



## "Let Us Do Your Research!" – Reply Memorandum

**DATE:** May 30, 2018  
**REQUESTOR:** John Doe  
**DEADLINE:** Wednesday, May 31, 2018  
by 4:30 PM

	TIME	COST
<b>Budget:</b>	4.00 .hrs /	\$ 400.00
<b>Actual:</b>	2.50 .hrs /	<b>\$ 250.00</b>

I am representing a client who wants to add post-majority education support to her existing child support order. Another attorney handled the original dissolution and did not add any language to the order for this.

**QUESTION:**

1. Can an existing support order be modified to add provisions for post-majority education support if the original order was silent on the issue?
2. What laws and procedures govern the modification of support orders?
3. What are the Washington cases related to modifications to allow for post-majority education support?

### I. ISSUE PRESENTED

To provide citations to statutes, court rules and Washington cases addressing:

1. The criteria for modifying an existing support order to allow for post-majority education support
2. Procedure for modifying existing support orders

### II. SOURCES CONSULTED

#### Criteria for adding support for post-majority education and Washington cases related to post-majority education support modifications

The most efficient way to research this question was to first consult the relevant sections of Washington Family Law Deskbook 2nd Edition (2012), Ch.28, specifically section 28.7(5). This revealed the landmark cases in Washington dealing with this issue. I then consulted RCW 26.09.170 and 26.09.100, which set out the criteria for the modification of decrees for maintenance or support. I then reviewed RCW 26.19.090, which controls the standards for postsecondary educational support

*(The contents of this memo do not in any way constitute legal advice.)*

awards. Finally, I reviewed in Westlaw cases specifically referring to modification for post-majority education support.

### **Criteria for modifying existing support orders**

The most efficient way to research this question was to first consult Family and Community Property Law with Forms, 2nd Edition (2015) Ch. 38. This chapter set out both the criteria for support order modifications and describes the procedure. I also reviewed Washington Family Law Deskbook 2nd Edition (2012), Ch.28, specifically section 28.4. Finally, I reviewed RCW 26.09.175 and 26.09.280, the statutes which describe the procedure for modifying support orders.

## **III. ANALYSIS**

### **Modifying to Add Post-majority Support**

Existing support decrees can be modified to provide for post-majority support upon showing of a substantial change in circumstances. See RCW 26.09.170(1) and 26.09.170(5)(a) and **Gimlett v. Gimlett, 95 Wash 2d 699**, 629 P.2d 450 (1981). It may also be possible to modify the decree without a showing of a substantial change in circumstances if your case meets the criteria set out by RCW 26.09.170(6) and (7). See also the section discussing this issue in Washington Family Law Deskbook, 2nd Edition. Sec. 28.7(5) at 28-80.

Petitions for modification must be filed before the obligation to pay support ends. See **In Re Marriage of Gillespie, 77 Wn. App. 342**, 890 P.2d 1083 (1995).

### **Procedures for Modifying a Support Order**

The procedures for modifying a support order are described in RCW 26.09.170, 26.09.175 and 26.09.280. There are also excellent discussions in Washington Family Law Deskbook 2nd Edition (2012), Ch.28 and Family and Community Property Law with Forms, 2nd Edition (2015) Ch. 38. Washington State provides mandatory forms at [www.courts.wa.gov/forms](http://www.courts.wa.gov/forms) under the Child Support section. These include the primary initiating documents: Summons: Notice about Petition to Modify Child Support Order and Petition to Modify Child Support Order. The following King County Local Family Court Rules should be consulted for particular local court practice: KCLFLR 10 and KCLFLR 14.

### **Cases Related to Post-Secondary Education Support Modifications**

Using Westlaw, I found 11 cases related to post-majority education support modifications. They are cited and summarized in Part V. Supporting Documents. I have also provided summaries of the supporting cases cited in the Analysis above.

