CHAPTER 518

MARRIAGE DISSOLUTION

518.001 [Repealed, 1978 c 699 s 17]

518.002 USE TERM DISSOLUTION.

Wherever the word "divorce" is used in the statutes, it has the same meaning as "dissolution" or "dissolution of marriage."

History: *1974 c 107 s 28*

518.003 DEFINITIONS.

Subdivision 1. For the purposes of this chapter, the following terms have the meanings provided in this section unless the context clearly requires otherwise.

Subd. 2. "Residence" means the place where a party has established a permanent home from which the party has no present intention of moving.

Subd. 3. **Custody.** Unless otherwise agreed by the parties:

(a) "Legal custody" means the right to determine the child's upbringing, including education, health care, and religious training.

(b) "Joint legal custody" means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education, health care, and religious training.

(c) "Physical custody and residence" means the routine daily care and control and the residence of the child.

(d) "Joint physical custody" means that the routine daily care and control and the residence of the child is structured between the parties.

(e) Wherever used in this chapter, the term "custodial parent" or "custodian" means the person who has the physical custody of the child at any particular time.

(f) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights, but does not include a decision relating to child support or any other monetary obligation of any person.

(g) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution, divorce, or separation, and includes proceedings involving children who are in need of protection or services, domestic abuse, and paternity.

Subd. 4. **Mediation.** "Mediation" means a process in which an impartial third party facilitates an agreement between two or more parties in a proceeding.

History: *1979 c 259 s 2; 1981 c 349 s 2; 1990 c 574 s 6,7*

518.005 RULES GOVERNING PROCEEDINGS.

Subdivision 1. Unless otherwise specifically provided, the rules of civil procedure for the district court apply to all proceedings under this chapter.

Subd. 2. A proceeding for dissolution of marriage, legal separation, or annulment shall be entitled "In re the Marriage of ..... and ....." A custody or support proceeding shall be entitled "In re the (Custody) (Support) of ....."

Subd. 3. The initial pleading in all proceedings under sections 518.002 to 518.66 shall be denominated a petition. A responsive pleading shall be denominated an answer. Other pleadings shall be denominated as provided in the rules of civil procedure.

Subd. 4. In sections 518.002 to 518.66, "decree" includes "judgment."

History: *1978 c 772 s 16; 1979 c 50 s 66,67; 1979 c 259 s 3*

518.01 VOID MARRIAGES.

All marriages which are prohibited by section 517.03 shall be absolutely void, without any decree of dissolution or other legal proceedings; except if a person whose husband or wife has been absent for four successive years, without being known to the person to be living during that time, marries during the lifetime of the absent husband or wife, the marriage shall be void only from the time that its nullity is duly adjudged. If the absentee is declared dead in accordance with section 576.142, the subsequent marriage shall not be void.

History: *(8580) RL s 3569; 1937 c 407 s 2; 1963 c 795 s 4; 1974 c 107 s 2; 1974 c 447 s 3; 1978 c 772 s 17*

518.02 VOIDABLE MARRIAGES.

A marriage shall be declared a nullity under the following circumstances:

(a) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity and the other party at the time the

marriage was solemnized did not know of the incapacity; or because of the influence of alcohol, drugs, or other incapacitating substances; or because consent of either was obtained by force or fraud and there was no subsequent voluntary cohabitation of the parties;

(b) A party lacks the physical capacity to consummate the marriage by sexual intercourse and the other party at the time the marriage was solemnized did not know of the incapacity;

(c) A party was under the age for marriage established by section 517.02.

History: *(8581) RL s 3570; 1978 c 772 s 18*

518.03 ACTION TO ANNUL; DECREE.

An annulment shall be commenced and the complaint shall be filed and proceedings had as in proceedings for dissolution. Upon due proof of the nullity of the marriage, it shall be adjudged null and void.

The provisions of sections 518.54 to 518.66 relating to property rights of the spouses, maintenance, support and custody of children on dissolution of marriage are applicable to proceedings for annulment.

History: *(8582) RL s 3571; 1974 c 107 s 3; 1978 c 772 s 19*

518.04 INSUFFICIENT GROUNDS FOR ANNULMENT.

No marriage shall be adjudged a nullity on the ground that one of the parties was under the age of legal consent if it appears that the parties had voluntarily cohabited together as husband and wife after having attained such age; nor shall the marriage of any insane person be adjudged void after restoration to reason, if it appears that the parties freely cohabited together as husband and wife after such restoration.

History: *(8583) RL s 3572; 1986 c 444*

518.05 ANNULMENT; WHEN TO BRING.

An annulment may be sought by any of the following persons and must be commenced within the times specified, but in no event may an annulment be sought after the death of either party to the marriage:

(a) For a reason set forth in section 518.02, clause (a), by either party or by the legal representative of the party who lacked capacity to consent, no later than 90 days after the petitioner obtained knowledge of the described condition;

(b) For the reason set forth in section 518.02, clause (b), by either party no later than one year after the petitioner obtained knowledge of the described condition;

(c) For the reason set forth in section 518.02, clause (c), by the underaged party, the party's parent or guardian, before the time the underaged party reaches the age at which the party could have married without satisfying the omitted requirement.

History: *(8584) RL s 3573; 1978 c 772 s 20; 1986 c 444*

518.055 PUTATIVE SPOUSE.

Any person who has cohabited with another to whom the person is not legally married in the good faith belief that the person was married to the other is a putative spouse until knowledge of the fact that the person is not legally married terminates the status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of the status, whether or not the marriage is prohibited or declared a nullity. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

History: *1978 c 772 s 21; 1986 c 444*

PROCEEDINGS

518.06 DISSOLUTION OF MARRIAGE; LEGAL SEPARATION; GROUNDS; UNCONTESTED LEGAL SEPARATION.

Subdivision 1. A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the marital status of both parties. A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. A decree of legal separation does not terminate the marital status of the parties. A dissolution of a marriage shall be granted by a county or district court when the court finds that there has been an irretrievable breakdown of the marriage relationship.

A decree of legal separation shall be granted when the court finds that one or both parties need a legal separation.

Defenses to divorce, dissolution and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

Subd. 2. [Repealed, 1978 c 772 s 63]

Subd. 3. If one or both parties petition for a decree of legal separation and neither party contests the granting of the decree nor petitions for a decree of dissolution, the court shall grant a decree of legal separation.

History: *(8585) RL s 3574; 1909 c 443 s 1; 1927 c 304 s 1; 1933 c 262 s 1; 1933 c 324; Ex1934 c 78 s 1; 1935 c 295 s 1; 1941 c 406 s 1; 1951 c 637 s 1; 1969 c 764 s 1; 1971 c 177 s 1; 1974 c 107 s 4; 1978 c 772 s 22,23; 1979 c 259 s 4,5*

518.07 RESIDENCE OF PARTIES.

No dissolution shall be granted unless (1) one of the parties has resided in this state, or has been a member of the armed services stationed in this state, for not less than 180 days immediately preceding the commencement of the proceeding; or (2) one of the parties has been a domiciliary of this state for not less than 180 days immediately preceding commencement of the proceeding.

History: *(8586) RL s 3575; 1974 c 107 s 5; 1978 c 772 s 24; 1979 c 259 s 6*

518.08 [Repealed, 1974 c 107 s 29]

518.09 PROCEEDING; HOW AND WHERE BROUGHT; VENUE.

A proceeding for dissolution or legal separation may be brought by either or both spouses and shall be commenced by personal service of the summons and petition venued in the county where either spouse resides. If neither party resides in the state and jurisdiction is based on the domicile of either spouse, the proceeding may be brought in the county where either party is domiciled. If neither party resides or is domiciled in this state and jurisdiction is premised upon one of the parties being a member of the armed services stationed in this state for not less than 180 days immediately preceding the commencement of the proceeding, the proceeding may be brought in the county where the member is stationed. This venue shall be subject to the power of the court to change the place of hearing by consent of the parties, or when it appears to the court that an impartial hearing cannot be had in the county where the proceedings are pending, or when the convenience of the parties or the ends of justice would be promoted by the change. No summons shall be required if a joint petition is filed.

History: *(8588) RL s 3577; 1931 c 226 s 1; 1974 c 107 s 6; 1978 c 772 s 25; 1979 c 259 s 7; 1981 c 349 s 3*

518.091 SUMMONS; TEMPORARY RESTRAINING PROVISIONS.

(a) Every summons must include the notice in this paragraph.

NOTICE OF TEMPORARY RESTRAINING PROVISIONS

UNDER MINNESOTA LAW, SERVICE OF THIS SUMMONS MAKES THE FOLLOWING REQUIREMENTS APPLY TO BOTH PARTIES TO THIS ACTION, UNLESS THEY ARE MODIFIED BY THE COURT OR THE PROCEEDING IS DISMISSED:

(1) NEITHER PARTY MAY DISPOSE OF ANY ASSETS EXCEPT (i) FOR THE NECESSITIES OF LIFE OR FOR THE NECESSARY GENERATION OF INCOME OR PRESERVATION OF ASSETS, (ii) BY AN AGREEMENT IN WRITING, OR (iii) FOR RETAINING COUNSEL TO CARRY ON OR TO CONTEST THIS PROCEEDING;

(2) NEITHER PARTY MAY HARASS THE OTHER PARTY; AND

(3) ALL CURRENTLY AVAILABLE INSURANCE COVERAGE MUST BE MAINTAINED AND CONTINUED WITHOUT CHANGE IN COVERAGE OR BENEFICIARY DESIGNATION.

IF YOU VIOLATE ANY OF THESE PROVISIONS, YOU WILL BE SUBJECT TO SANCTIONS BY THE COURT.

(b) Upon service of the summons, the restraining provisions contained in the notice apply by operation of law upon both parties until modified by further order of the court or dismissal of the proceeding, unless more than one year has passed since the last document was filed with the court.

History: *1991 c 271 s 1*

518.10 REQUISITES OF PETITION.

The petition for dissolution of marriage or legal separation shall state and allege:

(a) The name and address of the petitioner and any prior or other name used by the petitioner;

(b) The name and, if known, the address of the respondent and any prior or other name used by the respondent and known to the petitioner;

(c) The place and date of the marriage of the parties;

(d) In the case of a petition for dissolution, that either the petitioner or the respondent or both:

(1) Has resided in this state for not less than 180 days immediately preceding the commencement of the proceeding, or

(2) Has been a member of the armed services and has been stationed in this state for not less than 180 days immediately preceding the commencement of the proceeding, or

(3) Has been a domiciliary of this state for not less than 180 days immediately preceding the commencement of the proceeding;

(e) The name at the time of the petition and any prior or other name, age and date of birth of each living minor or dependent child of the parties born before the marriage or born or adopted during the marriage and a reference to, and the expected date of birth of, a child of the parties conceived during the marriage but not born;

(f) Whether or not a separate proceeding for dissolution, legal separation, or custody is pending in a court in this state or elsewhere;

(g) In the case of a petition for dissolution, that there has been an irretrievable breakdown of the marriage relationship;

(h) In the case of a petition for legal separation, that there is a need for a decree of legal separation; and

(i) Any temporary or permanent maintenance, child support, child custody, disposition of property, attorneys' fees, costs and disbursements applied for without setting forth the amounts.

The petition shall be verified by the petitioner or petitioners, and its allegations established by competent evidence.

History: *(8589) RL s 3578; 1955 c 688 s 1; 1974 c 107 s 7; 1978 c 772 s 26; 1979 c 259 s 8; 1983 c 308 s 14; 1991 c 161 s 2*

518.11 SERVICE; PUBLICATION.

(a) Unless a proceeding is brought by both parties, copies of the summons and petition shall be served on the respondent personally.

(b) When service is made out of this state and within the United States, it may be proved by the affidavit of the person making the same. When service is made without the United

States it may be proved by the affidavit of the person making the same, taken before and certified by any United States minister, charge d'affaires, commissioner, consul or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties; or before an officer authorized to administer an oath with the certificate of an officer of a court of record of the country wherein such affidavit is taken as to the identity and authority of the officer taking the same.

(c) If personal service cannot be made, the court may order service of the summons by alternate means. The application for alternate service must include the last known location of the respondent; the petitioner's most recent contacts with the respondent; the last known location of the respondent's employment; the names and locations of the respondent's parents, siblings, children, and other close relatives; the names and locations of other persons who are likely to know the respondent's whereabouts; and a description of efforts to locate those persons.

The court shall consider the length of time the respondent's location has been unknown, the likelihood that the respondent's location will become known, the nature of the relief sought, and the nature of efforts made to locate the respondent. The court shall order service by first class mail, forwarding address requested, to any addresses where there is a reasonable possibility that mail or information will be forwarded or communicated to the respondent.

The court may also order publication, within or without the state, but only if it might reasonably succeed in notifying the respondent of the proceeding. Also, the court may require the petitioner to make efforts to locate the respondent by telephone calls to appropriate persons. Service shall be deemed complete 21 days after mailing or 21 days after court-ordered publication.

History: *(8590) RL s 3579; 1909 c 434; 1913 c 57 s 1; 1974 c 107 s 8; 1978 c 772 s 27; 1994 c 630 art 12 s 2*

518.12 TIME FOR ANSWERING.

The respondent shall have 30 days in which to answer the petition. In case of service by publication, the 30 days shall not begin to run until the expiration of the period allowed for publication. In the case of a counterpetition for dissolution or legal separation to a petition for dissolution or legal separation, no answer shall be required to the counterpetition and the original petitioner shall be deemed to have denied each and every statement, allegation and claim in the counterpetition.

History: *(8591) RL s 3580; 1945 c 7 s 1; 1974 c 107 s 9; 1979 c 259 s 9*

518.13 FAILURE TO ANSWER; FINDINGS; HEARING.

Subdivision 1. If the respondent does not appear after service duly made and proved, the court may hear and determine the proceeding as a default matter.

Subd. 2. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the commencement of the proceeding and the prospect of reconciliation, and shall make a finding whether the marriage is irretrievably broken.

A finding of irretrievable breakdown under this subdivision is a determination that there is no reasonable prospect of reconciliation. The finding must be supported by evidence that (i) the parties have lived separate and apart for a period of not less than 180 days immediately preceding the commencement of the proceeding, or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage.

Subd. 3. If both parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding that the marriage is irretrievably broken.

Subd. 4. The court or judge, upon application, may refer the proceeding to a referee to take and report the evidence therein. Hearings for dissolution of marriage shall be heard in open court or before a referee appointed by the court to receive the testimony of the wit-

nesses, or depositions taken as in other equitable actions. However, the court may in its discretion close the hearing.

Subd. 5. **Approval without hearing.** Proposed findings of fact, conclusions of law, order for judgment, and judgment and decree must be submitted to the court for approval and filing without a final hearing in the following situations:

(1) if there are no minor children of the marriage, and (i) the parties have entered into a written stipulation, or (ii) the respondent has not appeared after service duly made and proved by affidavit and at least 20 days have elapsed since the time for answering under section 518.12 expired; or

(2) if there are minor children of the marriage, the parties have signed and acknowledged a stipulation, and all parties are represented by counsel.

Notwithstanding clause (1) or (2), the court shall schedule the matter for hearing in any case where the proposed judgment and decree does not appear to be in the best interests of the minor children or is contrary to the interests of justice.

History: *(8592) RL s 3581; 1974 c 107 s 10; 1978 c 772 s 28; 1979 c 259 s 10; 1991 c 271 s 2*

518.131 TEMPORARY ORDERS AND RESTRAINING ORDERS.

Subdivision 1. In a proceeding brought for custody, dissolution, or legal separation, or for disposition of property, maintenance, or child support following the dissolution of a marriage, either party may, by motion, request from the court and the court may grant a temporary order pending the final disposition of the proceeding to or for:

(a) Temporary custody and visitation rights of the minor children of the parties;

(b) Temporary maintenance of either spouse;

(c) Temporary child support for the children of the parties;

(d) Temporary costs and reasonable attorney fees;

(e) Award the temporary use and possession, exclusive or otherwise, of the family home, furniture, household goods, automobiles, and other property of the parties;

(f) Restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;

(g) Restrain one or both parties from harassing, vilifying, mistreating, molesting, disturbing the peace, or restraining the liberty of the other party or the children of the parties;

(h) Restrain one or both parties from removing any minor child of the parties from the jurisdiction of the court;

(i) Exclude a party from the family home of the parties or from the home of the other party; and

(j) Require one or both of the parties to perform or to not perform such additional acts as will facilitate the just and speedy disposition of the proceeding, or will protect the parties or their children from physical or emotional harm.

Subd. 2. No temporary order shall:

(a) Deny visitation rights to a noncustodial parent unless the court finds that visitation by the noncustodial parent is likely to cause physical or emotional harm to the child;

(b) Exclude a party from the family home of the parties unless the court finds that physical or emotional harm to one of the parties or to the children of the parties is likely to result, or that the exclusion is reasonable in the circumstances; or

(c) Vacate or modify an order granted under section 518B.01, subdivision 6, paragraph (a), clause (1), restraining an abusing party from committing acts of domestic abuse, except that the court may hear a motion for modification of an order for protection concurrently with a proceeding for dissolution of marriage upon notice of motion and motion. The notice required by court rule shall not be waived. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an order for protection shall be issued.

Subd. 3. A party may request and the court may make an ex parte restraining order which may include any matter that may be included in a temporary order except:

(a) A restraining order may not exclude either party from the family home of the parties except upon a finding by the court of immediate danger of physical harm to the other party or the children of either party; and

(b) A restraining order may not deny visitation to either party or grant custody of the minor children to either party except upon a finding by the court of immediate danger of physical harm to the minor children of the parties.

Subd. 4. Restraining orders shall be personally served upon the party to be restrained and shall be accompanied with a notice of the time and place of hearing for disposition of the matters contained in the restraining order at a hearing for a temporary order. When a restraining order has been issued, a hearing on the temporary order shall be held at the earliest practicable date. The restrained party may upon written notice to the other party advance the hearing date to a time earlier than that noticed by the other party. The restraining order shall continue in full force and effect only until the hearing time noticed, unless the court, for good cause and upon notice extends the time for hearing.

Subd. 5. A temporary order shall continue in full force and effect until the earlier of its amendment or vacation, dismissal of the main action or entry of a final decree of dissolution or legal separation.

Subd. 6. If a proceeding for dissolution or legal separation is dismissed, a temporary custody order is vacated unless one of the parties or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parties and the best interests of the child require that a custody order be issued.

Subd. 7. The court shall be guided by the factors set forth in sections 518.551 (concerning child support), 518.552 (concerning maintenance), 518.17 to 518.175 (concerning custody and visitation), and 518.14 (concerning costs and attorney fees) in making temporary orders and restraining orders.

Subd. 8. Temporary orders shall be made solely on the basis of affidavits and argument of counsel except upon demand by either party in a motion or responsive motion made within the time limit for making and filing a responsive motion that the matter be heard on oral testimony before the court, or if the court in its discretion orders the taking of oral testimony.

Subd. 9. A temporary order or restraining order:

(a) Shall not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding; and

(b) May be revoked or modified by the court before the final disposition of the proceeding upon the same grounds and subject to the same requirements as the initial granting of the order.

Subd. 10. In addition to being punishable by contempt, a violation of a provision of a temporary order or restraining order granting the relief authorized in subdivision 1, clauses (f), (g), or (h) is a misdemeanor.

History: *1979 c 259 s 11; 1986 c 444; 1987 c 237 s 1; 1987 c 403 art 3 s 76; 1990 c 574 s 8,9*

518.135 [Repealed, 1979 c 259 s 35]

518.14 COSTS AND DISBURSEMENTS; ATTORNEY FEES; COLLECTION COSTS.

Subdivision 1. **General.** Except as provided in subdivision 2, in a proceeding under this chapter, the court shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided it finds:

(1) that the fees are necessary for the good-faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Nothing in this section precludes the court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding. Fees, costs, and disbursements provided for in this section may be awarded at any point in the proceeding, including a modification proceeding under sections 518.18 and 518.64. The court may adjudge costs and disbursements against either party. The court may authorize the collection of money awarded by execution, or out of property sequestered, or in any other manner within the power of the court. An award of attorney's fees made by the court during the pendency of the proceeding or in the final judgment survives the proceeding and if not paid by the party directed to pay the same may be enforced as above provided or by a separate civil action brought in the attorney's own name. If the proceeding is dismissed or abandoned prior to determination and award of attorney's fees, the court may nevertheless award attorney's fees upon the attorney's motion. The award shall also survive the proceeding and may be enforced in the same manner as last above provided.

Subd. 2. **Enforcement of child support.** (a) A child support obligee is entitled to recover from the obligor reasonable attorney fees and other collection costs incurred to enforce a child support judgment, as provided in this subdivision. In order to recover collection costs under this subdivision, the arrearages must be at least $500 and must be at least 90 days past due. In addition, the arrearages must be a docketed judgment under sections 548.09 and 548.091. If the obligor pays in full the judgment rendered under section 548.091 within 20 days of receipt of notice of entry of judgment, the obligee is not entitled to recover attorney fees or collection costs under this subdivision.

(b) Written notice must be provided by any obligee contracting with an attorney or collection entity to enforce a child support judgment to the public authority responsible for child support enforcement, if the public authority is a party or provides services to a party, within five days of signing a contract for services and within five days of receipting any payments received on a child support judgment. Attorney fees and collection costs obtained under this subdivision are considered child support and entitled to the applicable remedies for collection and enforcement of child support.

