

## Stepparent Child Support Liability – General Law

A stepparent (non-biological parent who marries a biological parent) may be liable for child support, but only in limited circumstances:

1. When the child is residing with that stepparent *in loco parentis* (i.e. acting as a parent or guardian); or
2. During a divorce/legal separation proceeding between biological and stepparent.

When a person marries someone with a child, the financial obligation generally is limited to the above cases except in extraordinary circumstances (death, etc).

All income earned during the marriage is community property. Each party has an undivided one-half interest in the income. If a spouse owes child support, the ex-spouse may be able to access/garnish the one-half interest in the community property. In other words, if you have a joint bank account, the spouse seeking child support may be able to garnish part of the funds in the account, but it is limited to one-half.

Be aware, however, that under Washington State 's Family Expense Statute (RCW 26.16.205) both *parties in a marriage* are responsible for the expenses of the family. It defines family as: "stepchildren who are part of the family unit, who reside in the family home, or who are in the residential care of on of the adults in the family unit. **It does not include children who are in the primary residential care of the other parent."**

Note that if the child lives with the other biological parent, the stepparent IS NOT obligated to support. This means that if the new husband (biological parent) is paying child support, the stepparent (the newly married spouse) is not obligated to pay under this law. This statute governs situations where the spouse and stepparent divorce or separate and the spouse asks step parent for child support, or in some instances, the Department of Health and Social Services (DSHS). Also, it implies that the stepchild must be financially supported by the stepparent during the marriage (i.e. don't treat stepchild differently than own child). Keep in mind, however, the community property interest.

For situations where the stepparent and biological parent divorce, it is possible for the biological parent to ask the stepparent for temporary child support. However, it will be terminated upon death or entry of the decree of divorce/separation, emancipation of the child, or if the child leaves the family home during marriage.

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Law Office of Derek G. Medina  
210 East Fifth Street  
Port Angeles, WA 98362  
www.medina-law.com

As such, any child support obligation is temporary in nature. Between a parent and a stepparent, the obligation is joint and several, not primary and secondary. This means that a third party (usually DSHS) can collect all from the biological parent, or all from the stepparent, or part of it from both.

Keep in mind the intent of the State of Washington is to make the biological parent responsible to pay for their children. The biological parent is primarily responsible for the support of the child. Washington law states that, “the earnings of a noncustodial, nonobligated stepparent are not subject to the antenuptial obligation of child support.” *Van Dyke v. Thompson* (1981). Thus, the State will look to the biological parent first and not the stepparent unless the two rules described above apply.

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