### **Supporting Court Rules and Statutes**

Copies of the court rules and statutes cited in this memo are also in Part V. Supporting Documents.

## IV. SUGGESTIONS FOR FURTHER RESEARCH

I recommend you review the entirety of Washington Family Law Deskbook 2nd Edition (2012), Ch.28 and Family and Community Property Law with Forms, 2nd Edition (2015) Ch. 38. There are a number of Washington cases dealing with various aspects of the modification of support orders. I recommend you conduct additional Westlaw research to review some of these as well. The Law Library has public Westlaw computers in both branches. The only charge for using them is 20 cents per page if you decide to print your results.

## V. SUPPORTING DOCUMENTS

### Washington Cases Cited Specifically in this Memorandum

At Page 700 -- This case concerns a post-dissolution proceeding for enforcement of the child support provisions of an original dissolution decree. The Court of Appeals held the decree did not provide for child support payments after the child attained the age of majority. Mrs. Gimlett petitioned this court for review. We affirm.

At Page 705 -- Post-majority support can be granted in the original decree if justified by the circumstances. Childers v. Childers, supra. In compelling situations where post-majority support was not originally granted, courts have the power to modify the decree upon a showing of a substantial change of conditions. RCW 26.09.170; cf. Wagner v., Wagner, 95 Wash.2d 94, 98, 621 P.2d 1279 (1980) (modification of alimony).

***Gimlett v. Gimlett, 95 Wash 2d 699, 629 P.2d 450 (1981)***

At Page 344 -- Elaine Fay Gillespie filed a petition to modify the child support which her ex-husband, Michael Lee Gillespie, was required to pay for their child, Eric. The court concluded it lacked the authority to require Mr. Gillespie to pay support beyond Eric's 18th birthday because Eric had turned 18 prior to the time the petition was filed. On appeal, Ms. Gillespie contends (1) the court erred in ruling it did not have jurisdiction because Eric was still in high school and dependent on her for support; and (2) if RCW 26.09.170 does in fact deprive the court of jurisdiction to extend support, the statute is an unconstitutional denial of the equal protection of law. Mr. and Ms. Gillespie both request attorney fees. We affirm.

At Page 347 -- Division One of this court recently addressed a related issue in *In re Marriage of Major*, 71 Wash.App. 531, 859 P.2d 1262 (1993). There, the decree obligated the husband to pay support until " 'June of [the child's] eighteenth year, provided [the child] remains in school beyond his eighteenth birthday.' " *Major*, at 532, 859 P.2d 1262. The child turned 18 in December of 1990 and graduated from high school in June of 1991. In January 1992, the mother brought a modification proceeding requesting support for the child's postsecondary education. Relying on RCW 26.09.170(3), the court reiterated the rule that "[p]rovisions for the support of a child are terminated 'by emancipation of the child' '[u]nless otherwise agreed in writing or expressly provided in the decree'." *Major*, at 534, 859 P.2d 1262.

***In Re Marriage of Gillespie, 77 Wn. App. 342, 890 P.2d 1083 (1995)***

## **Additional Washington Cases Related to Postmajority Education Support Modifications**

Anthony Cota appeals the trial court's child support order requiring him to pay for one-third of his daughter's college expenses. He argues that the trial court (1) did not have authority to order postsecondary educational support because his former wife did not request the support award until after his daughter turned 18, (2) abused its discretion when it determined that an award of postsecondary educational support was proper, and (3) violated RCW 26.19.065(1) because the award of postsecondary educational support increased his child support obligation to more than 45 percent of his net income.

We affirm on the first two issues. Because the 2010 child support order expressly provided that Anthony's support obligation would terminate at the age of majority except for postsecondary educational support, the trial court had authority to order such support even though the request for postsecondary educational support was filed after the daughter turned 18. Further, the record supports the trial court's conclusion that a postsecondary educational award was appropriate under the factors outlined in RCW 26.19.090(2). However, we reverse and remand on the third issue. We are constrained to hold that postsecondary educational expenses constitute "child support" under RCW 26.19.065(1), and therefore the trial court's order improperly required Anthony to pay more than 45 percent of his net monthly income in child support without first finding good cause.