(c) The obligee shall serve notice of the obligee's intent to recover attorney fees and collections costs by certified or registered mail on the obligor at the obligor's last known address. The notice must include an itemization of the attorney fees and collection costs being sought by the obligee and inform the obligor that the fees and costs will become an additional judgment for child support unless the obligor requests a hearing on the reasonableness of the fees and costs or to contest the child support judgment on grounds limited to mistake of fact within 20 days of mailing of the notice.

(d) If the obligor requests a hearing, the only issues to be determined by the court are whether the attorney fees or collection costs were reasonably incurred by the obligee for the enforcement of a child support judgment against the obligor or the validity of the child support judgment on grounds limited to mistake of fact. The fees and costs may not exceed 30 percent of the arrearages. The court may modify the amount of attorney fees and costs as appropriate and shall enter judgment accordingly.

(e) If the obligor fails to request a hearing within 20 days of mailing of the notice under paragraph (a), the amount of the attorney fees or collection costs requested by the obligee in the notice automatically becomes an additional judgment for child support.

(f) The commissioner of human services shall prepare and make available to the court and the parties forms for use in providing for notice and requesting a hearing under this subdivision. The rulemaking provisions of chapter 14 do not apply to the forms.

History: *(8593) RL s 3582; 1955 c 687 s 1; 1974 c 107 s 11; 1978 c 772 s 30; 1986 c 444; 1990 c 574 s 10; 1993 c 340 s 20; 1994 c 630 art 11 s 5*

518.145 DECREE, FINALITY AND REOPENING.

Subdivision 1. **Appeal.** A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. When entered, the findings of fact and conclusions of law may constitute the judgment and decree. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the

time for appealing from that provision. A party may remarry before the time for appeal has run if it is not contested that the marriage is irretrievably broken or if a stipulation that the marriage is irretrievably broken is incorporated in the decree of dissolution.

Subd. 2. **Reopening.** On motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter, except for provisions dissolving the bonds of marriage, annulling the marriage, or directing that the parties are legally separated, and may order a new trial or grant other relief as may be just for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the rules of civil procedure, rule 59.03;

(3) fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;

(4) the judgment and decree or order is void; or

(5) the judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

The motion must be made within a reasonable time, and for a reason under clause (1), (2), or (3), not more than one year after the judgment and decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment and decree or order or suspend its operation. This subdivision does not limit the power of a court to entertain an independent action to relieve a party from a judgment and decree, order, or proceeding or to grant relief to a party not actually personally notified as provided in the rules of civil procedure, or to set aside a judgment for fraud upon the court.

History: *1978 c 772 s 31; 1979 c 259 s 12; 1981 c 349 s 4; 1988 c 668 s 11*

518.147 STATISTICAL REPORT FORM.

On or before the time a final decree of dissolution or annulment of marriage is entered, the petitioner or the moving party, if other than the petitioner, shall complete and file with the court administrator a statistical report form provided by the commissioner of health. After entry of the final decree, the court administrator shall forward the form to the commissioner of health pursuant to section 144.224. The court administrator shall not refuse entry of a decree on the basis that the statistical report form is incomplete. Neither the statistical report form, nor information contained in the form, shall be admissible in evidence in this or any subsequent proceeding.

History: *1984 c 534 s 29; 1Sp1986 c 3 art 1 s 82*

518.148 CERTIFICATION OF DISSOLUTION.

Subdivision 1. **Certificate of dissolution.** An attorney or pro se party may prepare and submit to the court a separate certificate of dissolution to be attached to the judgment and decree at the time of granting the dissolution of marriage. Upon approval by the court and filing of the certificate of dissolution with the court administrator, the court administrator shall provide to any party upon request certified copies of the certificate of dissolution.

Subd. 2. **Required information.** The certificate shall include the following information:

(1) the full caption and file number of the case and the title "Certificate of Dissolution";

(2) the names and any prior or other names of the parties to the dissolution;

(3) the names of any living minor or dependent children as identified in the judgment and decree;

(4) that the marriage of the parties is dissolved; and

(5) the date of the judgment and decree.

Subd. 3. **Certification.** The certificate of dissolution shall be conclusive evidence of the facts recited in the certificate.

History: *1991 c 161 s 3*

518.15 [Repealed, 1978 c 772 s 63]

518.155 CUSTODY DETERMINATIONS.

Notwithstanding any law to the contrary, a court in which a proceeding for dissolution, legal separation, or child custody has been commenced shall not issue, revise, modify or amend any order, pursuant to sections 518.131, 518.165, 518.168, 518.17, 518.175 or 518.18, which affects the custody of a minor child or the visitation rights of a noncustodial parent unless the court has jurisdiction over the matter pursuant to the provisions of sections 518A.01 to 518A.25.

History: *1977 c 8 s 26; 1978 c 772 s 32; 1979 c 259 s 13; 1Sp1981 c 4 art 1 s 179*

518.156 COMMENCEMENT OF CUSTODY PROCEEDING.

Subdivision 1. In a court of this state which has jurisdiction to decide child custody matters, a child custody proceeding is commenced:

(a) by a parent

(1) by filing a petition for dissolution or legal separation; or

(2) where a decree of dissolution or legal separation has been entered or where none is sought, or when paternity has been recognized under section 257.75, by filing a petition or motion seeking custody or visitation of the child in the county where the child is permanently resident or where the child is found or where an earlier order for custody of the child has been entered; or

(b) by a person other than a parent, where a decree of dissolution or legal separation has been entered or where none is sought by filing a petition or motion seeking custody or visitation of the child in the county where the child is permanently resident or where the child is found or where an earlier order for custody of the child has been entered. A person seeking visitation pursuant to this paragraph must qualify under one of the provisions of section 257.022.

Subd. 2. Written notice of a child custody or visitation proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

History: *1978 c 772 s 33; 1979 c 259 s 14; 1980 c 598 s 4; 1986 c 444; 1990 c 574 s 11; 1992 c 529 s 1; 1Sp1993 c 1 art 6 s 43*

518.157 ORIENTATION IN PROCEEDINGS INVOLVING CHILDREN.

In a proceeding under this chapter involving custody, support, or visitation of children, the court may require the parties to attend an orientation and education program regarding the proceedings and the impact on the children. Upon request of a party and a showing of good cause, the court shall excuse the party from attending the program. Parties may be required to pay a fee to cover the cost of the program, except that if a party is entitled to proceed in forma pauperis under section 563.01, the court shall waive the fee or direct its payment under section 563.01. The court may not require the parties to attend the same orientation session.

History: *1995 c 127 s 1*

518.158 GRANDPARENT EX PARTE TEMPORARY CUSTODY ORDER.

Subdivision 1. **Factors.** It is presumed to be in the best interests of the child for the court to grant temporary custody to a grandparent under subdivision 2 if a minor child has resided with the grandparent for a period of 12 months or more and the following circumstances exist without good cause:

(1) the parent has had no contact with the child on a regular basis and no demonstrated, consistent participation in the child's well-being for six months; or

(2) the parent, during the time the child resided with the grandparent, has refused or neglected to comply with the duties imposed upon the parent by the parent and child relation-

ship, including but not limited to providing the child necessary food, clothing, shelter, health care, education, and other care and control necessary for the child's physical, mental, or emotional health and development.

Subd. 2. **Emergency custody hearing.** If the parent seeks to remove the child from the home of the grandparent and the factors in subdivision 1 exist, the grandparent may apply for an ex parte temporary order for custody of the child. The court shall grant temporary custody if it finds, based on the application, that the factors in subdivision 1 exist. If it finds that the factors in subdivision 1 do not exist, the court shall order that the child be returned to the parent. An ex parte temporary custody order under this subdivision is good for a fixed period not to exceed 14 days. A temporary custody hearing under this chapter must be set for not later than seven days after issuance of the ex parte temporary custody order. The parent must be promptly served with a copy of the ex parte order and the petition and notice of the date for the hearing.

Subd. 3. **Further proceedings.** If the court orders temporary physical custody to the grandparent under subdivision 2 and the grandparent or parent seeks to pursue further temporary or permanent custody of the child, the custody issues must be determined pursuant to a petition under this chapter and the other standards and procedures of this chapter apply. This section does not affect any rights or remedies available under other law.

Subd. 4. **Return to parent.** If the court orders permanent custody to a grandparent under this section, the court shall set conditions the parent must meet in order to obtain custody. The court may notify the parent that the parent may request assistance from the local social service agency in order to meet the conditions set by the court.

History: *1994 c 630 art 12 s 3*

518.16 [Repealed, 1979 c 259 s 35]

518.165 GUARDIANS FOR MINOR CHILDREN.

Subdivision 1. **Permissive appointment of guardian ad litem.** In all proceedings for child custody or for dissolution or legal separation where custody or visitation of a minor child is in issue, the court may appoint a guardian ad litem from a panel established by the court to represent the interests of the child. The guardian ad litem shall advise the court with respect to custody, support and visitation.

Subd. 2. **Required appointment of guardian ad litem.** In all proceedings for child custody or for marriage dissolution or legal separation in which custody or visitation of a minor child is an issue, if the court has reason to believe that the minor child is a victim of domestic child abuse or neglect, as those terms are defined in sections 260.015 and 626.556, respectively, the court shall appoint a guardian ad litem. The guardian ad litem shall represent the interests of the child and advise the court with respect to custody, support, and visitation. If the child is represented by a guardian ad litem in any other pending proceeding, the court may appoint that guardian to represent the child in the custody or visitation proceeding. No guardian ad litem need be appointed if the alleged domestic child abuse or neglect is before the court on a juvenile dependency and neglect petition. Nothing in this subdivision requires the court to appoint a guardian ad litem in any proceeding for child custody, marriage dissolution, or legal separation in which an allegation of domestic child abuse or neglect has not been made.

Subd. 2a. **Responsibilities of guardian ad litem.** A guardian ad litem shall carry out the following responsibilities:

(1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court, reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others with knowledge relevant to the case;

(2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;

(3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;

(4) monitor the child's best interests throughout the judicial proceeding; and

(5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

Subd. 3. **Fees.** A guardian ad litem appointed under either subdivision 1 or 2 may be appointed either as a volunteer or on a fee basis. If a guardian ad litem is appointed on a fee basis, the court shall enter an order for costs, fees, and disbursements in favor of the child's guardian ad litem. The order may be made against either or both parties, except that any part of the costs, fees, or disbursements which the court finds the parties are incapable of paying shall be borne by the county in which the proceeding is being held. In no event may the court order that costs, fees, or disbursements be paid by a party receiving public assistance or legal assistance or by a party whose annual income falls below the poverty line as established under United States Code, title 42, section 9902(2).

History: *1974 c 33 s 1; 1978 c 772 s 35; 1979 c 259 s 15; 1986 c 469 s 1; 1995 c 226 art 6 s 10*

518.166 INTERVIEWS.

The court may interview the child in chambers to ascertain the child's reasonable preference as to custodian, if the court deems the child to be of sufficient age to express preference. The court shall permit counsel to be present at the interview and shall permit counsel to propound reasonable questions to the child either directly or through the court. The court shall cause a record of the interview to be made and to be made part of the record in the case unless waived by the parties.

In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian requests, the court may seek the recommendations of professional personnel whether or not they are employed on a regular basis by the court. The recommendations given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination of professional personnel consulted by the court.

History: *1978 c 772 s 36; 1979 c 259 s 16; 1986 c 444*

518.167 INVESTIGATIONS AND REPORTS.

Subdivision 1. **Court order.** In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the county welfare agency or department of court services.

Subd. 2. **Preparation.** (a) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the potential custodial arrangements except for persons involved in mediation efforts between the parties. Mediation personnel may disclose to investigators and evaluators information collected during mediation only if agreed to in writing by all parties. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, school personnel, or other expert persons who have served the child in the past after obtaining the consent of the parents or the child's custodian or guardian.

(b) The report submitted by the investigator must consider and evaluate the factors in section 518.17, subdivision 1, and include a detailed analysis of all information considered for each factor. If joint custody is contemplated or sought, the report must consider and evaluate the factors in section 518.17, subdivision 2, state the position of each party and the investigator's recommendation and the reason for the recommendation, and reference established means for dispute resolution between the parties.

Subd. 3. **Availability to counsel.** The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days before the hearing. The investigator shall maintain and, upon request, make available to counsel and to a party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subdivision 2, and the names and addresses of all persons whom the investigator has consulted. The investigator

and any person the investigator has consulted is subject to other pretrial discovery in accordance with the requirements of the Minnesota Rules of Civil Procedure. Mediation proceedings are not subject to discovery without written consent of both parties. A party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the right of cross-examination before the hearing.

Subd. 4. **Use at hearing.** The investigator's report may be received in evidence at the hearing.

Subd. 5. **Costs.** The court shall order all or part of the cost of the investigation and report to be paid by either or both parties, based on their ability to pay. Any part of the cost that the court finds the parties are incapable of paying must be borne by the county welfare agency or department of court services that performs the investigation. The court may not order costs under this subdivision to be paid by a party receiving public assistance or legal assistance from a qualified legal services program or by a party whose annual income falls below the poverty line under United States Code, title 42, section 9902(2).

History: *1978 c 772 s 37; 1984 c 635 s 1; 1986 c 444; 1990 c 574 s 12; 1991 c 271 s 3*

518.168 HEARINGS.

(a) Custody proceedings shall receive priority in being set for hearing.

(b) The court may tax as costs the payment of necessary travel and other expenses incurred by a person whose presence at the hearing the court deems necessary to determine the best interests of the child.

(c) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct interest in the particular case.

(d) If the court finds it necessary for the protection of the child's welfare that the record of an interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

History: *1978 c 772 s 38*

518.17 CUSTODY AND SUPPORT OF CHILDREN ON JUDGMENT.

Subdivision 1. **The best interests of the child.** (a) "The best interests of the child" means all relevant factors to be considered and evaluated by the court including:

(1) the wishes of the child's parent or parents as to custody;

(2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;

(3) the child's primary caretaker;

(4) the intimacy of the relationship between each parent and the child;

(5) the interaction and interrelationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;

(6) the child's adjustment to home, school, and community;

(7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(8) the permanence, as a family unit, of the existing or proposed custodial home;

(9) the mental and physical health of all individuals involved; except that a disability, as defined in section 363.01, of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;

(10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any;

(11) the child's cultural background;

(12) the effect on the child of the actions of an abuser, if related to domestic abuse, as defined in section 518B.01, that has occurred between the parents; and

(13) except in cases in which a finding of domestic abuse as defined in section 518B.01 has been made, the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child.

The court may not use one factor to the exclusion of all others. The primary caretaker factor may not be used as a presumption in determining the best interests of the child. The court must make detailed findings on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.

(b) The court shall not consider conduct of a proposed custodian that does not affect the custodian's relationship to the child.

Subd. 1a. **Evidence of false allegations of child abuse.** The court shall consider evidence of a violation of section 609.507 in determining the best interests of the child.

Subd. 2. **Factors when joint custody is sought.** In addition to the factors listed in subdivision 1, where either joint legal or joint physical custody is contemplated or sought, the court shall consider the following relevant factors:

(a) The ability of parents to cooperate in the rearing of their children;

(b) Methods for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods;

(c) Whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing; and

(d) Whether domestic abuse, as defined in section 518B.01, has occurred between the parents.

The court shall use a rebuttable presumption that upon request of either or both parties, joint legal custody is in the best interests of the child. However, the court shall use a rebuttable presumption that joint legal or physical custody is not in the best interests of the child if domestic abuse, as defined in section 518B.01, has occurred between the parents.

If the court awards joint legal or physical custody over the objection of a party, the court shall make detailed findings on each of the factors in this subdivision and explain how the factors led to its determination that joint custody would be in the best interests of the child.

Subd. 3. **Custody order.** (a) Upon adjudging the nullity of a marriage, or in a dissolution or separation proceeding, or in a child custody proceeding, the court shall make such further order as it deems just and proper concerning:

(1) the legal custody of the minor children of the parties which shall be sole or joint;

(2) their physical custody and residence; and

(3) their support. In determining custody, the court shall consider the best interests of each child and shall not prefer one parent over the other solely on the basis of the sex of the parent.

(b) The court shall grant the following rights to each of the parties, unless specific findings are made under section 518.68, subdivision 1. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Each party shall keep the other party informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent–teacher conferences. The school is not required to hold a separate conference for each party. In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment. Each party has the right to reasonable access and telephone contact with the minor children. The court may waive any of the rights under this section if it finds it is necessary to protect the welfare of a party or child.

Subd. 4. [Repealed, 1986 c 406 s 9]

Subd. 5. [Repealed, 1986 c 406 s 9]

Subd. 6. **Departure from guidelines based on joint custody.** An award of joint legal custody is not a reason for departure from the guidelines in section 518.551, subdivision 5.

History: *(8596) RL s 3585; 1969 c 1030 s 1; 1971 c 173 s 1; 1974 c 107 s 14; 1974 c 330 s 2; 1978 c 772 s 39; 1979 c 259 s 17; 1981 c 349 s 5; 1983 c 308 s 15; 1984 c 547 s 16; 1984 c 655 art 1 s 73; 1986 c 406 s 1,2; 1986 c 444; 1987 c 106 s 1; 1988 c 662 s 1; 1988 c 668 s 12; 1989 c 248 s 2,3; 1990 c 574 s 13,14; 1991 c 271 s 4; 1992 c 557 s 8; 1993 c 322 s 7; 1994 c 630 art 12 s 4*

518.171 MEDICAL SUPPORT.

Subdivision 1. **Order.** Compliance with this section constitutes compliance with a qualified medical child support order as described in the federal Employee Retirement Income Security Act of 1974 (ERISA) as amended by the federal Omnibus Budget Reconciliation Act of 1993 (OBRA).

(a) Every child support order must:

(1) expressly assign or reserve the responsibility for maintaining medical insurance for the minor children and the division of uninsured medical and dental costs; and

(2) contain the names and last known addresses, if any, of the dependents unless the court prohibits the inclusion of an address and orders the custodial parent to provide the address to the administrator of the health plan. The court shall order the party with the better group dependent health and dental insurance coverage or health insurance plan to name the minor child as beneficiary on any health and dental insurance plan that is available to the party on:

(i) a group basis;

(ii) through an employer or union; or

(iii) through a group health plan governed under the ERISA and included within the definitions relating to health plans found in section 62A.011, 62A.048, or 62E.06, subdivision 2. "Health insurance" or "health insurance coverage" as used in this section means coverage that is comparable to or better than a number two qualified plan as defined in section 62E.06, subdivision 2. "Health insurance" or "health insurance coverage" as used in this section does not include medical assistance provided under chapter 256, 256B, or 256D.

(b) If the court finds that dependent health or dental insurance is not available to the obligor or obligee on a group basis or through an employer or union, or that group insurance is not accessible to the obligee, the court may require the obligor (1) to obtain other dependent health or dental insurance, (2) to be liable for reasonable and necessary medical or dental expenses of the child, or (3) to pay no less than $50 per month to be applied to the medical and dental expenses of the children or to the cost of health insurance dependent coverage.

(c) If the court finds that the available dependent health or dental insurance does not pay all the reasonable and necessary medical or dental expenses of the child, including any existing or anticipated extraordinary medical expenses, and the court finds that the obligor has the financial ability to contribute to the payment of these medical or dental expenses, the court shall require the obligor to be liable for all or a portion of the medical or dental expenses of the child not covered by the required health or dental plan. Medical and dental expenses include, but are not limited to, necessary orthodontia and eye care, including prescription lenses.

(d) Unless otherwise agreed by the parties and approved by the court, if the court finds that the obligee is not receiving public assistance for the child and has the financial ability to contribute to the cost of medical and dental expenses for the child, including the cost of insurance, the court shall order the obligee and obligor to each assume a portion of these expenses based on their proportionate share of their total net income as defined in section 518.54, subdivision 6.

(e) Payments ordered under this section are subject to section 518.611. An obligee who fails to apply payments received to the medical expenses of the dependents may be found in contempt of this order.

Subd. 2. **Spousal or ex-spousal coverage.** The court shall require the obligor to provide dependent health and dental insurance for the benefit of the obligee if it is available at no additional cost to the obligor and in this case the provisions of this section apply.

Subd. 2a. **Employer and obligor responsibility.** An individual shall disclose at the time of hiring if medical support is required to be withheld. If an employee discloses that medical support is required to be withheld, the employer shall begin withholding according to the terms of the order and pursuant to section 518.611, subdivision 8. If an individual discloses an obligation to obtain health and dental dependent insurance coverage and coverage is available through the employer, the employer shall make all application processes known to the individual upon hiring and enroll the employee and dependent in the plan pursuant to subdivision 3.

Subd. 3. **Implementation.** A copy of the court order for insurance coverage shall be forwarded to the obligor's employer or union and to the health or dental insurance carrier or employer by the obligee or the public authority responsible for support enforcement only when ordered by the court or when the following conditions are met:

(1) the obligor fails to provide written proof to the obligee or the public authority, within 30 days of the effective date of the court order, that the insurance has been obtained;

(2) the obligee or the public authority serves written notice of its intent to enforce medical support on the obligor by mail at the obligor's last known post office address; and

(3) the obligor fails within 15 days after the mailing of the notice to provide written proof to the obligee or the public authority that the insurance coverage existed as of the date of mailing.

The employer or union shall forward a copy of the order to the health and dental insurance plan offered by the employer.

