

Subcommittee on Children from Other Relationships
Report to the 2011 Child Support Workgroup
May 20, 2011

Note: this report reflects a summary of the subcommittee's activities and discussions and is not intended to be a full report w/ recommendations to the Workgroup. Any errors in these summary representations are the author's and no effort has yet been made to identify any specific majority or minority positions of the subcommittee's members.

This subcommittee was one of those formed by the larger Workgroup so that various issues which required ultimate resolution in the Workgroup's final report to the Legislature could be addressed simultaneously. The specific purpose of this subcommittee was to address issues regarding the deviations under the present law [RCW 26.19.075(1)(e)] for children from other relationships (CFOR).

The subcommittee consists of the following members of the 2011 Workgroup: Kris Amblad, Kevin Callaghan, Angela Gerbracht, Ken Levinson, and Ed Pesik. Janet Skreen and Kristie Dimak have attended the meetings as alternates, but have participated fully. Ellen Nolan has provided administrative support from DCS.

We have only managed to get together for two telephone conference call meetings since our last Workgroup gathering and one was only lightly attended. Conflicting commitments and illness were the major issues for our not meeting as scheduled. We hope to do better with improving weather, although everyone remains busy and conflicted throughout the workweek.

The following represents the current recommendations of the Subcommittee on Children from Other Relationships.

1. The children being considered by a court or administrative tribunal for the purpose of assessing a parent's child support obligation and who are not the children for whom support is being determined shall be known as "Children Not Before the Court." (CNBC)
2. The children before the court or administrative tribunal for whom support is being determined shall be known as "Children Before the Court." (CBC)
3. CNBC are defined as those children:

- a. born during marriage, domestic partnership, or otherwise consistent with the provisions of RCW 26.26.116 (and the presumption of paternity under Chapter 26.26 RCW has not been rebutted),
- b. who have been adopted,
- c. born outside a marriage but for whom paternity has been established by either a registered acknowledgment of paternity or a court order, and
- d. for whom the parent has been established as a *de facto* parent pursuant to *In Re: Parentage of L.B.*, 155 Wn. 2d 679, 122 P. 3d 161 (2005).

4. Whenever support is being established or modified for CBC, either parent may submit evidence of CNBC.

5. The following CNBC shall be included in the determination of the standard calculation support obligation for the CBC.

[The precise method of considering the CNBC in the above-the-line (ATL) – non-deviation calculation has not been determined, but it might be as simple as adding in the number of the additional children to determine the column of the Economic Table that is used to set the basic support obligation. Of course, we may need more columns if we suggest this method.]

- a. Children in categories 3.a. through d. above who actually reside with the obligor, and
- b. Children in categories 3.a. through d. above who do not reside with the obligor and for whom an enforceable court or administrative order of current child support exists.

6. Only dependent children may qualify as CNBC.

7. We are not yet agreed upon a position with respect to stepchildren.

8. *We need to prepare to address (probably after the 5/20 Workgroup meeting) the issue of whether a parent can affirmatively use so-called “after acquired” CNBC to modify downwards an existing child support obligation. Some states do not allow it, and some courts in Washington do not allow it either. Some of the states that do not allow it do allow the obligor under the previously existing order to raise his/her CNBC as a defense if the obligee of that order seeks to modify upwards the support obligation.*

9. *We will also be taking up the issue of any possible “discretionary” deviations – the so-called below-the-line (BTL) accounting for any other possible situations, perhaps including stepchildren.*

10. *And we will also of course address the calculation method for any of our recommended changes.*

Respectfully submitted,

Edward F. Pesik, Jr.