***In re Marriage of Cota, 177 Wash. App. 527, 312 P.3d 695 (2013)***

When postsecondary educational support has been reserved in a child support order, it is properly requested in a petition for modification without the necessity to show a substantial change in circumstances has occurred. The day before child support was to terminate, Reyes filed a motion for adjustment to establish previously reserved postsecondary support for the older of two daughters. However, but for the choice of form, the proceeding below was the procedural and substantive equivalent of a modification proceeding. Therefore, the superior court did not lack authority to order postsecondary support and did not abuse its discretion in doing so. Because the factual record is not in dispute, the lack of findings of fact does not require remand.

***In re Marriage of Morris, 176 Wash.App. 893, 309 P.3d 767 (2013)***

Kenneth Hannan appeals a superior court order modifying his obligation to support his daughter, Miranda. Although Miranda's mother filed the modification petition while Miranda was a minor, Hannan argues that the court erred by failing to require Miranda's joinder when she became an adult because she then \*788 became a necessary party. The court ordered that Hannan's monthly support payments be increased retroactively to the date of filing. In addition, the court ordered that Hannan pay 57.3 percent of Miranda's postsecondary educational expenses. Hannan argues that the court erred by not imposing a monetary cap on this postsecondary obligation. He also argues that the court erred by ordering him to reimburse the mother twice for her college expenditures in both the retroactive support and

the postsecondary support orders. Hannan additionally claims that the court erred by failing to expressly require Miranda or her mother to contribute to the college expenses.

We hold that the court had jurisdiction to modify Hannan's child support obligation because Miranda did not become a necessary party when she turned eighteen. Because the obligation to pay a percentage of a child's educational costs is directly related to the child's needs, we also hold that no monetary cap was required. Hannan has failed to show that the trial court abused its discretion by overlapping his obligations. Except for a minor mathematical error, we affirm the modification order in its entirety.

***In re Marriage of Kelly, 85 Wash.App. 785 934 P.2d 1218 (1997)***

Eric Bradley appeals the trial court's orders in a dissolution action relating to his obligations to pay his son's college expenses and his daughter's child support. Bradley argues that the trial court erred by (1) ordering postsecondary educational support for his son even though his former wife Ann Sprute did not file her child support worksheets until after the deadline for filing the request for such support, (2) concluding that Sprute's Post-9/11 GI Bill benefits did not reduce his portion of postsecondary educational support, (3) failing to cap the total amount of postsecondary educational support at the amount charged by the University of Washington, \*\*732 Seattle (UW), and (4) using the one-child column rather than the two-child column of the child support schedule to determine the support for his minor daughter.

We hold that (1) Sprute was not required to file her child support worksheets with her request for postsecondary educational support in order to timely request such support, (2) Sprute's GI Bill benefits could only be applied to reduce her own postsecondary educational support obligations under 38 U.S.C. § 3319(f)(3), (3) the trial court did not abuse its discretion by failing to cap postsecondary educational support at the amount charged by UW; and (4) the trial court erred by using the one-child column to calculate child support for the parties' minor child because the parties were supporting two children. We consider and reject Bradley's additional arguments in the unpublished portion of this opinion. Accordingly, we affirm the trial court's order except for the child support provision. We reverse on that issue and remand for recalculation of child support for the daughter consistent with this opinion.

***Sprute v. Bradley, 15 186 Wash.App. 342, 344 P.3d 730 (2015)***

Carlos C. Lieser appeals the trial court's decision to grant Donna Goude's child support modification request for post-secondary educational support for their daughter, Kara Goude. The trial court set \$590 per month for Kara's post-secondary support by considering the basic child support obligation set in the economic table of the \*787 child support schedule, educational costs, and Kara's estimated contributions to her college expenses. Mr. Lieser contends the trial court erred by not considering several post-secondary support factors in RCW 26.19.090, and in utilizing the child support schedule in calculating post-secondary support. We affirm.