Subd. 4. **Effect of order.** (a) The order is binding on the employer or union and the health and dental insurance plan when service under subdivision 3 has been made. An employer or union that is included under ERISA may not deny enrollment based on exclusionary clauses described in section 62A.048. Upon receipt of the order, or upon application of the obligor pursuant to the order, the employer or union and its health and dental insurance plan shall enroll the minor child as a beneficiary in the group insurance plan and withhold any required premium from the obligor's income or wages. If more than one plan is offered by the employer or union, the child shall be enrolled in the least costly health insurance plan otherwise available to the obligor that is comparable to a number two qualified plan. If the obligor is not enrolled in a health insurance plan, the employer or union shall also enroll the obligor in the chosen plan if enrollment of the obligor is necessary in order to obtain dependent coverage under the plan. Enrollment of dependents and the obligor shall be immediate and not dependent upon open enrollment periods. Enrollment is not subject to the underwriting policies described in section 62A.048.

(b) An employer or union that willfully fails to comply with the order is liable for any health or dental expenses incurred by the dependents during the period of time the dependents were eligible to be enrolled in the insurance program, and for any other premium costs incurred because the employer or union willfully failed to comply with the order. An employer or union that fails to comply with the order is subject to contempt under section 518.615 and is also subject to a fine of $500 to be paid to the obligee or public authority. Fines paid to the public authority are designated for child support enforcement services.

(c) Failure of the obligor to execute any documents necessary to enroll the dependent in the group health and dental insurance plan will not affect the obligation of the employer or union and group health and dental insurance plan to enroll the dependent in a plan. Information and authorization provided by the public authority responsible for child support enforcement, or by the custodial parent or guardian, is valid for the purposes of meeting enrollment requirements of the health plan. The insurance coverage for a child eligible under subdivision 5 shall not be terminated except as authorized in subdivision 5.

Subd. 5. **Eligible child.** A minor child that an obligor is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the obligor until the child is emancipated or until further order of the court. The health or dental insurance carrier or employer may not disenroll or eliminate coverage of the child unless the health or dental insurance carrier or employer is provided satisfactory written evidence that the court order is no longer in effect, or the child is or will be enrolled in comparable health coverage through another health or dental insurance plan that will take effect no later than the

effective date of the disenrollment, or the employer has eliminated family health and dental coverage for all of its employees, or that the required premium has not been paid by or on behalf of the child. If disenrollment or elimination of coverage of a child under this subdivision is based upon nonpayment of premium, the health or dental insurance plan must provide 30 days written notice to the child's nonobligor parent prior to the disenrollment or elimination of coverage.

Subd. 6. **Plan reimbursement; correspondence and notice.** (a) The signature of the custodial parent of the insured dependent is a valid authorization to a health or dental insurance plan for purposes of processing an insurance reimbursement payment to the provider of the medical services or to the custodial parent if medical services have been prepaid by the custodial parent.

(b) The health or dental insurance plan shall send copies of all correspondence regarding the insurance coverage to both parents. When an order for dependent insurance coverage is in effect and the obligor's employment is terminated, or the insurance coverage is terminated, the health or dental insurance plan shall notify the obligee within ten days of the termination date with notice of conversion privileges.

Subd. 7. **Release of information.** When an order for dependent insurance coverage is in effect, the obligor's employer, union, or insurance agent shall release to the obligee or the public authority, upon request, information on the dependent coverage, including the name of the health or dental insurance carrier or employer. The employer, union, or health or dental insurance plan shall provide the obligee with insurance identification cards and all necessary written information to enable the obligee to utilize the insurance benefits for the covered dependents. Notwithstanding any other law, information reported pursuant to section 268.121 shall be released to the public agency responsible for support enforcement that is enforcing an order for health or dental insurance coverage under this section. The public agency responsible for support enforcement is authorized to release to the obligor's health or dental insurance carrier or employer information necessary to obtain or enforce medical support.

Subd. 8. **Obligor liability.** (a) An obligor who fails to maintain medical or dental insurance for the benefit of the children as ordered or fails to provide other medical support as ordered is liable to the obligee for any medical or dental expenses incurred from the effective date of the court order, including health and dental insurance premiums paid by the obligee because of the obligor's failure to obtain coverage as ordered. Proof of failure to maintain insurance or noncompliance with an order to provide other medical support constitutes a showing of increased need by the obligee pursuant to section 518.64 and provides a basis for a modification of the obligor's child support order.

(b) Payments for services rendered to the dependents that are directed to the obligor, in the form of reimbursement by the health or dental insurance carrier or employer, must be endorsed over to and forwarded to the vendor or custodial parent or public authority when the reimbursement is not owed to the obligor. An obligor retaining insurance reimbursement not owed to the obligor may be found in contempt of this order and held liable for the amount of the reimbursement. Upon written verification by the health or dental insurance carrier or employer of the amounts paid to the obligor, the reimbursement amount is subject to all enforcement remedies available under subdivision 10, including income withholding pursuant to section 518.611. The monthly amount to be withheld until the obligation is satisfied is 20 percent of the original debt or $50, whichever is greater.

Subd. 9. **Application for service.** The public agency responsible for support enforcement shall take necessary steps to implement and enforce an order for dependent health or dental insurance whenever the children receive public assistance, or upon application of the obligee to the public agency and payment by the obligee of any fees required by section 518.551.

Subd. 10. **Enforcement.** Remedies available for the collection and enforcement of child support apply to medical support. For the purpose of enforcement, the costs of individual or group health or hospitalization coverage, dental coverage, all medical costs ordered by the court to be paid by the obligor, including health and dental insurance premiums paid by

the obligee because of the obligor's failure to obtain coverage as ordered, or liabilities established pursuant to subdivision 8, are additional child support.

History: *1986 c 404 s 13; 1986 c 444; 1987 c 403 art 3 s 77; 1988 c 668 s 13; 1990 c 568 art 3 s 91–94; 1993 c 322 s 8; 1993 c 340 s 21–29; 1994 c 630 art 11 s 6,7; 1995 c 207 art 10 s 15–20; 1995 c 257 art 1 s 19*

518.175 VISITATION OF CHILDREN AND NONCUSTODIAL PARENT.

Subdivision 1. **General.** (a) In all proceedings for dissolution or legal separation, subsequent to the commencement of the proceeding and continuing thereafter during the minority of the child, the court shall, upon the request of either parent, grant such rights of visitation on behalf of the child and noncustodial parent as will enable the child and the noncustodial parent to maintain a child to parent relationship that will be in the best interests of the child. If the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict visitation by the noncustodial parent as to time, place, duration, or supervision and may deny visitation entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the noncustodial parent prior to the commencement of the proceeding. A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of visitation.

(b) The court may provide that a law enforcement officer or other appropriate person will accompany a party seeking to enforce or comply with visitation.

(c) Upon request of either party, to the extent practicable a visitation order must include a specific schedule for visitation, including the frequency and duration of visitation and visitation during holidays and vacations, unless visitation is restricted, denied, or reserved.

(d) The court administrator shall provide a form for a pro se motion regarding visitation disputes, which includes provisions for indicating the relief requested, an affidavit in which the party may state the facts of the dispute, and a brief description of the visitation expeditor process under section 518.1751. The form may not include a request for a change of custody. The court shall provide instructions on serving and filing the motion.

Subd. 2. Upon the request of either parent, the court may inform any child of the parties, if eight years of age or older, or otherwise of an age of suitable comprehension, of the rights of the child and the noncustodial parent under the order or decree or any substantial amendment thereof. The custodial parent shall present the child for visitation by the noncustodial parent, at such times as the court directs.

Subd. 3. The custodial parent shall not move the residence of the child to another state except upon order of the court or with the consent of the noncustodial parent, when the noncustodial parent has been given visitation rights by the decree. If the purpose of the move is to interfere with visitation rights given to the noncustodial parent by the decree, the court shall not permit the child's residence to be moved to another state.

Subd. 4. [Repealed, 1996 c 391 art 1 s 6]

Subd. 5. The court shall modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. Except as provided in section 631.52, the court may not restrict visitation rights unless it finds that:

(1) the visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development; or

(2) the noncustodial parent has chronically and unreasonably failed to comply with court-ordered visitation.

If the custodial parent makes specific allegations that visitation places the custodial parent or child in danger of harm, the court shall hold a hearing at the earliest possible time to determine the need to modify the order granting visitation rights. The court may require a third party, including the local social services agency, to supervise the visitation or may restrict a parent's visitation rights if necessary to protect the custodial parent or child from harm.

Subd. 6. **Remedies.** (a) The court may provide for one or more of the following remedies for denial of or interference with visitation as provided under this subdivision. All visitation orders must include notice of the provisions of this subdivision.

(b) If the court finds that a person has been wrongfully deprived of the duly established right to visitation, the court shall order the custodial parent to permit additional visits to compensate for the visitation of which the person was deprived. Additional visits must be:

(1) of the same type and duration as the wrongfully denied visit;

(2) taken within one year after the wrongfully denied visit; and

(3) at a time acceptable to the person deprived of visitation.

(c) If the court finds that a party has wrongfully failed to comply with a visitation order or a binding agreement or decision under section 518.1751, the court may:

(1) impose a civil penalty of up to $500 on the party; or

(2) require the party to post a bond with the court for a specified period of time to secure the party's compliance.

A civil penalty imposed under this paragraph must be deposited in the county general fund and must be used to fund the costs of a visitation expeditor program in a county with this program. In other counties, the civil penalty must be deposited in the state general fund.

(d) If the court finds that a party has been denied visitation and has incurred expenses in connection with the denied visitation, the court may require the party who denied visitation to post a bond in favor of the other party in the amount of prepaid expenses associated with an upcoming planned visitation.

(e) Proof of an unwarranted denial of or interference with duly established visitation may constitute contempt of court and may be sufficient cause for reversal of custody.

Subd. 7. **Grandparent visitation.** In all proceedings for dissolution or legal separation, after the commencement of the proceeding or at any time after completion of the proceedings, and continuing during the minority of the child, the court may make an order granting visitation rights to grandparents under section 257.022, subdivision 2.

Subd. 8. **Care of child by noncustodial parent.** The court may allow additional visitation to the noncustodial parent to provide child care while the custodial parent is working if this arrangement is reasonable and in the best interests of the child, as defined in section 518.17, subdivision 1. In addition, the court shall consider:

(1) the ability of the parents to cooperate;

(2) methods for resolving disputes regarding the care of the child, and the parents' willingness to use those methods; and

(3) whether domestic abuse, as defined in section 518B.01, has occurred between the parties.

History: *1971 c 172 s 1; 1974 c 107 s 15; 1978 c 772 s 40–42; 1979 c 259 s 18,19; 1982 c 537 s 1; 1986 c 406 s 3; 1986 c 444; 1988 c 668 s 14; 1989 c 248 s 4,5; 1990 c 574 s 15; 1993 c 62 s 2; 1993 c 322 s 9; 1994 c 631 s 31; 1995 c 257 art 1 s 20; 1996 c 391 art 1 s 1,2*

518.1751 VISITATION DISPUTE RESOLUTION.

Subdivision 1. **Visitation expeditor.** (a) Upon request of either party or upon the court's own motion, the court may appoint a visitation expeditor to resolve visitation disputes that occur under a visitation order while a matter is pending under this chapter, chapter 257 or 518A, or after a decree is entered. Prior to appointing the visitation expeditor, the court shall give the parties notice that the costs of the visitation expeditor will be apportioned among the parties and that if the parties do not reach an agreement, the visitation expeditor will make a nonbinding decision resolving the dispute.

(b) For purposes of this section, "visitation dispute" means a disagreement among parties about visitation with a child, including a dispute about an anticipated denial of a future scheduled visit. "Visitation dispute" includes a claim by a custodial parent that a noncustodial parent is not visiting a child as well as a claim by a noncustodial parent that a custodial parent is denying or interfering with visitation.

Subd. 2. **Appointment; costs.** The court shall appoint the visitation expeditor and indicate the term of the appointment. If the parties cannot agree on a visitation expeditor, the court shall present a list of candidates with one more candidate than there are parties to the

dispute. In developing the list of candidates, the court must give preference to persons who agree to volunteer their services or who will charge a variable fee for services based on the ability of the parties to pay for them. Each party shall strike one name and the court shall appoint the remaining individual as the visitation expeditor. In its order appointing the visitation expeditor, the court shall apportion the costs of the visitation expeditor among the parties, with each party bearing the portion of costs that the court determines is just and equitable under the circumstances. If a party files a pro se motion regarding a visitation dispute and there is not a court order that provides for apportionment of the costs of an expeditor, the court administrator may require the party requesting the appointment of an expeditor to pay the costs of the expeditor in advance. Neither party may be required to submit a dispute to a visitation expeditor if the party cannot afford to pay for the costs of an expeditor and an affordable expeditor is not available, unless the other party agrees to pay the costs. After costs are incurred, a party may by motion request that the costs be reapportioned on equitable grounds. The court may consider the resources of the parties, the nature of the dispute, and whether a party acted in bad faith. The court may consider information from the expeditor in determining bad faith.

Subd. 3. **Agreement or decision.** (a) If a visitation dispute arises, the visitation expeditor shall meet with the parties together or separately within five days and make a diligent effort to facilitate an agreement to resolve the visitation dispute. If a visitation dispute requires immediate resolution, the visitation expeditor may confer with the parties through a telephone conference or similar means. An expeditor may make a decision without conferring with a party if the expeditor made a good faith effort to confer with the party, but the party chose not to participate in resolution of the dispute.

(b) If the parties do not reach an agreement, the expeditor shall make a decision resolving the dispute as soon as possible but not later than five days after the final meeting or conference with the parties. Resolution of a dispute may include compensatory visitation under section 518.175, subdivision 6. The visitation expeditor may not make a decision that modifies visitation rights ordered by the court. The expeditor shall put an agreement or decision in writing, provide a copy to the parties, and file a copy with the court. If a party does not comply with an agreement of the parties or a decision of the expeditor, any party may bring a motion with the court to resolve the dispute. The court may consider the agreement of the parties or the decision of the expeditor, but neither is binding on the court.

Subd. 4. **Other agreements.** This section does not preclude the parties from voluntarily agreeing to submit their visitation dispute to a neutral third party or from otherwise resolving visitation disputes on a voluntary basis.

Subd. 5. **Immunity.** A visitation expeditor is immune from civil liability for actions taken or not taken when acting under this section.

Subd. 6. **Mandatory visitation dispute resolution.** (a) Subject to subdivision 7, a judicial district may establish a mandatory visitation dispute resolution program as provided in this subdivision. In a district where a program has been established, parties may be required to submit visitation disputes to a visitation expeditor as a prerequisite to a motion on the dispute being heard by the court, or either party may submit the dispute to a visitation expeditor. A party may file a motion with the court for purposes of obtaining a court date, if necessary, but a hearing may not be held until resolution of the dispute with the visitation expeditor.

(b) If a visitation expeditor has not been previously appointed for the parties under subdivision 1 and the parties cannot agree on a visitation expeditor, the court or court administrator shall appoint a visitation expeditor from a list of candidates established by the judicial district, giving preference to candidates who agree to volunteer their services or charge a variable fee based on the ability of the parties to pay.

(c) Notwithstanding subdivision 1, an agreement of the parties or decision of the visitation expeditor under this subdivision is binding on the parties unless vacated or modified by the court. The expeditor shall put the agreement or decision in writing, provide a copy to the parties, and file a copy with the court. The court may consider the agreement of the parties or the decision of the expeditor, but neither is binding on the court.

Subd. 7. **Exceptions.** A party may not be required to refer a visitation dispute to a visitation expeditor under this section if:

(1) the party has obtained an order for protection under chapter 518B against the other party; or

(2) the party is unable to pay the costs of the expeditor, as provided under subdivision 2.

History: *1989 c 248 s 6; 1996 c 391 art 1 s 3*

518.176 JUDICIAL SUPERVISION.

Subdivision 1. Except as otherwise agreed by the parties in writing at the time of the custody order, the custodian may determine the child's upbringing, including education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical or emotional health is likely to be endangered or the child's emotional development impaired.

Subd. 2. If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical or emotional health is likely to be endangered or the child's emotional development impaired, the court may order the local social services agency or the department of court services to exercise continuing supervision over the case under guidelines established by the court to assure that the custodial or visitation terms of the decree are carried out.

History: *1978 c 772 s 43; 1979 c 259 s 20; 1986 c 444; 1994 c 631 s 31*

518.177 NOTIFICATION REGARDING DEPRIVATION OF PARENTAL RIGHTS LAW.

Every court order and judgment and decree concerning custody of or visitation with a minor child shall contain the notice set out in section 518.68, subdivision 2.

History: *1984 c 484 s 1; 1993 c 322 s 10*

518.179 CUSTODY OR VISITATION WHEN PERSON CONVICTED OF CERTAIN OFFENSES.

Subdivision 1. **Seeking custody or visitation.** Notwithstanding any contrary provision in section 518.17 or 518.175, if a person seeking child custody or visitation has been convicted of a crime described in subdivision 2, the person seeking custody or visitation has the burden to prove that custody or visitation by that person is in the best interests of the child if:

(1) the conviction occurred within the preceding five years;

(2) the person is currently incarcerated, on probation, or under supervised release for the offense; or

(3) the victim of the crime was a family or household member as defined in section 518B.01, subdivision 2.

If this section applies, the court may not grant custody or visitation to the person unless it finds that the custody or visitation is in the best interests of the child. If the victim of the crime was a family or household member, the standard of proof is clear and convincing evidence.

Subd. 2. **Applicable crimes.** This section applies to the following crimes or similar crimes under the laws of the United States, or any other state:

(1) murder in the first, second, or third degree under section 609.185, 609.19, or 609.195;

(2) manslaughter in the first degree under section 609.20;

(3) assault in the first, second, or third degree under section 609.221, 609.222, or 609.223;

(4) kidnapping under section 609.25;

(5) depriving another of custodial or parental rights under section 609.26;

(6) soliciting, inducing, or promoting prostitution involving a minor under section 609.322;

(7) receiving profit from prostitution involving a minor under section 609.323;

(8) criminal sexual conduct in the first degree under section 609.342;

(9) criminal sexual conduct in the second degree under section 609.343;

(10) criminal sexual conduct in the third degree under section 609.344, subdivision 1, paragraph (c), (f), or (g);

(11) solicitation of a child to engage in sexual conduct under section 609.352;

(12) incest under section 609.365;

(13) malicious punishment of a child under section 609.377; or

(14) neglect of a child under section 609.378.

History: *1990 c 574 s 16*

518.18 MODIFICATION OF ORDER.

(a) Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than one year after the date of the entry of a decree of dissolution or legal separation containing a provision dealing with custody, except in accordance with paragraph (c).

(b) If a motion for modification has been heard, whether or not it was granted, unless agreed to in writing by the parties no subsequent motion may be filed within two years after disposition of the prior motion on its merits, except in accordance with paragraph (c).

(c) The time limitations prescribed in paragraphs (a) and (b) shall not prohibit a motion to modify a custody order if the court finds that there is persistent and willful denial or interference with visitation, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.

(d) If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order unless it finds, upon the basis of facts, including unwarranted denial of, or interference with, a duly established visitation schedule, that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custody arrangement established by the prior order unless:

(i) both parties agree to the modification;

(ii) the child has been integrated into the family of the petitioner with the consent of the other party; or

(iii) the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

In addition, a court may modify a custody order under section 631.52.

(e) In deciding whether to modify a prior joint custody order, the court shall apply the standards set forth in paragraph (d) unless: (1) the parties agree in writing to the application of a different standard, or (2) the party seeking the modification is asking the court for permission to move the residence of the child to another state.

(f) If a custodial parent has been granted sole physical custody of a minor and the child subsequently lives with the noncustodial parent, and temporary sole physical custody has been approved by the court or by a court-appointed referee, the court may suspend the noncustodial parent's child support obligation pending the final custody determination. The court's order denying the suspension of child support must include a written explanation of the reasons why continuation of the child support obligation would be in the best interests of the child.

History: *(8597) RL s 3586; 1978 c 772 s 44; 1979 c 259 s 21; 1986 c 444; 1990 c 574 s 17; 1991 c 266 s 1; 1994 c 630 art 11 s 8; 1995 c 257 art 1 s 21*

518.185 AFFIDAVIT PRACTICE.

A party seeking a temporary custody order or modification of a custody order shall submit together with moving papers an affidavit setting forth facts supporting the requested or-

der or modification and shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may file opposing affidavits.

History: *1978 c 772 s 45; 1986 c 444*

518.19 [Repealed, 1951 c 551 s 15]

518.191 SUMMARY REAL ESTATE DISPOSITION JUDGMENT.

Subdivision 1. **Abbreviated judgment and decree.** If real estate is described in a judgment and decree of dissolution, the court may direct either of the parties or their legal counsel to prepare and submit to the court a proposed summary real estate disposition judgment. Upon approval by the court and filing of the summary real estate disposition judgment with the court administrator, the court administrator shall provide to any party upon request certified copies of the summary real estate disposition judgment.

Subd. 2. **Required information.** A summary real estate disposition judgment must contain the following information: (1) the full caption and file number of the case and the title "Summary Real Estate Disposition Judgment"; (2) the dates of the parties' marriage and of the entry of the judgment and decree of dissolution; (3) the names of the parties' attorneys or if either or both appeared pro se; (4) the name of the judge and referee, if any, who signed the order for judgment and decree; (5) whether the judgment and decree resulted from a stipulation, a default, or a trial and the appearances at the default or trial; (6) whether either party changed the party's name through the judgment and decree; (7) the legal description of each parcel of real estate; (8) the name or names of the persons awarded an interest in each parcel of real estate and a description of the interest awarded; (9) liens, mortgages, encumbrances, or other interests in the real estate described in the judgment and decree; and (10) triggering or contingent events set forth in the judgment and decree affecting the disposition of each parcel of real estate.

