

Subcommittee on Children from Other Relationships
Report to the 2011 Child Support Workgroup
June 25, 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), now known as Children Not Before the Court (CNBC).

The subcommittee consists of the following members of the 2011 Workgroup: Kris Amblad, Kevin Callaghan, Angela Gerbracht (infrequent appearance due to her work schedule), Ken Levinson, and Ed Pesik. Janet Skreen has attended all of the meetings and participated fully. Kristie Dimak has also appeared as an alternate as her schedule has allowed. Ellen Nolan has provided administrative support from DCS.

The following represents the current position as of our last meetings (June 7, 14, & 17) of the Subcommittee. Although not repeated here, this present position statement includes the information previously reported by our subcommittee to the Workgroup on April 15th and May 20th.

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).

1. We clarified that the definition of children not before the court includes children of domestic partnerships. All children not before the court must either

reside with the obligor parent, or the obligor parent must have an established child support order obligating that parent to provide support.

2. We are not recommending any changes in existing law relative to child support modifications with respect to whether the acquisition of CNBC “after” the support obligation has been established for CBC can ever be the basis for an adjustment requested by the obligor (or perhaps raised as a defense to an adjustment requested by the obligee).
3. In addition to the moral reasoning behind not differentiating between existing and later-born children is the recognition of today’s society where multiple relationships/marriages do occur and parents have children with more than one partner or spouse.
4. One issue that remains to be addressed is the 45% limitation and the application of the whole family formula. It is believed that the self-support reserve would come into play before the 45% limitation would.
5. Another issue that remains to be addressed is whether the obligor must be paying his/her support obligation for a CNBC before getting the presumptive credit. Some members have suggested this not be a requirement while other members have suggested a payment threshold before the credit would apply. While no consensus has been reached on these proposals, the committee did agree that if the presumptive credit is rebutted, the obligor has the burden to show who the CNBC’s are and what obligations are required for each CNBC.
6. Considerable time was spent discussing “stacking” or the availability of one than more support reducing methodology for an obligor. In other words, if the self-support reserve would render a calculation of \$166, should the whole family formula be applied to allow for a \$58 reduction to that amount of support? Or is the fact that the support amount is already limited restrict the availability of the whole family formula. Keeping in mind that the \$50/child amount is a rebuttable presumption, there was discussion as to whether it is possible to establish a principle that in no event should application of the whole family formula take an obligation below \$50. Some counties may take the amount of support from the self-support reserve, for example \$166 and divide it by the total number of children, both before and not before the court, to determine the obligor’s obligation for the child/ren before the court, provided that the transfer payment should not be reduced below the presumptive support obligation of \$50.00 per month per child.
7. Discussion also took place regarding whether the worksheets can show both calculations – standard and the whole family formula – so that both amounts are readily visible. If there is a purpose behind this, it doesn’t seem to be an unreasonable request. One reason might be to prompt rebuttal discussion.

8. The last topic of discussion was the issue of obligee's other children. One method would be to have the obligee's children not before the court be the subject of a below the line deviation. It is uncertain whether SSGen or SupportCalc could be reconfigured to work the whole family formula so that different amounts of support are calculated for the obligor's AND the obligee's children not before the court. There was discussion of the seeming inequality of allowing a different amount of support for one parent (based on that person's relationship to CNBC) but not the other parent (who might also have CNBC). Some courts may deny a request for the whole family formula application because of the obligee's other children as an offset.

9. We also believe that the whole family formula should be the method for determining the amount of the "adjustment" for CNBC.

10. Stepchildren typically have two primary responsible parents and thus should not be considered as CNBC, but perhaps the door should remain open for them to be considered in a non-presumptive manner for special cases.

Respectfully submitted,

Edward F. Pesik, Jr.

(w/ special thanks to Janet Skreen who provided the majority effort in the drafting of this report.)