

Subcommittee on Children from Other Relationships
Report to the 2011 Child Support Workgroup
July 23, 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.

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 and is clearly a member of the subcommittee. Kristie Dimak has appeared as an occasional alternate as her schedule has allowed. Ellen Nolan and George Smylie have provided administrative support from DCS.

The following represents the current position as of our last meetings (June 28 and July 18) of the Subcommittee. For the sake of continuity I have repeated certain information that we have presented in our three previous reports to the Workgroup.

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). In addition to the moral reasoning behind not differentiating between existing and later-born children is the recognition by the majority of the members of the subcommittee that in today’s society multiple relationships/marriages do occur and parents have children with more than one partner or spouse – any attempt to ‘legislate’ to influence societal behavior in such a fundamental area is both unlikely to succeed and unlikely to attract many supporters in the legislature.

3. The subcommittee is also of the opinion that there should be a presumptive “above-the-line” treatment for the obligor’s CNBC, whether those children reside with the obligor or whether the obligor is subject to a support order for them. We also would recommend the use of the present Whole Family Formula to determine the amount of the adjustment for the CNBC. The subcommittee has spent considerable effort in determining a reasonable approach to the issue of, in the case of non-residential CNBC, the obligor must be paying his/her support obligation 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. At least four members of our subcommittee have agreed that the following represents a reasonable approach to this issue:

With respect to the obligor’s non-residential CNBC, the presumption may be rebutted upon a showing that the obligor has failed to pay any support in the prior twelve-month period without reasonable justification.

4. The subcommittee has also addressed the issue of the treatment of the obligee’s CNBC. We have agreed that logic demands at least some recognition of the obligee’s other children inasmuch as the presence of the obligor’s other children can have a significant impact on the “standard” calculation. Borrowing at least a portion of the language from a WSBA-sponsored bill, we propose the following language:

[SUBJECT TO THE LIMITATIONS SET FORTH IN RCW 26.19.065],

the court or administrative tribunal shall set support based upon the presumptive calculation (which includes the obligor’s CNBC) using the Whole Family Formula unless:

- 1) the presumption has been rebutted; or*
- 2) the presumptive support calculation would result in insufficient*

funds to meet the basic needs of the CBC (or perhaps simply “children”) in the obligee’s household and when taking the totality of the circumstances of both parents into account, including the obligee’s CNBC, the application of the presumptive calculation would be unjust.

The obligee shall be determined to have insufficient funds to meet the basic needs of the obligee’s household if the obligee’s gross (or perhaps “net”) income before the transfer payment is at or below one hundred twenty-five per cent (125%) of the federal poverty level for the obligee’s household size, including both CBC and CNBC.

5. 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.