Subd. 3. **Court order.** An order or provision in a judgment and decree that provides that the judgment and decree must be recorded in the office of the county recorder or filed in the office of the registrar of titles means, if a summary real estate disposition judgment has been approved by the court, that the summary real estate disposition judgment, rather than the judgment and decree, must be recorded in the office of the county recorder or filed in the office of the registrar of titles.

Subd. 4. **Transfer of property.** The summary real estate disposition judgment operates as a conveyance and transfer of each interest in the real estate in the manner and to the extent described in the summary real estate disposition judgment.

Subd. 5. **Conflict.** If a conflict exists between the judgment and decree and the summary real estate disposition judgment, the summary real estate disposition judgment recorded in the office of the county recorder or filed in the office of the registrar of titles controls as to the interest acquired in real estate by any subsequent purchaser in good faith and for a valuable consideration, who is in possession of the interest or whose interest is recorded with the county recorder or registrar of titles, before the recording of the judgment and decree in the same office.

History: *1990 c 575 s 7*

518.195 PILOT PROJECT.

Subdivision 1. **Criteria.** In the counties selected under subdivision 4, a couple desirous of dissolving their marriage may use the streamlined procedure in this section if:

(1) no living minor children have been born to or adopted by the parties before or during the marriage, unless someone other than the husband has been adjudicated the father;

(2) the wife is not pregnant;

(3) they have been married fewer than five years as of the date they file their joint declaration;

(4) neither party owns any real estate;

(5) there are no unpaid debts in excess of $5,000 incurred by either or both of the parties during the marriage, excluding encumbrances on automobiles;

(6) the total fair market value of the marital assets does not exceed $25,000, including net equity on automobiles;

(7) neither party has nonmarital assets in excess of $25,000; and

(8) neither party has been a victim of domestic abuse by the other.

Subd. 2. **Procedure.** A couple qualifying under all of the criteria in subdivision 1, may obtain a judgment and decree by:

(1) filing a sworn joint declaration, on which both of their signatures must be notarized, containing or appending the following information:

(i) the demographic data required in section 518.10;

(ii) verifying the qualifications set forth in subdivision 1;

(iii) listing each party's nonmarital property;

(iv) setting forth how the marital assets and debts will be apportioned;

(v) verifying both parties' income and preserving their rights to spousal maintenance; and

(vi) certifying that there has been no domestic abuse of one party by the other; and

(2) viewing any introductory and summary process educational videotapes, if then available from the court, and certifying that they watched any such tapes within the 30 days preceding the filing of the joint declaration.

The district court administrator shall enter a decree of dissolution 30 days after the filing of the joint declaration if the parties meet the statutory qualifications and have complied with the procedural requirements of this subdivision.

Subd. 3. **Forms.** The state court administrator shall develop simplified forms and instructions for the summary process within 120 days of July 1, 1991. District court administrators shall make the forms for the summary process available upon request and shall accept joint declarations for filing 180 days after July 1, 1991.

Subd. 4. **Pilot program.** The state court administrator shall designate no more than five counties in at least three different judicial districts as pilot jurisdictions for testing the streamlined process. District court administrators shall make the forms for the summary process available upon request to appropriate residents of the pilot jurisdictions.

History: *1991 c 271 s 5*

NOTE: This section added by Laws 1991, chapter 271, section 5, is repealed effective July 1, 1997, for cases filed on or after that date. Laws 1991, chapter 271, section 9, as amended by Laws 1996, chapter 408, article 11, section 9.

518.20 [Repealed, 1951 c 551 s 15]

518.21 [Repealed, 1951 c 551 s 15]

518.22 [Repealed, 1951 c 551 s 15]

518.23 [Repealed, 1951 c 551 s 15]

518.24 SECURITY; SEQUESTRATION; CONTEMPT.

In all cases when maintenance or support payments are ordered, the court may require sufficient security to be given for the payment of them according to the terms of the order. Upon neglect or refusal to give security, or upon failure to pay the maintenance or support, the court may sequester the obligor's personal estate and the rents and profits of real estate of the obligor, and appoint a receiver of them. The court may cause the personal estate and the rents and profits of the real estate to be applied according to the terms of the order. The obligor is presumed to have an income from a source sufficient to pay the maintenance or support order. A child support or maintenance order constitutes prima facie evidence that the obligor has the ability to pay the award. If the obligor disobeys the order, it is prima facie evidence of contempt. The court may cite the obligor for contempt under this section, section 518.617, or chapter 588.

History: *(8604) RL s 3593; 1969 c 1028 s 1; 1978 c 772 s 46; 1983 c 216 art 1 s 74; 1986 c 444; 1987 c 403 art 3 s 78; 1993 c 340 s 30; 1995 c 257 art 1 s 22*

518.25 REMARRIAGE; REVOCATION.

When a dissolution has been granted, and the parties afterward intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all

decrees and orders of dissolution, maintenance, and subsistence which will not affect the rights of third persons.

History: *(8605) RL s 3594; 1974 c 107 s 16; 1978 c 772 s 62*

518.255 PROVISION OF LEGAL SERVICES BY THE PUBLIC AUTHORITY.

The provision of services under the child support enforcement program that includes services by an attorney or an attorney's representative employed by, under contract to, or representing the public authority does not create an attorney–client relationship with any party other than the public authority. Attorneys employed by or under contract with the public authority have an affirmative duty to inform applicants and recipients of services under the child support enforcement program that no attorney–client relationship exists between the attorney and the applicant or recipient. This section applies to all legal services provided by the child support enforcement program.

The written notice must inform the individual applicant or recipient of services that no attorney–client relationship exists between the attorney and the applicant or recipient; the rights of the individual as a subject of data under section 13.04, subdivision 2; and that the individual has a right to have an attorney represent the individual.

Data disclosed by an applicant for, or recipient of, child support services to an attorney employed by, or under contract with, the public authority is private data on an individual. However, the data may be disclosed under section 13.46, subdivision 2, clauses (1) to (3) and (6) to (19), and in order to obtain, modify or enforce child support, medical support, and parentage determinations.

An attorney employed by, or under contract with, the public authority may disclose additional information received from an applicant for, or recipient of, services for other purposes with the consent of the individual applicant for, or recipient of, child support services.

History: *1995 c 257 art 4 s 13*

518.26 [Repealed, 1974 c 107 s 29]

518.27 NAME OF PARTY.

In the final decree of dissolution or legal separation the court shall, if requested by a party, change the name of that party to another name as the party requests. The court shall grant a request unless it finds that there is an intent to defraud or mislead. The party's new name shall be so designated in the final decree.

History: *(8607) RL s 3596; 1974 c 107 s 17; 1975 c 52 s 5; 1978 c 772 s 47; 1979 c 259 s 22*

518.28 [Repealed, 1974 c 107 s 29]

518.29 [Repealed, 1978 c 772 s 63]

518.41 [Repealed, 1982 c 436 s 37]

518.42 [Repealed, 1982 c 436 s 37]

518.43 [Repealed, 1982 c 436 s 37]

518.44 [Repealed, 1982 c 436 s 37]

518.45 [Repealed, 1982 c 436 s 37]

518.46 [Repealed, 1982 c 436 s 37]

518.47 [Repealed, 1982 c 436 s 37]

518.48 [Repealed, 1982 c 436 s 37]

518.49 [Repealed, 1982 c 436 s 37]

518.491 [Repealed, 1982 c 436 s 37]

518.50 [Repealed, 1982 c 436 s 37]

518.51 [Repealed, 1982 c 436 s 37]

518.52 [Repealed, 1982 c 436 s 37]

518.53 [Repealed, 1982 c 436 s 37]

MAINTENANCE, SUPPORT, PROPERTY

518.54 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 518.54 to 518.66, the terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. **Child.** "Child" means an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support.

Subd. 2a. **Deposit account.** "Deposit account" means funds deposited with a financial institution in the form of a savings account, checking account, NOW account, or demand deposit account.

Subd. 2b. **Financial institution.** "Financial institution" means a savings association, bank, trust company, credit union, industrial loan and thrift company, bank and trust company, or savings association, and includes a branch or detached facility of a financial institution.

Subd. 3. **Maintenance.** "Maintenance" means an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other.

Subd. 4. **Support money; child support.** "Support money" or "child support" means:

(1) an award in a dissolution, legal separation, annulment, or parentage proceeding for the care, support and education of any child of the marriage or of the parties to the proceeding; or

(2) a contribution by parents ordered under section 256.87.

Subd. 5. **Marital property; exceptions.** "Marital property" means property, real or personal, including vested public or private pension plan benefits or rights, acquired by the parties, or either of them, to a dissolution, legal separation, or annulment proceeding at any time during the existence of the marriage relation between them, or at any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment proceeding, but prior to the date of valuation under section 518.58, subdivision 1. All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property. Each spouse shall be deemed to have a common ownership in marital property that vests not later than the time of the entry of the decree in a proceeding for dissolution or annulment. The extent of the vested interest shall be determined and made final by the court pursuant to section 518.58. If a title interest in real property is held individually by only one spouse, the interest in the real property of the nontitled spouse is not subject to claims of creditors or judgment or tax liens until the time of entry of the decree awarding an interest to the nontitled spouse. The presumption of marital property is overcome by a showing that the property is nonmarital property.

"Nonmarital property" means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which

(a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;

(b) is acquired before the marriage;

(c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);

(d) is acquired by a spouse after the valuation date; or

(e) is excluded by a valid antenuptial contract.

Subd. 6. **Income.** "Income" means any form of periodic payment to an individual including, but not limited to, wages, salaries, payments to an independent contractor, workers'

compensation, reemployment insurance, annuity, military and naval retirement, pension and disability payments. Benefits received under sections 256.72 to 256.87 and chapter 256D are not income under this section.

Subd. 7. **Obligee.** "Obligee" means a person to whom payments for maintenance or support are owed.

Subd. 8. **Obligor.** "Obligor" means a person obligated to pay maintenance or support.

Subd. 9. **Public authority.** "Public authority" means the public authority responsible for child support enforcement.

Subd. 10. **Pension plan benefits or rights.** "Pension plan benefits or rights" means a benefit or right from a public or private pension plan accrued to the end of the month in which marital assets are valued, as determined under the terms of the laws or other plan document provisions governing the plan, including section 356.30.

Subd. 11. **Public pension plan.** "Public pension plan" means a pension plan or fund specified in section 356.20, subdivision 2, or 356.30, subdivision 3, the deferred compensation plan specified in section 352.96, or any retirement or pension plan or fund, including a supplemental retirement plan or fund, established, maintained, or supported by a governmental subdivision or public body whose revenues are derived from taxation, fees, assessments, or from other public sources.

Subd. 12. **Private pension plan.** "Private pension plan" means a plan, fund, or program maintained by an employer or employee organization that provides retirement income to employees or results in a deferral of income by employees for a period extending to the termination of covered employment or beyond.

History: *1951 c 551 s 1; 1969 c 1028 s 2,3; 1973 c 725 s 74; 1974 c 107 s 18; 1978 c 772 s 48; 1979 c 259 s 23,34; 1981 c 360 art 2 s 45; 1982 c 464 s 1; 1983 c 144 s 1; 1986 c 444; 1987 c 157 s 14–16; 1988 c 590 s 1; 1988 c 668 s 15,16; 1989 c 282 art 2 s 189; 1990 c 568 art 2 s 68,69; 1992 c 463 s 29; 1993 c 340 s 31; 1994 c 488 s 8; 1995 c 202 art 1 s 25*

518.55 MAINTENANCE OR SUPPORT MONEY.

Subdivision 1. **Contents of order.** Every award of maintenance or support money in a judgment of dissolution or legal separation shall clearly designate whether the same is maintenance or support money, or what part of the award is maintenance and what part is support money. An award of payments from future income or earnings of the custodial parent is presumed to be maintenance and an award of payments from the future income or earnings of the noncustodial parent is presumed to be support money, unless otherwise designated by the court. In a judgment of dissolution or legal separation the court may determine, as one of the issues of the case, whether or not either spouse is entitled to an award of maintenance notwithstanding that no award is then made, or it may reserve jurisdiction of the issue of maintenance for determination at a later date.

Subd. 2. [Repealed, 1993 c 322 s 21]

Subd. 2a. [Repealed, 1993 c 322 s 21]

Subd. 3. **Notice of address or residence change.** Every obligor shall notify the obligee and the public authority responsible for collection, if applicable, of a change of address or residence within 60 days of the address or residence change. Every order for support or maintenance must contain a conspicuous notice complying with section 518.68, subdivision 2. The court may waive or modify the requirements of this subdivision by order if necessary to protect the obligor from contact by the obligee.

History: *1951 c 551 s 2; 1969 c 1028 s 4; 1974 c 107 s 19; 1978 c 772 s 49; 1979 c 259 s 24; 1984 c 547 s 17; 1985 c 131 s 6; 1988 c 593 s 6,7; 1993 c 322 s 11*

518.551 MAINTENANCE AND SUPPORT PAYMENTS.

Subdivision 1. **Scope; payment to public agency.** (a) This section applies to all proceedings involving an award of child support.

(b) The court shall direct that all payments ordered for maintenance and support be made to the public agency responsible for child support enforcement so long as the obligee is

receiving or has applied for public assistance, or has applied for child support and maintenance collection services. Public authorities responsible for child support enforcement may act on behalf of other public authorities responsible for child support enforcement. This includes the authority to represent the legal interests of or execute documents on behalf of the other public authority in connection with the establishment, enforcement, and collection of child support, maintenance, or medical support, and collection on judgments. Amounts received by the public agency responsible for child support enforcement greater than the amount granted to the obligee shall be remitted to the obligee.

Subd. 2. [Repealed, 1983 c 308 s 32]

Subd. 3. [Repealed, 1983 c 308 s 32]

Subd. 4. [Repealed, 1983 c 308 s 32]

Subd. 5. **Notice to public authority; guidelines.** (a) The petitioner shall notify the public authority of all proceedings for dissolution, legal separation, determination of parentage or for the custody of a child, if either party is receiving aid to families with dependent children or applies for it subsequent to the commencement of the proceeding. The notice must contain the full names of the parties to the proceeding, their social security account numbers, and their birth dates. After receipt of the notice, the court shall set child support as provided in this subdivision. The court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct. The court shall approve a child support stipulation of the parties if each party is represented by independent counsel, unless the stipulation does not meet the conditions of paragraph (i). In other cases the court shall determine and order child support in a specific dollar amount in accordance with the guidelines and the other factors set forth in paragraph (c) and any departure therefrom. The court may also order the obligor to pay child support in the form of a percentage share of the obligor's net bonuses, commissions, or other forms of compensation, in addition to, or if the obligor receives no base pay, in lieu of, an order for a specific dollar amount.

(b) The court shall derive a specific dollar amount for child support by multiplying the obligor's net income by the percentage indicated by the following guidelines:

Net Income Per Month of Obligor	Number of Children						
	1	2	3	4	5	6	7 or more
$550 and Below	Order based on the ability of the obligor to provide support at these income levels, or at higher levels, if the obligor has the earning ability.						
$551 – 600	16%	19%	22%	25%	28%	30%	32%
$601 – 650	17%	21%	24%	27%	29%	32%	34%
$651 – 700	18%	22%	25%	28%	31%	34%	36%
$701 – 750	19%	23%	27%	30%	33%	36%	38%
$751 – 800	20%	24%	28%	31%	35%	38%	40%
$801 – 850	21%	25%	29%	33%	36%	40%	42%
$851 – 900	22%	27%	31%	34%	38%	41%	44%
$901 – 950	23%	28%	32%	36%	40%	43%	46%
$951 – 1000	24%	29%	34%	38%	41%	45%	48%
$1001– 5000 or the amount in effect under paragraph (k)	25%	30%	35%	39%	43%	47%	50%

Guidelines for support for an obligor with a monthly income in excess of the income limit currently in effect under paragraph (k) shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income equal to the limit in effect.

Net Income defined as:

Total monthly income less	*(i) Federal Income Tax *(ii) State Income Tax (iii) Social Security Deductions (iv) Reasonable Pension Deductions
*Standard Deductions apply–use of tax tables recommended	(v) Union Dues (vi) Cost of Dependent Health Insurance Coverage (vii) Cost of Individual or Group Health/Hospitalization Coverage or an Amount for Actual Medical Expenses (viii) A Child Support or Maintenance Order that is Currently Being Paid.

"Net income" does not include:

(1) the income of the obligor's spouse, but does include in–kind payments received by the obligor in the course of employment, self–employment, or operation of a business if the payments reduce the obligor's living expenses; or

(2) compensation received by a party for employment in excess of a 40–hour work week, provided that:

(i) support is nonetheless ordered in an amount at least equal to the guidelines amount based on income not excluded under this clause; and

(ii) the party demonstrates, and the court finds, that:

(A) the excess employment began after the filing of the petition for dissolution;

(B) the excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;

(C) the excess employment is voluntary and not a condition of employment;

(D) the excess employment is in the nature of additional, part–time or overtime employment compensable by the hour or fraction of an hour; and

(E) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.

The court shall review the work–related and education–related child care costs paid and shall allocate the costs to each parent in proportion to each parent's net income, as determined under this subdivision, after the transfer of child support and spousal maintenance, unless the allocation would be substantially unfair to either parent. There is a presumption of substantial unfairness if after the sum total of child support, spousal maintenance, and child care costs is subtracted from the noncustodial parent's income, the income is at or below 100 percent of the federal poverty guidelines. The cost of child care for purposes of this paragraph is 75 percent of the actual cost paid for child care, to reflect the approximate value of state and federal tax credits available to the custodial parent. The actual cost paid for child care is the total amount received by the child care provider for the child or children of the obligor from the obligee or any public agency. The court shall require verification of employment or school attendance and documentation of child care expenses from the obligee and the public agency, if applicable. If child care expenses fluctuate during the year because of seasonal employment or school attendance of the obligee or extended periods of visitation with the obligor, the court shall determine child care expenses based on an average monthly cost. The amount allocated for child care expenses is considered child support but is not subject to a cost–of–living adjustment under section 518.641. The amount allocated for child care expenses terminates when either party notifies the public authority that the child care costs have ended and without any legal action on the part of either party. The public authority shall verify the information received under this provision before authorizing termination.

The termination is effective as of the date of the notification. In other cases where there is a substantial increase or decrease in child care expenses, the parties may modify the order under section 518.64.

The court may allow the noncustodial parent to care for the child while the custodial parent is working, as provided in section 518.175, subdivision 8. Allowing the noncustodial parent to care for the child under section 518.175, subdivision 8, is not a reason to deviate from the guidelines.

(c) In addition to the child support guidelines, the court shall take into consideration the following factors in setting or modifying child support or in determining whether to deviate from the guidelines:

(1) all earnings, income, and resources of the parents, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of paragraph (b), clause (2)(ii);

(2) the financial needs and resources, physical and emotional condition, and educational needs of the child or children to be supported;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved, but recognizing that the parents now have separate households;

(4) which parent receives the income taxation dependency exemption and what financial benefit the parent receives from it;

(5) the parents' debts as provided in paragraph (d); and

(6) the obligor's receipt of assistance under sections 256.72 to 256.87 or 256B.01 to 256B.40.

(d) In establishing or modifying a support obligation, the court may consider debts owed to private creditors, but only if:

(1) the right to support has not been assigned under section 256.74;

(2) the court determines that the debt was reasonably incurred for necessary support of the child or parent or for the necessary generation of income. If the debt was incurred for the necessary generation of income, the court shall consider only the amount of debt that is essential to the continuing generation of income; and

(3) the party requesting a departure produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the amount of the original debt, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.

(e) Any schedule prepared under paragraph (d), clause (3), shall contain a statement that the debt will be fully paid after the number of months shown in the schedule, barring emergencies beyond the party's control.

(f) Any further departure below the guidelines that is based on a consideration of debts owed to private creditors shall not exceed 18 months in duration, after which the support shall increase automatically to the level ordered by the court. Nothing in this section shall be construed to prohibit one or more step increases in support to reflect debt retirement during the 18–month period.

(g) If payment of debt is ordered pursuant to this section, the payment shall be ordered to be in the nature of child support.

(h) Nothing shall preclude the court from receiving evidence on the above factors to determine if the guidelines should be exceeded or modified in a particular case.

(i) The guidelines in this subdivision are a rebuttable presumption and shall be used in all cases when establishing or modifying child support. If the court does not deviate from the guidelines, the court shall make written findings concerning the amount of the obligor's income used as the basis for the guidelines calculation and any other significant evidentiary factors affecting the determination of child support. If the court deviates from the guidelines, the court shall make written findings giving the amount of support calculated under the guidelines, the reasons for the deviation, and shall specifically address the criteria in paragraph (c) and how the deviation serves the best interest of the child. The court may deviate from the guidelines if both parties agree and the court makes written findings that it is in the best interests of the child, except that in cases where child support payments are assigned to

the public agency under section 256.74, the court may deviate downward only as provided in paragraph (j). Nothing in this paragraph prohibits the court from deviating in other cases. The provisions of this paragraph apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The court shall review stipulations presented to it for conformity to the guidelines and the court is not required to conduct a hearing, but the parties shall provide the documentation of earnings required under subdivision 5b.

(j) If the child support payments are assigned to the public agency under section 256.74, the court may not deviate downward from the child support guidelines unless the court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor.

(k) The dollar amount of the income limit for application of the guidelines must be adjusted on July 1 of every even–numbered year to reflect cost–of–living changes. The supreme court shall select the index for the adjustment from the indices listed in section 518.641. The state court administrator shall make the changes in the dollar amount required by this paragraph available to courts and the public on or before April 30 of the year in which the amount is to change.