***In re Goude, 152 Wash.App. 784, 219 P.3d 717 (2009)***

Joy Bailey (formerly Newell) appeals the trial court's postsecondary education support order for the parties' daughter. Bailey contends that the court abused its discretion in not accurately determining income for LaFrank Newell, her former spouse. Bailey also challenges the percentage allocation between the parents for postsecondary education expenses. She argues that the court should have included overtime pay in its calculation of Newell's income and based on this higher income, allocated more of the college expenses to Newell. Bailey also contends that when the trial court changed the income amount to be imputed to her, it should have changed the percentage share of income. \*\*1131 We conclude that although the child support schedule for postsecondary education support is advisory and not mandatory, the trial court must accurately calculate the parties' incomes and the presumptive proportional percentage share of income before deciding how to allocate postsecondary education expenses between the parents. We reverse and remand.

***Newell v. Newell, 117 Wash.App. 711, 72 P.3d 1130 (2003)***

Barry Scanlon appeals an order on modification of child support that increased his child support obligation, allocated long distance transportation expenses and tax exemptions, and ordered postsecondary educational support, but failed to address his request for attorney fees. We reverse.

***In re Marriage of Scanlon and Witrak, 109 Wash.App. 167, 34 P.3d 877 (2001)***

Morris Major appeals the Superior Court's denial of his motion to vacate a commissioner's ruling concerning a child support arbitration award, arguing that the court had no jurisdiction to order payment of postsecondary education support to Sandra Brooks, his former wife, for their 18-year-old child, Gary Major. We affirm.

***In re Marriage of Major, 1993 71 Wash.App. 531, 859 P.2d 1262 (1993)***

The Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW, governs modification of child support obligations in Washington when the initial child support order was entered in a different state but one of the parties lives in Washington. The UIFSA provides that the duration of child support is governed by the laws of the original forum state. Jeffrey Almgren and Carol Schneider \*356 divorced in Nebraska and Schneider moved to Washington with the couple's two children. We hold that the superior court erred by extending the father's child support obligation past the age of majority by granting postsecondary support for the daughter to attend college. Nebraska law would not have allowed postsecondary support in this case, and the UIFSA provides that the law of the original forum state governs the duration of child support. We reverse the Court of Appeals, which affirmed the trial court, and remand for further proceedings consistent with this opinion.

***In re Schneider, 173 Wash.2d 353, 268 P.3d 215 (2011)***

Maria Salcido Grenzebach petitioned the superior court to order her former husband, Jerry D. Balch, to pay child support for the college education of their then 19-year-old son, Tyson. The superior court dismissed her petition for want of subject matter jurisdiction. Grenzebach appeals; we reverse.

***Balch v. Balch, 1994 75 Wash.App. 776, 880 P.2d 78 (1994)***

Kathy Balcom sought modification of a support order to obtain postsecondary support for her daughter. When the superior court commissioner denied this request, Ms. Balcom filed a motion for revision along with an affidavit containing additional evidence. The trial court revised the commissioner's ruling and ordered the father to pay one-half of the daughter's postsecondary tuition costs, with payment not to exceed \$2,500 annually. \*57 He appeals contending the trial court erred by: (1) conducting a de novo review of the commissioner's ruling, (2) considering additional evidence, and (3) failing to consider all of the factors listed in RCW 26.19.090(2). We reverse and remand, and deny Ms. Balcom's request for fees.

***In re Marriage of Balcom and Fritchle, 101 Wash.App. 56, 1 P.3d 1174 (2000)***

## **Supporting Court Rules and Statutes**

### **King County Local Family Law Rule 10. Financial Provisions**

(a) When Financial Information is Required.

