluntarily incurred;

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

29 (iii) Special needs of disabled children;

30 (iv) Special medical, educational, or psychological needs of the  
31 children; or

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

36 (d) (~~**Residential schedule.** The court may deviate from the~~  
37 ~~standard calculation if the child spends a significant amount of time~~  
38 ~~with the parent who is obligated to make a support transfer payment.~~

1 ~~The court may not deviate on that basis if the deviation will result in~~  
2 ~~insufficient funds in the household receiving the support to meet the~~  
3 ~~basic needs of the child or if the child is receiving temporary~~  
4 ~~assistance for needy families. When determining the amount of the~~  
5 ~~deviation, the court shall consider evidence concerning the increased~~  
6 ~~expenses to a parent making support transfer payments resulting from~~  
7 ~~the significant amount of time spent with that parent and shall~~  
8 ~~consider the decreased expenses, if any, to the party receiving the~~  
9 ~~support resulting from the significant amount of time the child spends~~  
10 ~~with the parent making the support transfer payment.~~

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

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

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

21 (iii) When considering a deviation from the standard calculation  
22 for children from other relationships, the court may consider only  
23 other children to whom the parent owes a duty of support. The court  
24 may consider court-ordered payments of child support for children from  
25 other relationships only to the extent that the support is actually  
26 paid.

27 (iv) When the court has determined that either or both parents have  
28 children from other relationships, deviations under this section shall  
29 be based on consideration of the total circumstances of both  
30 households. All child support obligations paid, received, and owed for  
31 all children shall be disclosed and considered.

32 (2) All income and resources of the parties before the court, new  
33 spouses or new domestic partners, and other adults in the households  
34 shall be disclosed and considered as provided in this section. The  
35 presumptive amount of support shall be determined according to the  
36 child support schedule. Unless specific reasons for deviation are set  
37 forth in the written findings of fact and are supported by the

1 evidence, the court shall order each parent to pay the amount of  
2 support determined by using the standard calculation.

3 (3) The court shall enter findings that specify reasons for any  
4 deviation or any denial of a party's request for any deviation from the  
5 standard calculation made by the court. The court shall not consider  
6 reasons for deviation until the court determines the standard  
7 calculation for each parent.

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

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

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.19 RCW  
14 to read as follows:

15 (1) The court shall make an adjustment to the standard calculation  
16 for a shared residential schedule subject to the provisions in this  
17 section.

18 (2) An adjustment to the standard calculation based on the  
19 residential schedule may be made if there is a court order or findings  
20 made by an administrative law judge regarding the number of overnights  
21 the child or children spend with the obligor parent, and the number of  
22 overnights allocated to the obligor is equivalent to at least fourteen  
23 percent of annual overnights. The number of overnights in the court  
24 order or administrative law judge's findings must be used to calculate  
25 the residential adjustment. The findings made by an administrative law  
26 judge may be based upon a written agreement between the parents or upon  
27 sworn testimony provided by a party at the administrative hearing for  
28 child support.

29 (3) The residential schedule adjustment must be based on the table  
30 in section 3 of this act and the worksheet for calculating residential  
31 credit, and must be determined as follows:

32 (a) Using the residential time table in section 3 of this act,  
33 determine the appropriate figure in the TOTAL column for the number of  
34 overnights of the obligor parent, and multiply this figure by the basic  
35 child support obligation to determine the average monthly expenses  
36 incurred during parenting time.

1 (b) Using the residential time table in section 3 of this act,  
2 determine the appropriate figure in the DUPLICATED column based on the  
3 number of overnights of the obligor parent, and multiply this figure by  
4 the basic child support obligation to determine the average monthly  
5 duplicated expenses.

6 (c) Determine the obligor parent's share of duplicated expenses by  
7 multiplying the obligor parent's percentage share of the combined  
8 monthly net income by the average monthly duplicated expenses  
9 calculated under (b) of this subsection.

10 (d) Calculate the residential schedule adjustment by subtracting  
11 the obligor parent's share of duplicated expenses, as determined under  
12 (c) of this subsection, from the average monthly expenses during  
13 parenting time, as determined under (a) of this subsection.

14 (e) The standard calculation must be adjusted by the amount of the  
15 residential schedule adjustment in (d) of this subsection.

16 (4) An adjustment may not be made to the standard calculation based  
17 on the shared residential schedule if:

18 (a) The adjustment would result in insufficient funds in the  
19 household receiving the support transfer payment to meet the basic  
20 needs of the child;

21 (b) The obligee's net income before receiving the support transfer  
22 payment is at or below one hundred twenty-five percent of the federal  
23 poverty level guidelines for one person; or

24 (c) The child is receiving temporary assistance for needy families.

25 (5) To help parties estimate the residential schedule adjustment,  
26 the division of child support shall, if feasible and within available  
27 resources, create a residential schedule adjustment calculator  
28 available online.