Subd. 5a. **Order for community services.** If the court finds that the obligor earns $400 or less per month and does not have the ability to provide support based on the guidelines and factors under subdivision 5, the court may order the obligor to perform community services to fulfill the obligor's support obligation. In ordering community services under this subdivision, the court shall consider whether the obligor has the physical capability of performing community services, and shall order community services that are appropriate for the obligor's abilities.

Subd. 5b. **Determination of income.** (a) The parties shall timely serve and file documentation of earnings and income. When there is a prehearing conference, the court must receive the documentation of income at least ten days prior to the prehearing conference. Documentation of earnings and income also includes, but is not limited to, pay stubs for the most recent three months, employer statements, or statement of receipts and expenses if self–employed. Documentation of earnings and income also includes copies of each parent's most recent federal tax returns, including W–2 forms, 1099 forms, reemployment insurance statements, workers' compensation statements, and all other documents evidencing income as received that provide verification of income over a longer period.

(b) In addition to the requirements of paragraph (a), at any time after an action seeking child support has been commenced or when a child support order is in effect, a party or the public authority may require the other party to give them a copy of the party's most recent federal tax returns that were filed with the Internal Revenue Service. The party shall provide a copy of the tax returns within 30 days of receipt of the request unless the request is not made in good faith. A request under this paragraph may not be made more than once every two years, in the absence of good cause.

(c) If a parent under the jurisdiction of the court does not appear at a court hearing after proper notice of the time and place of the hearing, the court shall set income for that parent based on credible evidence before the court or in accordance with paragraph (d). Credible evidence may include documentation of current or recent income, testimony of the other parent concerning recent earnings and income levels, and the parent's wage reports filed with the Minnesota department of economic security under section 268.121.

(d) If the court finds that a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of imputed income. A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that the unemployment or underemployment: (1) is temporary and will ultimately lead to an increase in income; or (2) represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child. Imputed income means the estimated earning ability of a parent based on the parent's prior earnings history, education, and job skills, and on availability of jobs within the community for an individual with the parent's qualifications. If the court is unable to determine or estimate the earning ability of a parent, the court may calculate child support based on full–time employment of 40 hours per week at the federal mini-

mum wage or the Minnesota minimum wage, whichever is higher. If a parent is a recipient of public assistance under sections 256.72 to 256.87 or chapter 256D, or is physically or mentally incapacitated, it shall be presumed that the parent is not voluntarily unemployed or underemployed.

Subd. 5c. **Child support guidelines to be reviewed every four years.** No later than 1994 and every four years after that, the department of human services shall conduct a review of the child support guidelines.

Subd. 5d. **Education trust fund.** The parties may agree to designate a sum of money above any court–ordered child support as a trust fund for the costs of post–secondary education.

Subd. 6. **Failure of notice.** If the court in a dissolution, legal separation or determination of parentage proceeding, finds before issuing the order for judgment and decree, that notification has not been given to the public authority, the court shall set child support according to the guidelines in subdivision 5. In those proceedings in which no notification has been made pursuant to this section and in which the public authority determines that the judgment is lower than the child support required by the guidelines in subdivision 5, it shall move the court for a redetermination of the support payments ordered so that the support payments comply with the guidelines.

Subd. 7. **Service fee.** When the public agency responsible for child support enforcement provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the public agency may upon written notice to the obligor charge a monthly collection fee equivalent to the full monthly cost to the county of providing collection services, in addition to the amount of the child support which was ordered by the court. The fee shall be deposited in the county general fund. The service fee assessed is limited to ten percent of the monthly court ordered child support and shall not be assessed to obligors who are current in payment of the monthly court ordered child support.

An application fee of $25 shall be paid by the person who applies for child support and maintenance collection services, except persons who transfer from public assistance to non-public assistance status. Fees assessed by state and federal tax agencies for collection of overdue support owed to or on behalf of a person not receiving public assistance must be imposed on the person for whom these services are provided. The public authority upon written notice to the obligee shall assess a fee of $25 to the person not receiving public assistance for each successful federal tax interception. The fee must be withheld prior to the release of the funds received from each interception and deposited in the general fund.

However, the limitations of this subdivision on the assessment of fees shall not apply to the extent inconsistent with the requirements of federal law for receiving funds for the programs under Title IV–A and Title IV–D of the Social Security Act, United States Code, title 42, sections 601 to 613 and United States Code, title 42, sections 651 to 662.

Subd. 8. [Repealed, 1986 c 404 s 20]

Subd. 9. **Assignment of rights; judgment.** The public agency responsible for child support enforcement is joined as a party in each case in which rights are assigned under section 256.74, subdivision 5. The court administrator shall enter and docket a judgment obtained by operation of law under section 548.091, subdivision 1, in the name of the public agency to the extent that the obligation has been assigned. When arrearages are reduced to judgment under circumstances in which section 548.091 is not applicable, the court shall grant judgment in favor of, and in the name of, the public agency to the extent that the arrearages are assigned. After filing notice of an assignment with the court administrator, who shall enter the notice in the docket, the public agency may enforce a judgment entered before the assignment of rights as if the judgment were granted to it, and in its name, to the extent that the arrearages in that judgment are assigned.

Subd. 10. [Repealed, 1994 c 630 art 10 s 3]

Subd. 11. **Reopening support awards.** Section 518.145, subdivision 2, applies to awards of child support.

Subd. 12. **Occupational license suspension.** (a) Upon motion of an obligee, if the court finds that the obligor is or may be licensed by a licensing board listed in section 214.01 or other state agency or board that issues an occupational license and the obligor is in arrears in

court–ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the administrative law judge, or the court shall direct the licensing board or other licensing agency to suspend the license under section 214.101. The court's order must be stayed for 90 days in order to allow the obligor to execute a written payment agreement regarding both current support and arrearages. The payment agreement must be approved by either the court or the public authority responsible for child support enforcement. If the obligor has not executed or is not in compliance with a written payment agreement regarding both current support and arrearages after the 90 days expires, the court's order becomes effective. If the obligor is a licensed attorney, the court shall report the matter to the lawyers professional responsibility board for appropriate action in accordance with the rules of professional conduct. The remedy under this subdivision is in addition to any other enforcement remedy available to the court.

(b) If a public authority responsible for child support enforcement finds that the obligor is or may be licensed by a licensing board listed in section 214.01 or other state agency or board that issues an occupational license and the obligor is in arrears in court–ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the court, an administrative law judge, or the public authority shall direct the licensing board or other licensing agency to suspend the license under section 214.101. If the obligor is a licensed attorney, the public authority may report the matter to the lawyers professional responsibility board for appropriate action in accordance with the rules of professional conduct. The remedy under this subdivision is in addition to any other enforcement remedy available to the public authority.

(c) At least 90 days before notifying a licensing authority or the lawyers professional responsibility board under paragraph (b), the public authority shall mail a written notice to the license holder addressed to the license holder's last known address that the public authority intends to seek license suspension under this subdivision and that the license holder must request a hearing within 30 days in order to contest the suspension. If the license holder makes a written request for a hearing within 30 days of the date of the notice, either a court hearing or a contested administrative proceeding must be held under section 518.5511, subdivision 4. Notwithstanding any law to the contrary, the license holder must be served with 14 days' notice in writing specifying the time and place of the hearing and the allegations against the license holder. The notice may be served personally or by mail. If the public authority does not receive a request for a hearing within 30 days of the date of the notice, and the obligor does not execute a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge or the public authority within 90 days of the date of the notice, the public authority shall direct the licensing board or other licensing agency to suspend the obligor's license under paragraph (b), or shall report the matter to the lawyers professional responsibility board.

(d) The administrative law judge, on behalf of the public authority, or the court shall notify the lawyers professional responsibility board for appropriate action in accordance with the rules of professional responsibility conduct or order the licensing board or licensing agency to suspend the license if the judge finds that:

(1) the person is licensed by a licensing board or other state agency that issues an occupational license;

(2) the person has not made full payment of arrearages found to be due by the public authority; and

(3) the person has not executed or is not in compliance with a payment plan approved by the court, an administrative law judge, or the public authority.

(e) Within 15 days of the date on which the obligor either makes full payment of arrearages found to be due by the court or public authority or executes and initiates good faith compliance with a written payment plan approved by the court, an administrative law judge, or

the public authority, the court, an administrative law judge, or the public authority responsible for child support enforcement shall notify the licensing board or licensing agency or the lawyers professional responsibility board that the obligor is no longer ineligible for license issuance, reinstatement, or renewal under this subdivision.

Subd. 13. **Driver's license suspension.** (a) Upon motion of an obligee, which has been properly served on the obligor and upon which there has been an opportunity for hearing, if a court finds that the obligor has been or may be issued a driver's license by the commissioner of public safety and the obligor is in arrears in court–ordered child support or maintenance payments, or both, in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the court shall order the commissioner of public safety to suspend the obligor's driver's license. The court's order must be stayed for 90 days in order to allow the obligor to execute a written payment agreement regarding both current support and arrearages, which payment agreement must be approved by either the court or the public authority responsible for child support enforcement. If the obligor has not executed or is not in compliance with a written payment agreement regarding both current support and arrearages after the 90 days expires, the court's order becomes effective and the commissioner of public safety shall suspend the obligor's driver's license. The remedy under this subdivision is in addition to any other enforcement remedy available to the court. An obligee may not bring a motion under this paragraph within 12 months of a denial of a previous motion under this paragraph.

(b) If a public authority responsible for child support enforcement determines that the obligor has been or may be issued a driver's license by the commissioner of public safety and the obligor is in arrears in court–ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the public authority shall direct the commissioner of public safety to suspend the obligor's driver's license. The remedy under this subdivision is in addition to any other enforcement remedy available to the public authority.

(c) At least 90 days prior to notifying the commissioner of public safety pursuant to paragraph (b), the public authority must mail a written notice to the obligor at the obligor's last known address, that it intends to seek suspension of the obligor's driver's license and that the obligor must request a hearing within 30 days in order to contest the suspension. If the obligor makes a written request for a hearing within 30 days of the date of the notice, either a court hearing or a contested administrative proceeding must be held under section 518.5511, subdivision 4. Notwithstanding any law to the contrary, the obligor must be served with 14 days' notice in writing specifying the time and place of the hearing and the allegations against the obligor. The notice may be served personally or by mail. If the public authority does not receive a request for a hearing within 30 days of the date of the notice, and the obligor does not execute a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority within 90 days of the date of the notice, the public authority shall direct the commissioner of public safety to suspend the obligor's driver's license under paragraph (b).

(d) At a hearing requested by the obligor under paragraph (c), and on finding that the obligor is in arrears in court–ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments, the district court or the administrative law judge shall order the commissioner of public safety to suspend the obligor's driver's license or operating privileges unless the court or administrative law judge determines that the obligor has executed and is in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority.

(e) An obligor whose driver's license or operating privileges are suspended may provide proof to the court or the public authority responsible for child support enforcement that the obligor is in compliance with all written payment agreements regarding both current support and arrearages. Within 15 days of the receipt of that proof, the court or public authority

shall inform the commissioner of public safety that the obligor's driver's license or operating privileges should no longer be suspended.

(f) On January 15, 1997, and every two years after that, the commissioner of human services shall submit a report to the legislature that identifies the following information relevant to the implementation of this section:

(1) the number of child support obligors notified of an intent to suspend a driver's license;

(2) the amount collected in payments from the child support obligors notified of an intent to suspend a driver's license;

(3) the number of cases paid in full and payment agreements executed in response to notification of an intent to suspend a driver's license;

(4) the number of cases in which there has been notification and no payments or payment agreements;

(5) the number of driver's licenses suspended; and

(6) the cost of implementation and operation of the requirements of this section.

Subd. 14. **Motor vehicle lien.** (a) Upon motion of an obligee, if a court finds that the obligor is the registered owner of a motor vehicle and the obligor is a debtor for a judgment debt resulting from nonpayment of court-ordered child support or maintenance payments, or both, in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments, the court shall order the commissioner of public safety to enter a lien in the name of the obligee or in the name of the state of Minnesota, as appropriate, in accordance with section 168A.05, subdivision 8, unless the court finds that the obligor is in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority or that the obligor's interest in the motor vehicle is valued at less than $4,500. The court's order must be stayed for 90 days in order to allow the obligor to either execute a written payment agreement regarding both current support and arrearages, which agreement shall be approved by either the court or the public authority responsible for child support enforcement, or to allow the obligor to demonstrate that the ownership interest in the motor vehicle is valued at less than $4,500. If the obligor has not executed or is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority or has not demonstrated that the ownership interest in the motor vehicle is valued at less than $4,500 within the 90-day period, the court's order becomes effective and the commissioner of public safety shall record the lien. The remedy under this subdivision is in addition to any other enforcement remedy available to the court.

(b) If a public authority responsible for child support enforcement determines that the obligor is the registered owner of a motor vehicle and the obligor is a debtor for judgment debt resulting from nonpayment of court-ordered child support or maintenance payments, or both, in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments, the public authority shall direct the commissioner of public safety to enter a lien in the name of the obligee or in the name of the state of Minnesota, as appropriate, under section 168A.05, subdivision 8, unless the public authority determines that the obligor is in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority or that the obligor's ownership interest in the motor vehicle is valued at less than $4,500. The remedy under this subdivision is in addition to any other enforcement remedy available to the public agency.

(c) At least 90 days prior to notifying the commissioner of public safety pursuant to paragraph (b), the public authority must mail a written notice to the obligor at the obligor's last known address, that it intends to record a lien on the obligor's motor vehicle certificate of title and that the obligor must request a hearing within 30 days in order to contest the action. If the obligor makes a written request for a hearing within 30 days of the date of the notice, either a court hearing or a contested administrative proceeding must be held under section 518.5511, subdivision 4. Notwithstanding any law to the contrary, the obligor must be served with 14 days' notice in writing specifying the time and place of the hearing and the allegations against the obligor. The notice may be served personally or by mail. If the public author-

ity does not receive a request for a hearing within 30 days of the date of the notice and the obligor does not execute a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority or demonstrate to the public authority that the obligor's ownership interest in the motor vehicle is valued at less than $4,500 within 90 days of the date of the notice, the public authority shall direct the commissioner of public safety to record the lien under paragraph (b).

(d) At a hearing requested by the obligor under paragraph (c), and on finding that the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments, the district court or the administrative law judge shall order the commissioner of public safety to record the lien unless the court or administrative law judge determines that:

(1) the obligor has executed and is in compliance with a written payment agreement regarding both current support and arrearages determined to be acceptable by the court, an administrative law judge, or the public authority; or

(2) the obligor has demonstrated that the ownership interest in the motor vehicle is valued at less than $4,500.

(e) An obligor who has had a lien recorded against a motor vehicle certificate of title may provide proof to the court or the public authority responsible for child support enforcement that the obligor is in compliance with all written payment agreements regarding both current support and arrearages. Within 15 days of the receipt of that proof, the court or public authority shall execute a release of security interest under section 168A.20, subdivision 4, and mail or deliver the release to the owner or other authorized person. The dollar amounts in this section shall change periodically in the manner provided in section 550.37, subdivision 4a.

History: *1971 c 961 s 21; 1974 c 107 s 20; 1977 c 282 s 29; 1978 c 772 s 50; 1979 c 259 s 25; 1981 c 349 s 6; 1981 c 360 art 2 s 46; 3Sp1981 c 3 s 19; 1982 c 488 s 4,5; 1983 c 308 s 16–20; 1984 c 547 s 18,19; 1985 c 131 s 7; 1986 c 406 s 4; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 403 art 3 s 79,80; 1988 c 593 s 8; 1988 c 668 s 17,18; 1989 c 282 art 2 s 190,191; 1990 c 568 art 2 s 70–72; 1990 c 574 s 18; 1991 c 266 s 2; 1991 c 292 art 5 s 75–78; 1992 c 513 art 8 s 53,54; 1993 c 34 s 1; 1993 c 322 s 12; 1993 c 340 s 32–38; 1Sp1993 c 1 art 6 s 44; 1994 c 483 s 1; 1994 c 488 s 8; 1994 c 630 art 11 s 9,10; 1995 c 186 s 94; 1995 c 257 art 1 s 23–26*

ADMINISTRATIVE PROCESS

518.5511 ADMINISTRATIVE PROCESS FOR CHILD AND MEDICAL SUPPORT ORDERS.

Subdivision 1. **General.** (a) An administrative process is established to obtain, modify, and enforce child and medical support orders and parentage orders and modify maintenance if combined with a child support proceeding. All laws governing these actions apply insofar as they are not inconsistent with the provisions of this section and section 518.5512. Wherever other laws are inconsistent with this section and section 518.5512, the provisions in this section and section 518.5512 shall apply.

(b) All proceedings for obtaining, modifying, or enforcing child and medical support orders and modifying maintenance orders if combined with a child support proceeding, are required to be conducted in the administrative process when the public authority is a party or provides services to a party or parties to the proceedings. At county option, the administrative process may include contempt motions or actions to establish parentage. Nothing contained herein shall prevent a party, upon timely notice to the public authority, from commencing an action or bringing a motion for the establishment, modification, or enforcement of child support or modification of maintenance orders if combined with a child support proceeding in district court, if additional issues involving domestic abuse, establishment or modification of custody or visitation, property issues, or other issues outside the jurisdiction of the administrative process, are part of the motion or action, or from proceeding with a mo-

tion or action brought by another party containing one or more of these issues if it is pending in district court.

(c) A party may make a written request to the public authority to initiate an uncontested administrative proceeding. If the public authority denies the request, the public authority shall issue a summary notice which denies the request for relief, states the reasons for the denial, and notifies the party of the right to commence an action for relief. If the party commences an action or serves and files a motion within 30 days after the public authority's denial and the party's action results in a modification of a child support order, the modification may be retroactive to the date the written request was received by the public authority.

(d) After August 1, 1994, all counties shall participate in the administrative process established in this section in accordance with a statewide implementation plan to be set forth by the commissioner of human services. No county shall be required to participate in the administrative process until after the county has been trained. The implementation plan shall include provisions for training the counties by region no later than July 1, 1995.

(e) For the purpose of the administrative process, all powers, duties, and responsibilities conferred on judges of district court to obtain and enforce child and medical support and parentage and maintenance obligations, subject to the limitations of this section are conferred on administrative law judges, including the power to issue subpoenas, orders to show cause, and bench warrants for failure to appear.

The administrative law judge has the authority to enter parentage orders in which the custody and visitation provisions are uncontested.

Subd. 2. **Uncontested administrative proceeding.** (a) A party may petition the chief administrative law judge, the chief district court judge, or the chief family court referee to proceed immediately to a contested hearing upon good cause shown.

(b) The public authority shall give the parties written notice requesting the submission of information necessary for the public authority to prepare a proposed order. The written notice shall be sent by first class mail to the parties' last known addresses. The written notice shall describe the information requested, state the purpose of the request, state the date by which the information must be postmarked or received (which shall be at least 30 days from the date of the mailing of the written notice), state that if the information is not postmarked or received by that date, the public authority will prepare a proposed order on the basis of the information available, and identify the type of information which will be considered.

(c) Following the submission of information or following the date when the information was due, the public authority shall, on the basis of all information available, complete and sign a proposed order and notice. In preparing the proposed order, the public authority will establish child support in the highest amount permitted under section 518.551, subdivision 5. The proposed order shall include written findings in accordance with section 518.551, subdivision 5, clauses (i) and (j). The notice shall state that the proposed order will be entered as a final and binding default order unless one of the parties requests a conference under subdivision 3 within 21 days following the date of service of the proposed order. The method for requesting the conference shall be stated in the notice. The notice and proposed order shall be served under the rules of civil procedure. For the purposes of the contested hearing, and notwithstanding any law or rule to the contrary, the service of the proposed order pursuant to this paragraph shall be deemed to have commenced a proceeding and the judge, including an administrative law judge or a referee, shall have jurisdiction over the contested hearing.

(d) If a conference under subdivision 3 is not requested by a party within 21 days after the date of service of the proposed order, the public authority may submit the proposed order as the default order. The default order becomes enforceable upon signature by an administrative law judge, district court judge, or referee. The public authority may also prepare and serve a new notice and proposed order if new information is subsequently obtained. The default order shall be a final order, and shall be served under the rules of civil procedure.

(e) The public authority shall file in the district court copies of all notices served on the parties, proof of service, and all orders.

Subd. 3. **Administrative conference.** (a) If a party requests a conference within 21 days of the date of service of the proposed order, the public authority shall schedule a conference, and shall serve written notice of the date, time, and place of the conference on the parties.

(b) The purpose of the conference is to review all available information and seek an agreement to enter a consent order. The notice shall state the purpose of the conference, and that the proposed order will be entered as a final and binding default order if the requesting party fails to appear at the conference. The notice shall be served on the parties by first class mail at their last known addresses, and the method of service shall be documented in the public authority file.

(c) A party alleging domestic abuse by the other party shall not be required to participate in a conference. In such a case, the public authority shall meet separately with the parties in order to determine whether an agreement can be reached.

(d) If the party requesting the conference does not appear and fails to provide a written excuse (with supporting documentation if relevant) to the public authority within seven days after the date of the conference which constitutes good cause, the public authority may enter a default order through the uncontested administrative process. The public authority shall not enter the default order until at least seven days after the date of the conference.

For purposes of this section, misrepresentation, excusable neglect, or circumstances beyond the control of the person who requested the conference which prevented the person's appearance at the conference constitutes good cause for failure to appear. If the public authority finds good cause, the conference shall be rescheduled by the public authority and the public authority shall send notice as required under this subdivision.