(1) Each party shall complete, sign, file, and serve on all parties a financial declaration for any motion, trial, or settlement conference that concerns the following issues:

(A) Payment of a child's expenses, such as tuition, costs of extracurricular activities, medical expenses, or college;

(B) Child support or spousal maintenance; or

(C) Any other financial matter, including payment of debt, attorney and expert fees, or the costs of an investigation or evaluation.

(2) A party may use a previously-prepared financial declaration if all information in that declaration remains accurate.

(3) Financial declarations need not be provided when presenting an order by agreement or default.

(b) Supporting Documents to be filed with the Financial Declaration. Parties who file a financial declaration shall also file the following supporting documents:

(1) Pay stubs for the past six months. If a party does not receive pay stubs, other documents shall be provided that show all income received from whatever source, and the deductions from earned income for these periods;

(2) Complete personal tax returns for the prior two years, including all Schedules and all W-2s;



(3) If either party owns an interest of 5% or more in a corporation, partnership or other entity that generates its own tax return, the complete tax return for each such corporation, partnership or other entity for the prior two years;

(4) All statements related to accounts in financial institutions in which the parties have or had an interest during the last six (6) months. "Financial institutions" includes banks, credit unions, mutual fund companies, and brokerages.

(5) If a party receives or has received non-taxable income or benefits (for example, from a trust, barter, gift, etc.), documents shall be provided that show receipts, the source, and any deductions for the last two (2) years.

(6) Check registers shall be supplied within fourteen (14) days if requested by the other party.

(7) If a party asks the court to order or change child support or order payment of other expenses for a child, each party shall also file completed Washington State Child Support Worksheets.

(8) For additional requirements for a Settlement Conference, see LFLR 16.

(c) Documents to be filed under Seal. Tax returns, pay stubs, bank statements, and the statements of other financial institutions should not be attached to the Financial Declaration but should be submitted to the clerk under a cover sheet with the caption "Sealed Financial Source Documents". If so designated, the Clerk will file these documents under seal so that only a party to the case or their attorney can access these documents from the court file without a separate court order.

*[Adopted effective September 1, 2004]*

#### **King County Local Family Law Rule 14. Child Support and Spousal Maintenance Modifications and Adjustments**

(a) Scope of This Rule.

(1) This rule applies child support and spousal maintenance adjustments that are brought independently from a petition to modify a parenting plan, or child custody or visitation order. This rule does not apply to support modifications that are based on a substantial change of circumstances if there is a pending proceeding to modify a parenting plan, or child custody or visitation order.

(2) In cases where a modification of a parenting plan, child custody, or visitation has been resolved, the court may transfer the support issues to the Trial by Affidavit Calendar, and this rule will then apply.

(3) A child support adjustment, which merely implements a periodic adjustment clause in an Order of Child Support or is limited to the relief authorized by RCW 26.09.170(9) and (10), shall be brought on the Family Law Motions Calendar under LFLR 6. Each party must also follow LFLR 10.

(4) In a Child Support modification proceeding, the court may grant relief limited to the scope of a child support adjustment, if the case does not meet the requirements for a modification but does meet the requirements for an adjustment.

(b) Support Modification Proceedings.

(1) Documents Required to Be Served and Filed

(A) Documents Required from Petitioner. A party petitioning for modification of child support or spousal maintenance shall file and serve upon all other parties the Summons and Petition, a completed Financial Declaration, child support worksheets (if applicable), and the financial documents specified in LFLR 10. The petitioning party shall serve the other party a copy of the Order Setting Case Schedule (issued by the Clerk) with the Summons. If the existing support order was not issued by King County Superior Court, a certified copy of the order must be filed with the Petition.

(B) Documents Required from Responding Parties. Each responding party shall file and serve a Response to Petition, a completed Financial Declaration, child support worksheets (if applicable), and the financial documents specified in LFLR 10, by the deadline established by service of the Summons.

(c) Motions.