29 NEW SECTION. **Sec. 3.** A new section is added to chapter 26.19 RCW  
30 to read as follows:

31 Residential time table. The TOTAL column represents the  
32 anticipated total out-of-pocket expenses expressed as a percentage of  
33 the basic child support obligation that will be incurred by the parent  
34 who will pay child support. The total expenses are the sum of  
35 transferred and duplicated expenses. The DUPLICATED column represents  
36 the duplicated expenses and reflects the assumption that when there is  
37 an equal sharing of residential time, fifty percent of the basic child

1 support obligation will be duplicated. The number of annual overnights  
2 column will determine the particular fractions of TOTAL and DUPLICATED  
3 to be used in the residential time credit worksheet.

4	ANNUAL OVERNIGHTS			
5	FROM	TO	TOTAL	DUPLICATED
6	1	51	0.000	0.000
7	52	55	0.062	0.011
8	56	60	0.070	0.014
9	61	65	0.080	0.020
10	66	70	0.093	0.028
11	71	75	0.108	0.038
12	76	80	0.127	0.052
13	81	85	0.150	0.070
14	86	90	0.178	0.093
15	91	95	0.211	0.122
16	96	100	0.250	0.156
17	101	105	0.294	0.195
18	106	110	0.341	0.237
19	111	115	0.388	0.280
20	116	120	0.434	0.321
21	121	125	0.476	0.358
22	126	130	0.513	0.390
23	131	135	0.544	0.417
24	136	140	0.570	0.438
25	141	145	0.591	0.454
26	146	150	0.609	0.467
27	151	155	0.623	0.476
28	156	160	0.634	0.483
29	161	165	0.644	0.488
30	166	170	0.652	0.491
31	171	175	0.660	0.494
32	176	180	0.666	0.495
33	181	183	0.675	0.500

34 **Sec. 4.** RCW 26.09.170 and 2010 c 279 s 1 are each amended to read  
35 as follows:

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

12           (2) Unless otherwise agreed in writing or expressly provided in the  
13 decree the obligation to pay future maintenance is terminated upon the  
14 death of either party or the remarriage of the party receiving  
15 maintenance or registration of a new domestic partnership of the party  
16 receiving maintenance.

17           (3) Unless otherwise agreed in writing or expressly provided in the  
18 decree, provisions for the support of a child are terminated by  
19 emancipation of the child or by the death of the parent obligated to  
20 support the child.

21           (4) Unless expressly provided by an order of the superior court or  
22 a court of comparable jurisdiction, provisions for the support of a  
23 child are terminated upon the marriage or registration of a domestic  
24 partnership to each other of parties to a paternity order, or upon the  
25 remarriage or registration of a domestic partnership to each other of  
26 parties to a decree of dissolution. The remaining provisions of the  
27 order, including provisions establishing paternity, remain in effect.

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

31           (b) An obligor's voluntary unemployment or voluntary  
32 underemployment, by itself, is not a substantial change of  
33 circumstances.

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

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

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

5 (c) If a child is still in high school, upon a finding that there  
6 is a need to extend support beyond the eighteenth birthday to complete  
7 high school; (~~(or)~~)

8 (d) To add an automatic adjustment of support provision consistent  
9 with RCW 26.09.100; or

10 (e) When any residential schedule adjustment that was made pursuant  
11 to section 2 of this act is no longer accurate because, for a period of  
12 at least six months, the child's residential time with the parents  
13 varies from that set out in the child support order granting the  
14 residential schedule adjustment, in an amount sufficient to change the  
15 transfer payment by at least fifty dollars per month.

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

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

21 (ii) Changes in the economic table or standards in chapter 26.19  
22 RCW.

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

25 (c) If the court adjusts or modifies a child support obligation  
26 pursuant to this subsection by more than thirty percent and the change  
27 would cause significant hardship, the court may implement the change in  
28 two equal increments, one at the time of the entry of the order and the  
29 second six months from the entry of the order. Twenty-four months must  
30 pass following the second change before a motion for another adjustment  
31 under this subsection may be filed.

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



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

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

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

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

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

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

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

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

22 (c) Another state or jurisdiction has requested a modification of  
23 the order.

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

29 **Sec. 5.** RCW 26.19.050 and 2005 c 282 s 37 are each amended to read  
30 as follows:

31 (1) The administrative office of the courts shall develop and adopt  
32 worksheets and instructions to assist the parties and courts in  
33 establishing the appropriate child support level and apportionment of  
34 support. The administrative office of the courts shall develop and  
35 adopt a worksheet for calculating the residential schedule adjustment  
36 that is consistent with section 2 of this act. The administrative

1 office of the courts shall attempt to the greatest extent possible to  
2 make the worksheets and instructions understandable by persons who are  
3 not represented by legal counsel.

4 (2) The administrative office of the courts shall develop and adopt  
5 standards for the printing of worksheets and shall establish a process  
6 for certifying printed worksheets. The administrator may maintain a  
7 register of sources for approved worksheets.

8 (3) The administrative office of the courts should explore methods  
9 to assist pro se parties and judges in the courtroom to calculate  
10 support payments through automated software, equipment, or personal  
11 assistance.

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