(e) If the parties appear at the conference, the public authority shall seek agreement of the parties to the entry of a consent order which establishes child support in accordance with applicable law. The public authority shall advise the parties that if a consent order is not entered, the matter will be scheduled for a hearing before an administrative law judge, or a district court judge or referee, and that the public authority will seek the establishment of child support at the hearing in accordance with the highest amount permitted under section 518.551, subdivision 5. If an agreement to enter the consent order is not reached at the conference, the public authority shall schedule the matter for a contested hearing.

(f) If an agreement is reached by the parties at the conference, a consent order shall be prepared by the public authority, and shall be signed by the parties. All consent and default orders shall be signed by the nonattorney employee of the public authority and shall be submitted to an administrative law judge or the district court for approval and signature. The order is enforceable upon the signature by the administrative law judge or the district court. The consent order shall be served on the parties under the rules of civil procedure.

Subd. 4. **Contested administrative proceeding.** (a) All counties shall participate in the contested administrative process established in this section as designated in a statewide implementation plan to be set forth by the commissioner of human services. No county shall be required to participate in the contested administrative process until after the county has been trained. The contested administrative process shall be in operation in all counties no later than July 1, 1998, with the exception of Hennepin county which shall have a pilot program in operation no later than July 1, 1996.

The Hennepin county pilot program shall be jointly planned, implemented, and evaluated by the department of human services, the office of administrative hearings, the fourth judicial district court, and Hennepin county. The pilot program shall provide that one-half of the case load use the contested administrative process. The pilot program shall include an evaluation which shall be conducted after one year of program operation. A preliminary evaluation report shall be submitted by the commissioner to the legislature by March 1, 1997. A final evaluation report shall be submitted by the commissioner to the legislature by January 15, 1998. The pilot program shall continue pending final decision by the legislature, or until the commissioner determines that the pilot program shall discontinue and that Hennepin county shall not participate in the contested administrative process.

In counties designated by the commissioner, contested hearings required under this section shall be scheduled before administrative law judges, and shall be conducted in accordance with the provisions under this section. In counties not designated by the commissioner, contested hearings shall be conducted in district court in accordance with the rules of civil procedure and the rules of family court.

(b) An administrative law judge may conduct hearings and approve a stipulation reached on a contempt motion brought by the public authority. Any stipulation that involves a finding of contempt and a jail sentence, whether stayed or imposed, shall require the review and signature of a district court judge.

(c) A party, witness, or attorney may appear or testify by telephone, audiovisual means, or other electronic means, at the discretion of the administrative law judge.

(d) Before implementing the process in a county, the chief administrative law judge, the commissioner of human services, the director of the county human services agency, the county attorney, the county court administrator, and the county sheriff shall jointly establish procedures, and the county shall provide hearing facilities for implementing this process in the county. A contested administrative hearing shall be conducted in a courtroom, if one is available, or a conference or meeting room with at least two exits and of sufficient size to permit adequate physical separation of the parties. The court administrator shall, to the extent practical, provide administrative support for the contested hearing. Security personnel shall either be present during the administrative hearings, or be available to respond to a request for emergency assistance.

(e) The contested administrative hearings shall be conducted under the rules of the office of administrative hearings, Minnesota Rules, parts 1400.5275, 1400.5500, 1400.6000 to 1400.6400, 1400.6600 to 1400.7000, 1400.7100 to 1400.7500, 1400.7700, 1400.7800, and 1400.8100, as adopted by the chief administrative law judge. For matters not initiated under subdivision 2, documents from the moving party shall be served and filed at least 21 days prior to the hearing and the opposing party shall serve and file documents raising new issues at least ten days prior to the hearing. In all contested administrative proceedings, the administrative law judge may limit the extent and timing of discovery. Except as provided under this section, other aspects of the case, including, but not limited to, discovery, shall be conducted under the rules of family court, the rules of civil procedure, and chapter 518.

(f) Pursuant to a contested administrative hearing, the administrative law judge shall make findings of fact, conclusions, and a final decision and issue an order. Orders issued by an administrative law judge may be enforceable by the contempt powers of the district courts.

(g) At the time the matter is scheduled for a contested hearing, the public authority shall file in the district court copies of all relevant documents sent to or received from the parties, in addition to the documents filed under subdivision 2, paragraph (e). For matters scheduled for a contested hearing which were not initiated under subdivision 2, the public authority shall obtain any income information available to the public authority through the department of economic security and serve this information on all parties and file the information with the court at least five days prior to the hearing.

(h) The decision and order of the administrative law judge is appealable to the court of appeals in the same manner as a decision of the district court.

Subd. 5. **Nonattorney authority.** Nonattorney employees of the public authority responsible for child support may prepare, sign, serve, and file complaints, motions, notices, summary notices, proposed orders, default orders, and consent orders for obtaining, modifying, or enforcing child and medical support orders, orders establishing paternity, and related documents, and orders to modify maintenance if combined with a child support order. The nonattorney may also conduct prehearing conferences, and participate in proceedings before an administrative law judge. This activity shall not be considered to be the unauthorized practice of law. Nonattorney employees may not represent the interests of any party other than the public authority, and may not give legal advice to any party.

Subd. 6. **Subpoenas.** After the commencement of the administrative process, any party or the public authority may request a subpoena, and the administrative law judge shall have the authority to issue subpoenas.

Subd. 7. **Public authority legal advisor.** At all stages of the administrative process, the county attorney, or other attorney under contract, shall act as the legal advisor for the public authority, but shall not play an active role in the review of information, the preparation of default and consent orders, and the contested hearings unless the nonattorney employee of the public authority requests the appearance of the county attorney.

Subd. 8. **Costs associated with the administrative process.** The commissioner of human services shall distribute money for this purpose to counties to cover the costs of the administrative process, including the salaries of administrative law judges. If available appropriations are insufficient to cover the costs, the commissioner shall prorate the amount among the counties.

Subd. 9. **Training and restructuring.** (a) The commissioner of human services, in consultation with the office of administrative hearings, shall be responsible for the supervision of the administrative process. The commissioner of human services shall provide training to child support officers and other persons involved in the administrative process. The commissioner of human services shall prepare simple and easy to understand forms for all notices and orders prescribed in this section, and the public authority shall use them.

(b) The office of administrative hearings shall be responsible for training and monitoring the performance of administrative law judges, maintaining records of proceedings, providing transcripts upon request, and maintaining the integrity of the district court file.

History: *1994 c 630 art 10 s 1; 1995 c 257 art 5 s 1–7*

518.5512 ADMINISTRATIVE PROCEDURES FOR CHILD AND MEDICAL SUPPORT ORDERS AND PARENTAGE ORDERS.

Subdivision 1. **General.** The provisions of this section apply to actions conducted in the administrative process pursuant to section 518.5511.

Subd. 2. **Paternity.** (a) A nonattorney employee of the public authority may request an administrative law judge or the district court to order the child, mother, or alleged father to submit to blood or genetic tests. The order is effective when signed by an administrative law judge or the district court. Failure to comply with the order for blood or genetic tests may result in a default determination of parentage.

(b) If parentage is contested at the administrative hearing, the administrative law judge may order temporary child support under section 257.62, subdivision 5, and shall refer the case to the district court.

(c) The district court may appoint counsel for an indigent alleged father only after the return of the blood or genetic test results from the testing laboratory.

Subd. 3. **Cost–of–living adjustment.** The notice of application for adjustment shall be treated as a proposed order under section 518.5511, subdivision 2, paragraph (c). The public authority shall stay the adjustment of support upon receipt of a request for an administrative conference. An obligor requesting an administrative conference shall provide all relevant information that establishes an insufficient increase in income to justify the adjustment of the support obligation. If the obligor fails to submit any evidence at the administrative conference, the cost–of–living adjustment will immediately go into effect.

Subd. 4. **Termination of interest.** The public authority or a party bringing a motion under section 548.091, subdivision 1a, may proceed immediately to a contested administrative proceeding under section 518.5511, subdivision 4.

History: *1995 c 257 art 5 s 8; 1996 c 391 art 2 s 1*

518.552 MAINTENANCE.

Subdivision 1. In a proceeding for dissolution of marriage or legal separation, or in a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse and which has since acquired jurisdiction, the court may grant a maintenance order for either spouse if it finds that the spouse seeking maintenance:

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self–support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Subd. 2. The maintenance order shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting;

(c) the standard of living established during the marriage;

(d) the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;

(e) the loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance;

(f) the age, and the physical and emotional condition of the spouse seeking maintenance;

(g) the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance; and

(h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment or business.

Subd. 3. Nothing in this section shall be construed to favor a temporary award of maintenance over a permanent award, where the factors under subdivision 2 justify a permanent award.

Where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification.

Subd. 4. **Reopening maintenance awards.** Section 518.145, subdivision 2, applies to awards of spousal maintenance.

Subd. 5. **Private agreements.** The parties may expressly preclude or limit modification of maintenance through a stipulation, if the court makes specific findings that the stipulation is fair and equitable, is supported by consideration described in the findings, and that full disclosure of each party's financial circumstances has occurred. The stipulation must be made a part of the judgment and decree.

History: *1978 c 772 s 51; 1979 c 259 s 26; 1982 c 535 s 1; 1985 c 266 s 2; 1986 c 444; 1988 c 668 s 19; 1989 c 248 s 7*

518.553 PAYMENT AGREEMENTS.

In proposing or approving proposed written payment agreements for purposes of section 518.551, the court, an administrative law judge, or the public authority shall take into consideration the amount of the arrearages, the amount of the current support order, any pending request for modification, and the earnings of the obligor.

History: *1995 c 257 art 1 s 27*

518.56 [Repealed, 1969 c 1028 s 9]

518.561 [Repealed, 1995 c 257 art 1 s 36]

518.57 MINOR CHILDREN; SUPPORT.

Subdivision 1. **Order.** Upon a decree of dissolution, legal separation, or annulment, the court shall make a further order which is just and proper concerning the maintenance of the minor children as provided by section 518.551, and for the maintenance of any child of the parties as defined in section 518.54, as support money. The court may make any child support

order a lien or charge upon the property of the obligor, either at the time of the entry of the judgment or by subsequent order upon proper application.

Subd. 2. **Seasonal income.** The court shall establish the annual support of an obligor with a seasonal income so that the obligor makes either the same monthly payments throughout the year or monthly payments that reflect variations in income.

Subd. 3. **Satisfaction of child support obligation.** The court may conclude that an obligor has satisfied a child support obligation by providing a home, care, and support for the child while the child is living with the obligor, if the court finds that the child was integrated into the family of the obligor with the consent of the obligee and child support payments were not assigned to the public agency under section 256.74.

Subd. 4. **Other custodians.** If a child resides with a person other than a parent and the court approves of the custody arrangement, the court may order child support payments to be made to the custodian regardless of whether the person has legal custody.

History: *1951 c 551 s 4; 1974 c 107 s 21; 1978 c 772 s 52; 1986 c 406 s 5; 1987 c 403 art 3 s 81; 1990 c 574 s 19; 1991 c 266 s 3; 1993 c 340 s 40,41*

518.575 PUBLICATION OF NAMES OF DELINQUENT CHILD SUPPORT OBLIGORS.

Subdivision 1. **Publication of names.** Twice each year, the commissioner of human services shall publish a list of the names and last known addresses of each person who (1) is a child support obligor, (2) is at least $3,000 in arrears, and (3) is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority. The commissioner of human services shall publish the name of each obligor in the newspaper or newspapers of widest circulation in the area where the obligor is most likely to be residing. For each publication, the commissioner shall release the list of all names being published not earlier than the first day on which names appear in any newspaper. An obligor's name may not be published if the obligor claims in writing, and the commissioner of human services determines, there is good cause for the nonpayment of child support. Good cause includes the following: (i) there is a mistake in the obligor's identity or the amount of the obligor's arrears; (ii) arrears are reserved by the court or there is a pending legal action concerning the unpaid child support; or (iii) other circumstances as determined by the commissioner. The list must be based on the best information available to the state at the time of publication.

Before publishing the name of the obligor, the department of human services shall send a notice to the obligor's last known address which states the department's intention to publish the obligor's name and the amount of child support the obligor owes. The notice must also provide an opportunity to have the obligor's name removed from the list by paying the arrearage or by entering into an agreement to pay the arrearage, and the final date when the payment or agreement can be accepted.

The department of human services shall insert with the notices sent to the obligee, a notice stating the intent to publish the obligor's name, and the criteria used to determine the publication of the obligor's name.

Subd. 2. **Names published in error.** If the commissioner publishes a name under subdivision 1 which is in error, the commissioner must also offer to publish a printed retraction and apology acknowledging that the name was published in error. The retraction and apology must appear in each publication that included the original notice with the name listed in error, and it must appear in the same type size and appear the same number of times as the original notice.

History: *1994 c 630 art 11 s 11; 1995 c 257 art 3 s 2*

518.58 DIVISION OF MARITAL PROPERTY.

Subdivision 1. **General.** Upon a dissolution of a marriage, an annulment, or in a proceeding for disposition of property following a dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property and which has since acquired jurisdiction, the court shall make a just and equitable

division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property. The court shall base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker. It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife. The court may also award to either spouse the household goods and furniture of the parties, whether or not acquired during the marriage. The court shall value marital assets for purposes of division between the parties as of the day of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable. If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution.

Subd. 1a. **Transfer, encumbrance, concealment, or disposition of marital assets.** During the pendency of a marriage dissolution, separation, or annulment proceeding, or in contemplation of commencing a marriage dissolution, separation, or annulment proceeding, each party owes a fiduciary duty to the other for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets. If the court finds that a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution, separation, or annulment proceeding, transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life, the court shall compensate the other party by placing both parties in the same position that they would have been in had the transfer, encumbrance, concealment, or disposal not occurred. The burden of proof under this subdivision is on the party claiming that the other party transferred, encumbered, concealed, or disposed of marital assets in contemplation of commencing or during the pendency of the current dissolution, separation, or annulment proceeding, without consent of the claiming party, and that the transfer, encumbrance, concealment, or disposal was not in the usual course of business or for the necessities of life. In compensating a party under this section, the court, in dividing the marital property, may impute the entire value of an asset and a fair return on the asset to the party who transferred, encumbered, concealed, or disposed of it. Use of a power of attorney, or the absence of a restraining order against the transfer, encumbrance, concealment, or disposal of marital property is not available as a defense under this subdivision.

Subd. 2. **Award of nonmarital property.** If the court finds that either spouse's resources or property, including the spouse's portion of the marital property as defined in section 518.54, subdivision 5, are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded under section 518.54, subdivision 5, clauses (a) to (d), to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

Subd. 3. **Sale or distribution while proceeding pending.** (a) If the court finds that it is necessary to preserve the marital assets of the parties, the court may order the sale of the homestead of the parties or the sale of other marital assets, as the individual circumstances may require, during the pendency of a proceeding for a dissolution of marriage or an annulment. If the court orders a sale, it may further provide for the disposition of the funds received from the sale during the pendency of the proceeding. If liquid or readily liquidated marital property other than property representing vested pension benefits or rights is available, the

court, so far as possible, shall divide the property representing vested pension benefits or rights by the disposition of an equivalent amount of the liquid or readily liquidated property.

(b) The court may order a partial distribution of marital assets during the pendency of a proceeding for a dissolution of marriage or an annulment for good cause shown or upon the request of both parties, provided that the court shall fully protect the interests of the other party.

Subd. 4. **Pension plans.** (a) The division of marital property that represents pension plan benefits or rights in the form of future pension plan payments:

(1) is payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan;

(2) is not payable for a period that exceeds the time that pension plan benefits are payable to the pension plan benefit recipient;

(3) is not payable in a lump sum amount from pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a pension plan;

(4) if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and

(5) in the case of public pension plan benefits or rights, may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.

(b) The individual retirement account plans established under chapter 354B may provide in its plan document, if published and made generally available, for an alternative marital property division or distribution of individual retirement account plan assets. If an alternative division or distribution procedure is provided, it applies in place of paragraph (a), clause (5).

History: *1951 c 551 s 5; 1974 c 107 s 22; 1978 c 772 s 53; 1979 c 259 s 27; 1979 c 289 s 8; 1981 c 349 s 7; 1982 c 464 s 2; 1986 c 444; 1987 c 157 s 17; 1988 c 590 s 2; 1988 c 668 s 20; 1989 c 248 s 8; 1991 c 266 s 4,5; 1992 c 548 s 6; 1993 c 239 art 4 s 1*

518.581 SURVIVING SPOUSE BENEFIT.

Subdivision 1. **Award of benefit.** If a current or former employee's marriage is dissolved, the court may order the employee, the employee's pension plan, or both, to pay amounts as part of the division of pension rights that the court may make under section 518.58, or as an award of maintenance in the form of a percentage of periodic or other payments or in the form of a fixed dollar amount. The court may, as part of the order, award a former spouse all or part of a survivor benefit unless the plan does not allow by law the payment of a surviving spouse benefit to a former spouse.

Subd. 2. **Payment of funds by retirement plan.** (a) If the court has ordered that a spouse has an interest in a pension plan, the court may order the pension plan to withhold payment of a refund upon termination of employment or lump sum distribution to the extent of the spouse's interest in the plan, or to provide survivor benefits ordered by the court.

(b) The court may not order the pension plan to:

(1) pay more than the equivalent of one surviving spouse benefit, regardless of the number of spouses or former spouses who may be sharing in a portion of the total benefit;

(2) pay surviving spouse benefits under circumstances where the plan member does not have a right to elect surviving spouse benefits;

(3) pay surviving spouse benefits to a former spouse if the former spouse would not be eligible for benefits under the terms of the plan; or

(4) order survivor benefits which, when combined with the annuity or benefit payable to the pension plan member, exceed the actuarial equivalent value of the normal retirement annuity form, determined under the plan documents of the pension plan then in effect and the actuarial assumptions then in effect for calculating optional annuity forms by the pension plan or for calculating the funding requirements of the pension plan if no optional annuity forms are provided by the pension plan.

(c) If more than one spouse or former spouse is entitled to a surviving spouse benefit, the pension plan shall pay each spouse a portion of the benefit based on the ratio of the number of years the spouse was married to the plan member to the total number of years the plan member was married to spouses who are entitled to the benefit.

Subd. 3. **Notice to former spouse.** A pension plan shall notify a former spouse of an application by the employee for a refund of pension benefits if the former spouse has filed with the pension plan:

(1) a copy of the court order, including a withholding order, determining the former spouse's rights;

(2) the name and last known address of the employee; and

(3) the name and address of the former spouse.

A pension plan shall comply with an order, including a withholding order, issued by a court having jurisdiction over dissolution of marriage that is served on the pension plan, if the order states the name, last known address of the payees, and name and address of the former spouse, or if the names and addresses are provided to the pension plan with service of the order.

Subd. 4. **Definitions.** For purposes of this section, the following terms have the meanings given in this subdivision.

(a) "Current or former employee" or "employee" means an individual who has an interest in a pension plan.

(b) "Surviving spouse benefit" means (1) a benefit a surviving spouse may be eligible for under the laws and bylaws of the pension plan if the employee dies before retirement, or (2) a benefit selected for or available to a surviving spouse under the laws and bylaws of the pension plan upon the death of the employee after retirement.

History: *1987 c 157 s 18; 1988 c 668 s 21; 1994 c 386 s 1*

518.582 PROCEDURE FOR VALUING PENSION BENEFITS OR RIGHTS.

Subdivision 1. **Appointment of actuary.** Each court of this state that has jurisdiction to decide marriage dissolution matters may appoint a qualified person experienced in the valuation of pension benefits and rights to function as an expert witness in valuing pension benefits or rights.

Subd. 2. **Standards.** A court appointed actuary shall determine the present value of pension benefits or rights that are marital property of the parties to the action based on the applicable plan documents of the pension plan and the applicable actuarial assumptions specified for use in calculating optional annuity forms by the pension plan or for funding the pension plan, if reasonable, or as specified by the court. The court appointed actuary shall report to the court and to the parties the present value of the pension benefits or rights that are marital property.

Subd. 3. **Compensation.** The court appointed actuary may be compensated at a rate established by the court. The compensation of the court appointed actuary shall be allocated between the parties as the court directs.

Subd. 4. **Stipulation.** In lieu of valuing pension benefits or rights through use of the court appointed actuary, the parties may stipulate the present value of pension benefits or rights that are marital property.

History: *1987 c 157 s 19; 1988 c 619 s 1*

518.583 CAPITAL GAIN ON SALE OF PRINCIPAL RESIDENCE.

All judgments and decrees involving a principal residence must include the following notice to the parties as a finding of fact or as an appendix:

"CAPITAL GAIN ON SALE OF PRINCIPAL RESIDENCE

Income tax laws regarding the capital gain tax may apply to the sale of the parties' principal residence and the parties may wish to consult with an attorney or tax advisor concerning the applicable laws. These laws may include, but are not limited

to, the exclusion available on the sale of a principal residence for those over a certain age under section 121 of the Internal Revenue Code of 1986, or other applicable law."

History: *1990 c 574 s 20; 1993 c 322 s 13*

518.585 NOTICE OF INTEREST ON LATE CHILD SUPPORT.

Any judgment or decree of dissolution or legal separation containing a requirement of child support and any determination of parentage, order under chapter 518C, order under section 256.87, or order under section 260.251 must include a notice to the parties that section 548.091, subdivision 1a, provides for interest to begin accruing on a payment or installment of child support whenever the unpaid amount due is greater than the current support due.