(1) Pre-trial Motions re Support-only Modifications. All pre-trial motions relating to support-only modifications, including motions to change the trial date, to permit testimony, or relating to discovery, shall be decided on the Trial by Affidavit Calendar without oral argument. Motions shall be noted for hearing fourteen (14) or more days in advance. The procedure for such motions shall conform to LCR 7 and LFLR 6 to the extent not inconsistent with this rule. There is no requirement to confirm such motions. Motion documents shall be filed with the Clerk and working copies shall be provided to the court. Working copies shall be submitted pursuant to the requirements of LCR 7(b) to the extent not inconsistent with this rule. Working copies submitted in paper form must be delivered to the Trial by Affidavit mailbox in the judges' mailroom of the courthouse where the matter will be heard.

(2) Motions to Permit Live Testimony.

(A) Testimony is ordinarily in the form of declarations and affidavits. Oral argument is allowed at all trials by affidavit. A party seeking permission to present live testimony at the time of the trial by affidavit (in addition to oral argument) must file a motion with a supporting declaration setting forth the reasons why live testimony is necessary. The motion and supporting documents shall be noted, filed and served not later than the deadline set forth in the case schedule.

(B) The supporting documents must demonstrate the extraordinary features of the case warranting live testimony. Factors which may be considered include: substantial questions of credibility on a major issue, insufficiency or inconsistency in discovery materials not correctable by further discovery, or particularly complex circumstances requiring expert testimony.

(C) A Motion to Permit Testimony may not be entered by stipulation. If the motion is granted, a hearing will be set.

(3) Motions for Temporary Orders. Motions for Temporary Support Orders will not ordinarily be considered in support-only modification proceedings. Exceptions may apply in exigent circumstances, such as when there has been a change in residential care, a party has requested a continuance of the trial date, or when the lack of a temporary order would substantially prejudice a party. A motion for temporary support shall be noted on the Family Law Motions Calendar; the court in its discretion may also consider an oral motion for temporary support at the time of the support modification trial where the matter is being

continued for reasons unrelated to the conduct of the party requesting the temporary support order.

(d) Method of Disposition of Support Modification Proceedings.

(1) Trial by Affidavit. The trial of support-only modification petitions shall be heard on affidavits, declarations, pleadings, and discovery materials obtained pursuant to CR 26-37, unless the court authorizes live testimony pursuant to a motion brought under LFLR 14(c)(2) above.

(2) Proposed Orders. The petitioning party is obliged to provide proposed findings of fact and conclusions of law, child support worksheets, and orders to the other parties and the court not later than the time of trial. The proposed orders shall not be filed with the clerk. Working copies of the proposed orders for the judge shall be submitted pursuant to the requirements of LCR 7(b) to the extent not inconsistent with this rule. If the petitioner is not present and has not presented proposed orders, the matter may be dismissed.

(3) Judicial Officer Presiding. Unless otherwise assigned by the court, support-only modification trials shall be heard on the Trial by Affidavit Calendar by a Family Law Commissioner.

(4) Affidavits of Prejudice Not Recognized. See LCR 40(g).

(5) Independent Proceedings. Except as otherwise stated, Petitions for Modification of Support shall proceed as original determinations, with no threshold or adequate cause hearing required.

(6) Arbitration. The parties may stipulate to arbitrate the issues in the petition pursuant to the state and local Mandatory Arbitration Rules. The stipulation must be in writing, in a form as prescribed by the Court. The stipulation must state whether the issues will be handled by private arbitration or will be submitted to the King County Arbitration Department for assignment of an arbitrator.

(A) Motions for Temporary Relief. Once an arbitrator has been appointed, all motions shall be decided by the arbitrator.

(B) Appeals from Arbitration. Requests for a trial de novo from the decision of an arbitrator shall be heard on the Trial by Affidavit Calendar.