History: *1993 c 340 s 49*

518.5851 CHILD SUPPORT PAYMENT CENTER; DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of the child support center established under sections 518.5851 to 518.5853, the following terms have the meanings given.

Subd. 2. **Central collections unit.** "Central collections unit" means the unit created under section 518.5852.

Subd. 3. **Local child support agency.** "Local child support agency" means the entity at the county level that is responsible for providing child support enforcement services.

Subd. 4. **Payment.** "Payment" means the payment of child support, medical support, maintenance, and related payments required by order of a tribunal, voluntary support, or statutory fees.

Subd. 5. **Tribunal.** "Tribunal" has the meaning given in section 518C.101.

History: *1995 c 257 art 2 s 1*

518.5852 CENTRAL COLLECTIONS UNIT.

The commissioner of human services shall create and maintain a central collections unit for the purpose of receiving, processing, and disbursing payments, and for maintaining a record of payments, in all cases in which:

(1) the state or county is a party;

(2) the state or county provides child support enforcement services to a party; or

(3) payment is collected through income withholding.

The commissioner of human services may contract for services to carry out these provisions.

History: *1995 c 257 art 2 s 2*

518.5853 MANDATORY PAYMENT OF OBLIGATIONS TO CENTRAL COLLECTIONS UNIT.

Subdivision 1. **Location of payment.** All payments described in section 518.5852 must be made to the central collections unit.

Subd. 2. **Agency designation of location.** Each local child support agency shall provide a location within the agency to receive payments. A local agency receiving a payment shall transmit the funds to the central collections unit within one working day of receipt of the payment.

Subd. 3. **Incentives.** Notwithstanding any rule to the contrary, incentives must be paid to the county providing services and maintaining the case to which the payment is applied. Incentive payments awarded for the collection of child support must be based solely upon payments processed by the central collections unit. Incentive payments received by the county under this subdivision shall be used for county child support collection efforts.

Subd. 4. **Electronic transfer of funds.** The central collections unit is authorized to engage in the electronic transfer of funds for the receipt and disbursement of funds.

Subd. 5. **Required content of order.** A tribunal issuing an order that establishes or modifies a payment shall issue an income withholding order in conformity with section 518.613, subdivision 2. The automatic income withholding order must include the name of the obligor, the obligor's social security number, the obligor's date of birth, and the name and address of the obligor's employer. The street mailing address and the electronic mail address for the central collections unit must be included in each automatic income withholding order issued by a tribunal.

Subd. 6. **Transmittal of order to the local agency by the tribunal.** The tribunal shall transmit a copy of the order establishing or modifying the payment, and a copy of the automatic income withholding order, to the local child support agency within two working days of the approval of the order by the judge or administrative law judge or other person or entity authorized to sign the automatic withholding order.

Subd. 7. **Transmittal of funds from the obligor or payor of funds to the central collections unit.** The obligor or other payor of funds shall identify the obligor on the check or remittance by name, payor number, and social security number, and shall comply with section 518.611, subdivision 4.

Subd. 8. **Sanction for checks drawn on insufficient funds.** A notice may be directed to any person or entity submitting a check drawn on insufficient funds stating that future payment must be paid by cash or certified funds. The central collections unit and the local child support agency may refuse a check from a person or entity that has been given notice that payments must be in cash or certified funds.

Subd. 9. **Admissibility of payment records.** A copy of the record of payments maintained by the central collections unit in section 518.5852 is admissible evidence in all tribunals as proof of payments made through the central collections unit without the need of testimony to prove authenticity.

Subd. 10. **Transition provisions.** (a) The commissioner of human services shall develop a plan for the implementation of the central collections unit. The plan must require that payments be redirected to the central collections unit. Payments may be redirected in groups according to county of origin, county of payment, method of payment, type of case, or any other distinguishing factor designated by the commissioner.

(b) Notice that payments must be made to the central collections unit must be provided to the obligor and to the payor of funds within 30 days prior to the redirection of payments to the central collections unit. After the notice has been provided to the obligor or payor of funds, mailed payments received by a local child support agency must be forwarded to the central collections unit. A notice must be sent to the obligor or payor of funds stating that payment application may be delayed and provide directions to submit future payment to the central collections unit.

History: *1995 c 257 art 2 s 3*

518.59 [Repealed, 1978 c 772 s 63]

518.60 [Repealed, 1969 c 1028 s 9]

518.61 TRUSTEE.

(a) Upon its own motion or upon motion of either party, the court may appoint a trustee, when it is deemed expedient, to receive any money ordered to be paid as maintenance or support money for remittance to the person entitled to receive the payments. The trustee may also receive property which is part of an award under section 518.58, upon trust to invest the same, and pay over the income in the manner the court directs, or to pay over the principal sum in the proportions and at the times the court orders. The court shall have regard in all cases to the situation and circumstances of the recipient, and the children, if there are any. The trustee shall give a bond, as the court requires, for the faithful performance of the trust. If it appears that the recipient of money ordered to be paid as support will receive public assistance, the court shall appoint as trustee the public authority responsible for support enforcement.

(b) The trustee shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order.

(c) The parties affected by the order shall inform the trustee of a change of address or of other conditions that may affect the administration of the order.

(d) If a required payment of support or of maintenance and support combined is not made within ten days after the due date, the trustee shall send by first class mail notice of the arrearage to the obligor. If payment of the sum due is not received by the trustee within ten days after sending notice, the trustee shall certify the amount due to the public authority responsible for support enforcement, whenever that authority is not the trustee. If the public authority responsible for support enforcement refers the arrearage to the county attorney, the county attorney may initiate enforcement proceedings against the obligor for support or for maintenance and support combined.

(e) The public authority responsible for support enforcement may represent a person entitled to receive support or maintenance or both in court proceedings initiated under this section to enforce compliance with a support order or combined maintenance and support orders.

(f) If the person obligated to pay support or maintenance is beyond the jurisdiction of the court, the county attorney may institute any proceeding available under state or federal law for the enforcement of duties of support or maintenance.

History: *1951 c 551 s 8; 1969 c 1028 s 6; 1978 c 772 s 54; 1986 c 444*

518.611 INCOME WITHHOLDING.

Subdivision 1. **Order.** Whenever an obligation for support of a dependent child or maintenance of a spouse, or both, is determined and ordered by a court of this state, the amount of child support or maintenance as determined by court order must be withheld from the income, regardless of source, of the person obligated to pay the support or maintenance, and paid through the public authority. The court shall provide a copy of any order where withholding is ordered to the public authority responsible for support collections. Every order for maintenance or support must include:

(1) the obligor's social security number and date of birth and the name and address of the obligor's employer or other payor of funds; and

(2) provisions for the obligor to keep the public authority informed of the name and address of the obligor's current employer or payor of funds, and whether the obligor has access to employment-related health insurance coverage and, if so, the health insurance policy information.

Subd. 2. **Conditions of income withholding.** (a) Withholding shall result when:

(1) the obligor requests it in writing to the public authority;

(2) the custodial parent requests it by making a motion to the court and the court finds that previous support has not been paid on a timely or consistent basis or that the obligor has threatened expressly or otherwise to stop or reduce payments; or

(3) the obligor fails to make the maintenance or support payments, and the following conditions are met:

(i) the obligor is at least 30 days in arrears;

(ii) the obligee or the public authority serves written notice of income withholding, showing arrearage, on the obligor at least 15 days before service of the notice of income withholding and a copy of the court's order on the payor of funds;

(iii) within the 15-day period, the obligor fails to move the court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding, or on other grounds limited to mistakes of fact, and, ex parte, to stay service on the payor of funds until the motion to deny withholding is heard;

(iv) the obligee or the public authority sends the payor of funds a notice of the withholding requirements and the provisions of this section; and

(v) the obligee serves on the public authority a copy of the notice of income withholding, a copy of the court's order, an application, and the fee to use the public authority's collection services.

For those persons not applying for the public authority's IV-D services, a monthly service fee of $15 must be charged to the obligor in addition to the amount of child support ordered

by the court and withheld through automatic income withholding, or for persons applying for the public authority's IV–D services, the service fee under section 518.551, subdivision 7, applies. The county agency shall explain to affected persons the services available and encourage the applicant to apply for IV–D services.

(b) The employer or payor of funds shall withhold from the obligor's income an additional amount equal to 20 percent of the monthly child support or maintenance obligation until the arrearage is paid.

(c) In cases where child support or maintenance is not assigned under section 256.74, if an obligor has overpaid a child support or maintenance obligation because of a modification of or error in the amount owed, the public authority shall:

(1) apply the amount of the overpayment to reduce the amount of any child support or maintenance related arrearages or debts owed to the obligee; and

(2) if an overpayment amount remains after the reduction of any arrearage or debt, reduce the amount of the child support remitted to the obligee by an amount equal to no more than 20 percent of the current monthly support or maintenance obligation and remit this amount to the obligor until the overpayment is reduced to zero.

(d) The obligor may move the court, under section 518.64, to modify the order respecting the amount of maintenance or support.

(e) Every order for support or maintenance shall provide for a conspicuous notice of the provisions of this subdivision that complies with section 518.68, subdivision 2. An order without this notice remains subject to this subdivision.

(f) Absent a court order to the contrary, if an arrearage exists at the time an order for ongoing support or maintenance would otherwise terminate, income withholding shall continue in effect in an amount equal to the former support or maintenance obligation plus an additional amount equal to 20 percent of the monthly child support obligation, until all arrears have been paid in full.

Subd. 2a. **Preauthorized transfers from obligor accounts.** In any case where income withholding is ineffective due to the obligor's method of obtaining income, the court shall order the obligor to identify a child support deposit account owned solely by the obligor, or to establish an account, in a financial institution located in this state for the purpose of depositing court–ordered child support payments. The court shall order the obligor to execute an agreement with the appropriate public authority authorizing preauthorized transfers from the obligor's child support deposit account payable to an account of the public authority responsible for child support enforcement. The court shall order the obligor to disclose to the court all deposit accounts owned by the obligor in whole or in part in any financial institution. The court may order the obligor to disclose to the court the opening or closing of any deposit account owned in whole or in part by the obligor within 30 days of the opening or closing. The court may order the obligor to execute an agreement with the appropriate public authority authorizing preauthorized transfers from any deposit account owned in whole or in part by the obligor to the obligor's child support deposit account if necessary to satisfy court–ordered child support payments. The court may order a financial institution to disclose to the court the account number and any other account identification information regarding accounts owned in whole or in part by the obligor. An obligor who fails to comply with this section, fails to deposit funds in at least one deposit account sufficient to pay court–ordered child support, or stops payment or revokes authorization of any preauthorized transfer is subject to contempt of court procedures under chapter 588.

Subd. 3. **Withholding hearing.** Within 45 days from the date of the notice given under subdivision 2, the court shall hold the hearing on the motion under subdivision 2 and notify the parties of its decision. At the hearing to deny withholding, if the court finds that there was no mistake of fact, the court shall order income withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing. If the court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but finds a mistake in the amount of arrearage, the court shall order income withholding, but it shall correct the amount of arrearage to be withheld under subdivision 2, paragraph (b).

Subd. 4. **Effect of order.** (a) Notwithstanding any law to the contrary, the order is binding on the employer, trustee, payor of the funds, or financial institution when service under

subdivision 2 has been made. Withholding must begin no later than the first pay period that occurs after 14 days following the date of the notice. In the case of a financial institution, preauthorized transfers must occur in accordance with a court–ordered payment schedule. An employer, payor of funds, or financial institution in this state is required to withhold income according to court orders for withholding issued by other states or territories. The payor shall withhold from the income payable to the obligor the amount specified in the order and amounts required under subdivision 2 and section 518.613 and shall remit, within ten days of the date the obligor is paid the remainder of the income, the amounts withheld to the public authority. The payor shall identify on the remittance information the date the obligor is paid the remainder of the income. The obligor is considered to have paid the amount withheld as of the date the obligor received the remainder of the income. The financial institution shall execute preauthorized transfers from the deposit accounts of the obligor in the amount specified in the order and amounts required under subdivision 2 as directed by the public authority responsible for child support enforcement.

(b) Employers may combine all amounts withheld from one pay period into one payment to each public authority, but shall separately identify each obligor making payment. Amounts received by the public authority which are in excess of public assistance expended for the party or for a child shall be remitted to the party.

(c) An employer shall not discharge, or refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this section. The employer or other payor of funds shall be liable to the obligee for any amounts required to be withheld. A financial institution is liable to the obligee if funds in any of the obligor's deposit accounts identified in the court order equal the amount stated in the preauthorization agreement but are not transferred by the financial institution in accordance with the agreement. An employer or other payor of funds that fails to withhold or transfer funds in accordance with this section is also liable to the obligee for interest on the funds at the rate applicable to judgments under section 549.09, computed from the date the funds were required to be withheld or transferred. An employer or other payor of funds is liable for reasonable attorney fees of the obligee or public authority incurred in enforcing the liability under this paragraph. An employer or other payor of funds that has failed to comply with the requirements of this section is subject to contempt sanctions under section 518.615. If an employer violates this subdivision, a court may award the employee twice the wages lost as a result of this violation. If a court finds the employer violates this subdivision, the court shall impose a civil fine of not less than $500.

Subd. 5. **Arrearage order.** Nothing in this section shall prevent the court from ordering the payor of funds to withhold amounts to satisfy the obligor's previous arrearage in child support or maintenance payments, the obligor's liability for reimbursement of child support or of public assistance pursuant to sections 256.87 and 257.66, for pregnancy and confinement expenses and for blood test costs, and any service fees that may be imposed under section 518.551. This remedy shall not operate to exclude availability of other remedies to enforce judgments.

Subd. 6. **Priority.** (a) An order for withholding under this section or execution or garnishment upon a judgment for child support arrearages or preadjudicated expenses shall have priority over an attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the obligor. Amounts withheld from an employee's income must not exceed the maximum permitted under the Consumer Credit Protection Act, United States Code, title 15, section 1673(b)(2).

(b) If a single employee is subject to multiple withholding orders for the support of more than one child, the payor of funds shall comply with all of the orders to the extent that the total amount withheld from the payor's income does not exceed the limits imposed under the Consumer Credit Protection Act, giving priority to amounts designated in each order as current support as follows:

(1) if the total of the amounts designated in the orders as current support exceeds the amount available for income withholding, the payor of funds shall allocate to each order an amount for current support equal to the amount designated in that order as current support, divided by the total of the amounts designated in the orders as current support, multiplied by the amount of the income available for income withholding; and

(2) if the total of the amounts designated in the orders as current support does not exceed the amount available for income withholding, the payor of funds shall pay the amounts designated as current support, and shall allocate to each order an amount for past due support equal to the amount designated in that order as past due support, divided by the total of the amounts designated in the orders as past due support, multiplied by the amount of income remaining available for income withholding after the payment of current support.

(c) If more than one order exists involving the same obligor and child, the public authority shall enforce the most current order. Income withholding that has been implemented under a previous order pursuant to this section or section 518.613 shall be terminated as of the date of the most current order. The public authority shall notify the payor of funds to withhold under the most current order.

(d) Notwithstanding any law to the contrary, funds from income sources included in section 518.54, subdivision 6, whether periodic or lump sum, are not exempt from attachment or execution upon a judgment for child support arrearages.

Subd. 7. **Employer expenses.** An employer may deduct one dollar from the obligor–employee's remaining salary for each payment made pursuant to a withholding order under this section to cover the employer's expenses involved in the withholding.

Subd. 8. [Repealed, 1995 c 257 art 1 s 36]

Subd. 8a. **Lump sum payments.** Before transmittal to the obligor of a lump sum payment including, but not limited to, severance pay, accumulated sick pay, vacation pay, bonuses, commissions, or other pay or benefits:

(1) an employer, trustee, or other payor of funds who has been served with a notice of income withholding under subdivision 2 or section 518.613 must:

(i) notify the public authority of any lump sum payment of $500 or more that is to be paid to the obligor;

(ii) hold the lump sum payment for 30 days after the date on which the lump sum payment would otherwise have been paid to the obligor, notwithstanding sections 181.08, 181.101, 181.11, 181.13, and 181.145;

(iii) upon order of the court, pay any specified amount of the lump sum payment to the public authority for current support or reimbursement of support judgment, judgments, or arrearages; and

(iv) upon order of the court, and after a showing of past willful nonpayment of support, pay any specified amount of the lump sum payment to the public authority for future support; or

(2) upon service by United States mail of a sworn affidavit from the public authority or a court order stating:

(i) that a judgment entered pursuant to section 548.091, subdivision 1a, exists against the obligor, or that other support arrearages exist;

(ii) that a portion of the judgment, judgments, or arrearages remains unpaid; and

(iii) the current balance of the judgment, judgments, or arrearages, the payor of funds shall pay to the public authority the lesser of the amount of the lump sum payment or the total amount of judgments plus arrearages as stated in affidavit or court order, subject to the limits imposed under the consumer credit protection act.

Subd. 9. **Forms.** The commissioner of human services shall prepare and make available to courts and obligors a form to be submitted by the obligor in support of a motion to deny withholding under this section. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form.

Subd. 10. **Order terminating income withholding.** (a) Whenever an obligation for support of a child or maintenance of a spouse, or both, terminates under the terms of the order or decree establishing the obligation, and where the obligation is enforced by an order for income withholding from the obligor, the court shall enter an order, directed to the obligor's employer or other payer of funds, which terminates the income withholding. The order terminating income withholding must specify the effective date of the order, referencing the initial order or decree establishing the support obligation.

The order must be entered once the following conditions have been met:

(1) the obligor serves written notice of the application for termination of income withholding by mail upon the obligee at the obligee's last known mailing address; and a duplicate copy of the application is served upon the public authority responsible for the processing of support collection services;

(2) the application for termination of income withholding specifies the event that terminates the support obligation, the effective date of the termination of the support obligation, and the applicable provisions of the order or decree that established the support obligation;

(3) the application includes the complete name of the obligor's employer or other payer of funds, the business mailing address, the court action and court file number, and the support and collections file number, if known; and

(4) after receipt of the application for termination of income withholding, the obligee or the public authority fails within 20 days to request a hearing on the issue of whether income withholding of support should continue clearly specifying the basis for the continued support obligation and, ex parte, to stay the service of the order terminating income withholding upon the obligor's employer or other payer of funds, pending the outcome of the hearing.

(b) If the public authority determines that the support obligation has terminated under the terms of the order or decree establishing the obligation, the public authority shall notify the obligee and obligor of intent to terminate income withholding. Five days following this notice, the public authority shall issue a notice to the payor of funds terminating income withholding, without a requirement for a court order terminating income withholding, unless a hearing has been requested under paragraph (a).

Subd. 11. **Contract for service.** To carry out the provisions of this section, the public authority responsible for child support enforcement may contract for services, including the use of electronic funds transfer.

Subd. 12. **Interstate income withholding.** Upon receipt of an order for support entered in another state, with the specified documentation from an authorized agency, the public authority shall implement income withholding under subdivision 2. If the obligor requests a hearing under subdivision 3 to contest withholding, the court administrator shall enter the order. Entry of the order shall not confer jurisdiction on the courts or administrative agencies of this state for any purpose other than contesting implementation of income withholding.

History: *1978 c 772 s 55; 1979 c 259 s 28; 1981 c 360 art 2 s 47; 1982 c 488 s 6; 1983 c 308 s 21; 1984 c 547 s 20; 1985 c 131 s 8–12; 1986 c 404 s 14–16; 1986 c 406 s 6; 1987 c 403 art 3 s 82–88; 1988 c 668 s 22,23; 1989 c 282 art 2 s 192; 1990 c 568 art 2 s 73–78; 1993 c 322 s 14; 1993 c 340 s 42; 1Sp1993 c 1 art 6 s 45–48; 1995 c 207 art 10 s 21,22; 1995 c 257 art 3 s 3–7; 1996 c 406 s 1*

518.612 INDEPENDENCE OF PROVISIONS OF DECREE OR TEMPORARY ORDER.

Failure by a party to make support payments is not a defense to: interference with visitation rights; or without the permission of the court or the noncustodial parent removing a child from this state. Nor is interference with visitation rights or taking a child from this state without permission of the court or the noncustodial parent a defense to nonpayment of support. If a party fails to make support payments, or interferes with visitation rights, or without permission of the court or the noncustodial parent removes a child from this state, the other party may petition the court for an appropriate order.

History: *1978 c 772 s 56; 1979 c 259 s 29*

518.613 AUTOMATIC WITHHOLDING.

Subdivision 1. **General.** Notwithstanding any provision of section 518.611, subdivision 2 or 3, to the contrary, whenever an obligation for child support or maintenance, enforced by the public authority, is initially determined and ordered or modified by the court, the amount of child support or maintenance ordered by the court and any fees assessed by the public authority responsible for child support enforcement must be withheld from the income and forwarded to the public authority, regardless of the source of income, of the person obligated to pay the support.

Subd. 2. **Order; collection services.** Every order for child support must include the obligor's social security number and date of birth and the name and address of the obligor's employer or other payor of funds. In addition, every order must contain provisions requiring the obligor to keep the public authority informed of the name and address of the obligor's current employer, or other payor of funds and whether the obligor has access to employment-related health insurance coverage and, if so, the health insurance policy information. Upon entry of the order for support or maintenance, the court shall provide a copy of the withholding order to the public authority responsible for child support enforcement. An obligee who is not a recipient of public assistance must decide to either apply for the IV-D collection services of the public authority or obtain income withholding only services when an order for support is entered unless the requirements of this section have been waived under subdivision 7. The supreme court shall develop a standard automatic income withholding form to be used by all Minnesota courts. This form shall be made a part of any order for support or decree by reference.