(7) Trial by Affidavit Procedure. Parties shall file the originals of all documents to be considered with the Clerk. Settings on the Trial by Affidavit Calendar must be confirmed by the submission of a copy of these materials either in paper form to the Trial by Affidavit mailbox at the courthouse where the matter will be heard or electronically through the Clerk's e-filing system by the deadline in the case schedule. Each party to the proceeding will have a maximum of ten (10) minutes, including rebuttal, to present oral argument to the court. No new evidence may be offered at the time of trial unless stipulated by the parties or authorized by the court for good cause shown. Parties may attend the trial by telephone, provided that prior arrangements have been made with the court. A party is not obligated to attend the hearing.

(8) Procedure on Default.

(A) Default Procedures. See LFLR 5(c)(9).

(B) Failure of a responding party to be present in person or by counsel at the time of trial shall not constitute a default, as the presentation of oral argument is optional. If counsel

or a pro se party is not present, the court will decide the matter based upon the working papers and the oral argument of those present.

*[Adopted effective September 1, 2004; amended effective September 1, 2008; June 1, 2009.]*

**RCW 26.09.170**

**Modification of decree for maintenance or support, property disposition—Termination of maintenance obligation and child support—Grounds.**

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

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

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

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

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

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

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

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

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

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

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

- (7)(a) If twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of substantially changed circumstances based upon:
- (i) Changes in the income of the parents; or
  - (ii) Changes in the economic table or standards in chapter 26.19 RCW.
- (b) Either party may initiate the adjustment by filing a motion and child support worksheets.
- (c) If the court adjusts or modifies a child support obligation pursuant to this subsection by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for another adjustment under this subsection may be filed.
- (8)(a) The department of social and health services may file an action to modify or adjust an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011 and reasons for the deviation are not set forth in the findings of fact or order.
- (b) The department of social and health services may file an action to modify or adjust an order of child support in a nonassistance case if:
- (i) The child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011;
  - (ii) The department has determined the case meets the department's review criteria; and
  - (iii) A party to the order or another state or jurisdiction has requested a review.
- (c) The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.
- (9) The department of social and health services may file an action to modify or adjust an order of child support under subsections (5) through (7) of this section if:
- (a) Public assistance money is being paid to or for the benefit of the child;
  - (b) A party to the order in a nonassistance case has requested a review; or
  - (c) Another state or jurisdiction has requested a modification of the order.
- (10) If testimony other than affidavit is required in any proceeding under this section, a court of this state shall permit a party or witness to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means, unless good cause is shown.

[ 2010 c 279 § 1; 2008 c 6 § 1017; 2002 c 199 § 1; 1997 c 58 § 910; 1992 c 229 § 2; 1991 sp.s. c 28 § 2; 1990 1st ex.s. c 2 § 2; 1989 c 416 § 3; 1988 c 275 § 17; 1987 c 430 § 1; 1973 1st ex.s. c 157 § 17.]

**NOTES:**

*Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.*

*Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.*

*Severability—Effective date—Captions not law—1991 sp.s. c 28: See notes following RCW 26.09.100.*

*Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.*

*Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.*

*Severability—1987 c 430: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1987 c 430 § 4.]*

## **RCW 26.09.175**

### **Modification of order of child support.**

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

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

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

(3) As provided for under RCW 26.09.170, the department of social and health services may file an action to modify or adjust an order of child support if:

- (a) Public assistance money is being paid to or for the benefit of the child;
- (b) A party to the order in a nonassistance case has requested a review; or
- (c) Another state or jurisdiction has requested a modification of the order.

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

(5) At any time after responsive pleadings are filed, any party may schedule the matter for hearing.

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

(7) A party seeking authority to present oral testimony on the petition to modify a support order shall file an appropriate motion not later than ten days after the time of notice of hearing. Affidavits and exhibits setting forth the reasons oral testimony is necessary to a just adjudication of the issues shall accompany the petition. The affidavits and exhibits must demonstrate the extraordinary features of the case. Factors which may be considered include,

but are not limited to: (a) Substantial questions of credibility on a major issue; (b) insufficient or inconsistent discovery materials not correctable by further discovery; or (c) particularly complex circumstances requiring expert testimony.

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

[ 2010 c 279 § 2; 2002 c 199 § 2; 1992 c 229 § 3; 1991 c 367 § 6; 1990 1st ex.s. c 2 § 3; 1987 c 430 § 2.]

**NOTES:**

*Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.*

*Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.*

*Severability—1987 c 430: See note following RCW 26.09.170.*

## **RCW 26.09.100**

### **Child support—Apportionment of expense—Periodic adjustments or modifications.**

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to misconduct, the court shall order either or both parents owing a duty of support to any child of the marriage or the domestic partnership dependent upon either or both spouses or domestic partners to pay an amount determined under chapter 26.19 RCW.

(2) The court may require automatic periodic adjustments or modifications of child support. That portion of any decree that requires periodic adjustments or modifications of child support shall use the provisions in chapter 26.19 RCW as the basis for the adjustment or modification. Provisions in the decree for periodic adjustment or modification shall not conflict with RCW 26.09.170 except that the decree may require periodic adjustments or modifications of support more frequently than the time periods established pursuant to RCW 26.09.170.

(3) Upon motion of a party and without a substantial change of circumstances, the court shall modify the decree to comply with subsection (2) of this section as to installments accruing subsequent to entry of the court's order on the motion for modification.

(4) The adjustment or modification provision may be modified by the court due to economic hardship consistent with the provisions of RCW 26.09.170(6)(a).

[ 2010 c 279 § 3; 2008 c 6 § 1013; 1991 sp.s. c 28 § 1; 1990 1st ex.s. c 2 § 1; 1989 c 375 § 7; 1988 c 275 § 9; 1987 c 430 § 3; 1973 1st ex.s. c 157 § 10.]

**NOTES:**

*Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.*

*Severability—1991 sp.s. c 28: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1991 sp.s. c 28 § 9.]*

*Effective date—1991 sp.s. c 28: "Sections 1 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state*

*government and its existing public institutions, and shall take effect September 1, 1991." [ 1991 sp.s. c 28 § 10.]*

*Captions not law—1991 sp.s. c 28: "Captions as used in this act do not constitute any part of the law." [ 1991 sp.s. c 28 § 11.]*

*Effective dates—1990 1st ex.s. c 2: "(1) Sections 5 and 22 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1990].*

*(2) The remainder of this act shall take effect July 1, 1990." [ 1990 1st ex.s. c 2 § 30.]*

*Severability—1990 1st ex.s. c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [ 1990 1st ex.s. c 2 § 31.]*

*Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.*

*Severability—1987 c 430: See note following RCW 26.09.170.*

## **RCW 26.09.280**

### **Parenting plan or child support modification or enforcement—Venue.**

Every action or proceeding to change, modify, or enforce any final order, judgment, or decree entered in any dissolution or legal separation or declaration concerning the validity of a marriage or domestic partnership, whether under this chapter or prior law, regarding the parenting plan or child support for the minor children of the marriage or the domestic partnership may be brought in the county where the minor children are then residing, or in the court in which the final order, judgment, or decree was entered, or in the county where the parent or other person who has the care, custody, or control of the children is then residing.

*[ 2008 c 6 § 1020; 1991 c 367 § 10; 1987 c 460 § 20; 1975 c 32 § 4; 1973 1st ex.s. c 157 § 28.]*

#### **NOTES:**

*Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.*

*Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.*



## RCW 26.19.090

### Standards for postsecondary educational support awards.

- (1) The child support schedule shall be advisory and not mandatory for postsecondary educational support.
- (2) When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.
- (3) The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.
- (4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided in RCW 26.09.225.
- (5) The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.
- (6) The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments.

*[ 1991 sp.s. c 28 § 7; 1990 1st ex.s. c 2 § 9.]*