Subd. 3. **Withholding.** The employer or other payor shall withhold and forward the child support or maintenance ordered in the manner and within the time limits provided in section 518.611. Amounts received from employers or other payors under this section by the public agency responsible for child support enforcement that are in excess of public assistance received by the obligee must be remitted to the obligee. A county in which this section applies may contract for services to carry out the provisions of this section.

Subd. 4. **Application.** On and after November 1, 1990, this section applies to all child support and maintenance obligations that are initially ordered or modified on and after November 1, 1990, and that are being enforced by the public authority. Effective January 1, 1994, this section applies to all child support and maintenance obligations ordered or modified by the court. Those persons not applying for the public authority's IV-D services must pay a monthly service fee of $15. The fee will be charged to the obligor in addition to the amount of the child support which was ordered by the court. Persons applying for the public authority's IV-D services will pay the service fee under section 518.551, subdivision 7.

Subd. 5. [Repealed, 1989 c 282 art 2 s 219]

Subd. 6. **Notice of services.** The department of human services shall prepare and make available to the courts a form notice of child support and maintenance collection services available through the public authority responsible for child support enforcement, including automatic income withholding under this section. Promptly upon the filing of a petition for dissolution of marriage or legal separation by parties who have a minor child, the court administrator shall send the form notice to the petitioner and respondent at the addresses given in the petition. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form notice.

Subd. 7. **Waiver.** (a) The court may waive the requirements of this section if the court finds that there is no arrearage in child support or maintenance as of the date of the hearing and: (1) one party demonstrates and the court finds that there is good cause to waive the requirements of this section or to terminate automatic income withholding on an order previously entered under this section; or (2) all parties reach a written agreement that provides for an alternative payment arrangement and the agreement is approved by the court after a finding that the agreement is likely to result in regular and timely payments. The court's findings waiving the requirements of this section must include a written explanation of the reasons why automatic withholding would not be in the best interests of the child and, in a case that involves modification of support, that past support has been timely made. If the court waives the requirements of this section:

(1) in all cases where the obligor is at least 30 days in arrears, withholding must be carried out pursuant to section 518.611;

(2) the obligee may at any time and without cause request the court to issue an order for automatic income withholding under this section; and

(3) the obligor may at any time request the public authority to begin withholding pursuant to this section, by serving upon the public authority the request and a copy of the order for child support or maintenance. Upon receipt of the request, the public authority shall serve a copy of the court's order and the provisions of section 518.611 and this section on the obli-

gor's employer or other payor of funds. The public authority shall notify the court that withholding has begun at the request of the obligor pursuant to this clause.

(b) For purposes of this subdivision, "parties" includes the public authority in cases when it is a party pursuant to section 518.551, subdivision 9.

Subd. 8. **Interest on amount wrongfully withheld.** If an excessive amount of child support is wrongfully withheld from the obligor's income because of an error by the public authority, the public authority shall pay interest based on the rate under section 549.09 on the amount wrongfully withheld from the time of the withholding until it is repaid to the obligor.

History: *1987 c 403 art 3 s 89; 1988 c 693 s 1,2; 1989 c 282 art 2 s 193–197; 1990 c 568 art 2 s 79; 1993 c 340 s 43; 1Sp1993 c 1 art 6 s 49–51; 1995 c 207 art 10 s 23; 1995 c 257 art 1 s 28; art 3 s 8,9*

518.614 ESCROW ACCOUNT; CHILD SUPPORT; MAINTENANCE OBLIGATION.

Subdivision 1. **Stay of service.** If the court finds there is no arrearage in child support or maintenance as of the date of the court hearing, the court shall stay service of the order under section 518.613, subdivision 2, if the obligor establishes a savings account for a sum equal to two months of the monthly child support or maintenance obligation and provides proof of the establishment to the court and the public authority on or before the day of the court hearing determining the obligation. This sum must be held in a financial institution in an interest–bearing account with only the public authority authorized as drawer of funds. Proof of the establishment must include the financial institution name and address, account number, and the amount of deposit.

Subd. 2. **Release of stay.** Within three working days of receipt of notice of default, the public authority shall direct the financial institution to release to the public authority the sum held under this subdivision when the following conditions are met:

(1) the obligor fails to pay the support amount to the obligee or the public authority within ten days of the date it is ordered to be paid;

(2) the obligee transmits a notice of default to the public authority and makes application to the public authority for child support and maintenance collection services. The notice must be verified by the obligee and must contain the title of the action, the court file number, the full name and address of the obligee, the name and last known address of the obligor, the obligor's last known employer or other payor of funds, the date of the first unpaid amount, the date of the last unpaid amount, and the total amount unpaid; and

(3) within three working days of receipt of notice from the obligee, the public authority sends a copy of the notice of default and a notice of intent to implement income withholding by mail to the obligor at the address given. The notice of intent shall state that the order establishing the support or maintenance obligation will be served on the obligor's employer or payor of funds unless within 15 days after the mailing of the notice the obligor requests a hearing on the issue of whether payment was in default as of the date of the notice of default and serves notice of the request for hearing on the public authority and the obligee.

Subd. 3. **Duties of public authority.** Within three working days of receipt of sums released under subdivision 2, the public authority shall remit to the obligee all amounts not assigned under section 256.74 as current support or maintenance. The public authority shall also serve a copy of the court's order and the provisions of section 518.611 and this section on the obligor's employer or other payor of funds unless within 15 days after mailing of the notice of intent to implement income withholding the obligor requests a hearing on the issue of whether payment was in default as of the date of the notice of default and serves notice of the request for hearing on the public authority and the obligee. The public authority shall instruct the employer or payor of funds pursuant to section 518.611 as to the effective date on which the next support or maintenance payment is due. The withholding process must begin on said date and shall reflect the total credits of principle and interest amounts received from the escrow account.

Subd. 4. **Hearing.** Within 30 days of the date of the notice of default under subdivision 2, clause (2), the court must hold a hearing requested by the obligor. If the court finds that there was a default, the court shall order the immediate withholding of support or mainte-

nance from the obligor's income. If the court finds that there was no default, the court shall order the reestablishment of the escrow account by either the obligee or obligor and continue the stay of income withholding.

Subd. 5. **Termination of stay.** When the obligation for support of a child or for spousal maintenance ends under the terms of the order or decree establishing the obligation and the sum held under this section has not otherwise been released, the public authority shall release the sum and interest to the obligor when the following conditions are met:

(1) the obligor transmits a notice of termination to the public authority. The notice shall be verified by the obligor and contain the title of the action, the court file number, the full name and address of the obligee, specify the event that ends the support or maintenance obligation, the effective date of the termination of support or maintenance obligation, and the applicable provisions of the order or decree that established the support or maintenance obligation;

(2) the public authority sends a copy of the notice of termination to the obligee; and

(3) the obligee fails within 20 days after mailing of the notice under clause (2) to request a hearing on the issue of whether the support or maintenance obligation continues and serve notice of the request for hearing on the obligor and the public authority.

History: *1988 c 693 s 3; 1995 c 257 art 3 s 10*

518.615 EMPLOYER CONTEMPT.

Subdivision 1. **Orders binding.** Income withholding or medical support orders issued pursuant to sections 518.171, 518.611, and 518.613 are binding on the employer, trustee, or other payor of funds after the order and notice of income withholding or enforcement of medical support has been served on the employer, trustee, or payor of funds.

Subd. 2. **Contempt action.** An obligee or the public agency responsible for child support enforcement may initiate a contempt action against an employer, trustee, or payor of funds, within the action that created the support obligation, by serving an order to show cause upon the employer, trustee, or payor of funds.

The employer, trustee, or payor of funds is presumed to be in contempt:

(1) if the employer, trustee, or payor of funds has intentionally failed to withhold support after receiving the order and notice of income withholding or notice of enforcement of medical support; or

(2) upon presentation of pay stubs or similar documentation showing the employer, trustee, or payor of funds withheld support and demonstration that the employer, trustee, or payor of funds intentionally failed to remit support to the agency responsible for child support enforcement.

Subd. 3. **Liability.** The employer, trustee, or payor of funds is liable to the obligee or the agency responsible for child support enforcement for any amounts required to be withheld that were not paid. The court may enter judgment against the employer, trustee, or payor of funds for support not withheld or remitted. An employer, trustee, or payor of funds found guilty of contempt shall be punished by a fine of not more than $250 as provided in chapter 588. The court may also impose other contempt sanctions authorized under chapter 588.

History: *1993 c 340 s 44; 1995 c 207 art 10 s 24*

518.616 ADMINISTRATIVE SEEK EMPLOYMENT ORDERS.

Subdivision 1. **Court order.** For any support order being enforced by the public authority, the public authority may seek a court order requiring the obligor to seek employment if:

(1) employment of the obligor cannot be verified;

(2) the obligor is in arrears in court–ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments; and

(3) the obligor is not in compliance with a written payment plan.

Upon proper notice being given to the obligor, the court may enter a seek employment order if it finds that the obligor has not provided proof of gainful employment and has not

consented to an order for income withholding under section 518.611 or 518.613 or entered into a written payment plan approved by the court, an administrative law judge, or the public authority.

Subd. 2. **Contents of order.** The order to seek employment shall:

(1) order that the obligor seek employment within a determinate amount of time;

(2) order that the obligor file with the public authority on a weekly basis a report of at least five new attempts to find employment or of having found employment, which report must include the names, addresses, and telephone numbers of any employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom an inquiry was directed;

(3) notify the obligor that failure to comply with the order is evidence of a willful failure to pay support under section 518.617;

(4) order that the obligor provide the public authority with verification of any reason for noncompliance with the order; and

(5) specify the duration of the order, not to exceed three months.

History: *1995 c 257 art 1 s 29*

518.617 CONTEMPT PROCEEDINGS FOR NONPAYMENT OF SUPPORT.

Subdivision 1. **Grounds.** If a person against whom an order or decree for support has been entered under this chapter, chapter 256, or a comparable law from another jurisdiction, is in arrears in court-ordered child support or maintenance payments in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment plan approved by the court, an administrative law judge, or the public authority, the person may be cited and punished by the court for contempt under section 518.64, chapter 588, or this section. Failure to comply with a seek employment order entered under section 518.616 is evidence of willful failure to pay support.

Subd. 2. **Court options.** (a) If a court cites a person for contempt under this section, and the obligor lives in a county that contracts with the commissioner of human services under section 256.997, the court may order the performance of community service work up to 32 hours per week for six weeks for each finding of contempt if the obligor:

(1) is able to work full time;

(2) works an average of less than 32 hours per week; and

(3) has actual weekly gross income averaging less than 40 times the federal minimum hourly wage under United States Code, title 29, section 206(a)(1), or is voluntarily earning less than the obligor has the ability to earn, as determined by the court.

An obligor is presumed to be able to work full time. The obligor has the burden of proving inability to work full time.

(b) A person ordered to do community service work under paragraph (a) may, during the six-week period, apply to the court, an administrative law judge, or the public authority to be released from the community service work requirement if the person:

(1) provides proof to the court, an administrative law judge, or the public authority that the person is gainfully employed and submits to an order for income withholding under section 518.611 or 518.613;

(2) enters into a written payment plan regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority; or

(3) provides proof to the court, an administrative law judge, or the public authority that, subsequent to entry of the order, the person's circumstances have so changed that the person is no longer able to fulfill the terms of the community service order.

Subd. 3. **Continuing obligations.** The performance of community service work does not relieve a child support obligor of any unpaid accrued or accruing support obligation.

History: *1995 c 257 art 1 s 30*

518.619 CUSTODY OR VISITATION; MEDIATION SERVICES.

Subdivision 1. **Mediation proceeding.** Except as provided in subdivision 2, if it appears on the face of the petition or other application for an order or modification of an order

for the custody of a child that custody or visitation is contested, or that any issue pertinent to a custody or visitation determination, including visitation rights, is unresolved, the matter may be set for mediation of the contested issue prior to, concurrent with, or subsequent to the setting of the matter for hearing. The purpose of the mediation proceeding is to reduce acrimony which may exist between the parties and to develop an agreement that is supportive of the child's best interests. The mediator shall use best efforts to effect a settlement of the custody or visitation dispute, but shall have no coercive authority.

Subd. 2. **Exception.** If the court determines that there is probable cause that one of the parties, or a child of a party, has been physically or sexually abused by the other party, the court shall not require or refer the parties to mediation or any other process that requires parties to meet and confer without counsel, if any, present.

Subd. 3. **Mediator appointment.** In order to participate in a custody mediation, a mediator must be appointed by the family court. A mediator must be a member of the professional staff of a family court, probation department, mental health services agency, or a private mediation service. The mediator must be on a list of mediators approved by the court having jurisdiction of the matter, unless the parties stipulate to a mediator not on the list.

Subd. 4. **Mediator qualifications.** A mediator who performs mediation in contested child custody matters shall meet the following minimum qualifications:

(a) knowledge of the court system and the procedures used in contested child custody matters;

(b) knowledge of other resources in the community to which the parties to contested child custody matters can be referred for assistance;

(c) knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and child custody research; and

(d) a minimum of 40 hours of certified mediation training.

Subd. 5. **Records; private data.** Mediation proceedings shall be conducted in private. All records of a mediation proceeding shall be private and not available as evidence in an action for marriage dissolution and related proceedings on any issue in controversy in the dissolution.

Subd. 6. **Mediator recommendations.** When the parties have not reached agreement as a result of the mediation proceeding, the mediator may recommend to the court that an investigation be conducted under section 518.167, or that other action be taken to assist the parties to resolve the controversy before hearing on the issues. The mediator may not conduct the investigation or evaluation unless: (1) the parties agree in writing, executed after the termination of mediation, that the mediator may conduct the investigation or evaluation, or (2) there is no other person reasonably available to conduct the investigation or evaluation. The mediator may recommend that mutual restraining orders be issued in appropriate cases, pending determination of the controversy, to protect the well–being of the children involved in the controversy.

Subd. 7. **Mediation agreement.** An agreement reached by the parties as a result of mediation shall be discussed by the parties with their attorneys, if any, and the approved agreement may then be included in the marital dissolution decree or other stipulation submitted to the court. An agreement reached by the parties as a result of mediation may not be presented to the court nor made enforceable unless the parties and their counsel, if any, consent to its presentation to the court, and the court adopts the agreement.

Subd. 8. **Rules.** Each court shall adopt rules to implement this section, and shall compile and maintain a list of mediators.

History: *1986 c 406 s 7; 1990 c 574 s 21; 1991 c 266 s 6*

518.62 TEMPORARY MAINTENANCE.

Temporary maintenance and temporary support may be awarded as provided in section 518.131. The court may also award to either party to the proceeding, having due regard to all the circumstances and the party awarded the custody of the children, the right to the exclusive use of the household goods and furniture of the parties pending the proceeding and the right to the use of the homestead of the parties, exclusive or otherwise, pending the proceeding.

The court may order either party to remove from the homestead of the parties upon proper application to the court for an order pending the proceeding.

History: *1951 c 551 s 9; 1969 c 1028 s 7; 1974 c 107 s 24; 1978 c 772 s 57; 1979 c 259 s 30*

518.63 HOMESTEAD, OCCUPANCY.

The court, having due regard to all the circumstances and the custody of children of the parties, may award to either party the right of occupancy of the homestead of the parties, exclusive or otherwise, upon a final decree of dissolution or legal separation or proper modification of it, for a period of time determined by the court. An award of the right of occupancy of the homestead, whether exclusive or otherwise, may be in addition to the maximum amounts awarded under sections 518.58, 518.61 and 518.611.

History: *1951 c 551 s 10; 1969 c 1028 s 8; 1974 c 107 s 25; 1978 c 772 s 58*

518.64 MODIFICATION OF ORDERS OR DECREES.

Subdivision 1. After an order for maintenance or support money, temporary or permanent, or for the appointment of trustees to receive property awarded as maintenance or support money, the court may from time to time, on motion of either of the parties, a copy of which is served on the public authority responsible for child support enforcement if payments are made through it, or on motion of the public authority responsible for support enforcement, modify the order respecting the amount of maintenance or support money, and the payment of it, and also respecting the appropriation and payment of the principal and income of property held in trust, and may make an order respecting these matters which it might have made in the original proceeding, except as herein otherwise provided. A party or the public authority also may bring a motion for contempt of court if the obligor is in arrears in support or maintenance payments.

Subd. 2. **Modification.** (a) The terms of an order respecting maintenance or support may be modified upon a showing of one or more of the following: (1) substantially increased or decreased earnings of a party; (2) substantially increased or decreased need of a party or the child or children that are the subject of these proceedings; (3) receipt of assistance under sections 256.72 to 256.87 or 256B.01 to 256B.40; (4) a change in the cost of living for either party as measured by the federal bureau of statistics, any of which makes the terms unreasonable and unfair; (5) extraordinary medical expenses of the child not provided for under section 518.171; or (6) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses.

It is presumed that there has been a substantial change in circumstances under clause (1), (2), or (4) and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if the application of the child support guidelines in section 518.551, subdivision 5, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least $50 per month higher or lower than the current support order.

(b) On a motion for modification of maintenance, including a motion for the extension of the duration of a maintenance award, the court shall apply, in addition to all other relevant factors, the factors for an award of maintenance under section 518.552 that exist at the time of the motion. On a motion for modification of support, the court:

(1) shall apply section 518.551, subdivision 5, and shall not consider the financial circumstances of each party's spouse, if any; and

(2) shall not consider compensation received by a party for employment in excess of a 40-hour work week, provided that the party demonstrates, and the court finds, that:

(i) the excess employment began after entry of the existing support order;

(ii) the excess employment is voluntary and not a condition of employment;

(iii) the excess employment is in the nature of additional, part-time employment, or overtime employment compensable by the hour or fractions of an hour;

(iv) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation;

(v) in the case of an obligor, current child support payments are at least equal to the guidelines amount based on income not excluded under this clause; and

(vi) in the case of an obligor who is in arrears in child support payments to the obligee, any net income from excess employment must be used to pay the arrearages until the arrearages are paid in full.

(c) A modification of support or maintenance may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the public authority if public assistance is being furnished or the county attorney is the attorney of record. However, modification may be applied to an earlier period if the court makes express findings that the party seeking modification was precluded from serving a motion by reason of a significant physical or mental disability, a material misrepresentation of another party, or fraud upon the court and that the party seeking modification, when no longer precluded, promptly served a motion. The court may provide that a reduction in the amount allocated for child care expenses based on a substantial decrease in the expenses is effective as of the date the expenses decreased.

(d) Except for an award of the right of occupancy of the homestead, provided in section 518.63, all divisions of real and personal property provided by section 518.58 shall be final, and may be revoked or modified only where the court finds the existence of conditions that justify reopening a judgment under the laws of this state, including motions under section 518.145, subdivision 2. The court may impose a lien or charge on the divided property at any time while the property, or subsequently acquired property, is owned by the parties or either of them, for the payment of maintenance or support money, or may sequester the property as is provided by section 518.24.

(e) The court need not hold an evidentiary hearing on a motion for modification of maintenance or support.

(f) Section 518.14 shall govern the award of attorney fees for motions brought under this subdivision.

Subd. 3. 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.

Subd. 4. Unless otherwise agreed in writing or expressly provided in the order, provisions for the support of a child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

Subd. 4a. **Automatic termination of support.** (a) Unless a court order provides otherwise, a child support obligation in a specific amount per child terminates automatically and without any action by the obligor to reduce, modify, or terminate the order upon the emancipation of the child as provided under section 518.54, subdivision 2.

(b) A child support obligation for two or more children that is not a support obligation in a specific amount per child continues in the full amount until the emancipation of the last child for whose benefit the order was made, or until further order of the court.

(c) The obligor may request a modification of the obligor's child support order upon the emancipation of a child if there are still minor children under the order. The child support obligation shall be determined based on the income of the parties at the time the modification is sought.

Subd. 5. **Form.** The department of human services shall prepare and make available to courts, obligors and persons to whom child support is owed a form to be submitted by the obligor or the person to whom child support is owed in support of a motion for a modification of an order for support or maintenance or for contempt of court. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form.

Subd. 6. [Repealed, 1995 c 257 art 3 s 17]

History: *1951 c 551 s 11; 1974 c 107 s 26; 1978 c 772 s 59; 1979 c 259 s 31; 1981 c 360 art 2 s 48,49; 1982 c 424 s 130; 1983 c 283 s 1; 1983 c 308 s 22,23; 1984 c 654 art 5 s 58; 1985 c 266 s 3; 1986 c 406 s 8; 1987 c 403 art 3 s 90; 1988 c 532 s 14; 1988 c 668 s 24; 1951 c 551 s 11; 1974 c 107 s 26; 1978 c 772 s 59; 1979 c 259 s 31; 1981 c 360 art 2 s 48,49; 1982 c 424 s 130; 1983 c 283 s 1; 1983 c 308 s 22,23; 1984 c 654 art 5 s 58; 1985 c 266 s 3; 1986 c 406 s 8; 1987 c 403 art 3 s 90; 1988 c 532 s 14; 1988 c 668 s 24; 1990 c 574 s 22; 1991 c 266 s 7; 1991 c 292 art 5 s 79; 1993 c 340 s 45–48; 1Sp1993 c 1 art 6 s 52; 1994 c 630 art 11 s 12; 1995 c 257 art 1 s 31; art 3 s 11,12*

518.641 COST–OF–LIVING ADJUSTMENTS IN MAINTENANCE OR CHILD SUPPORT ORDER.

Subdivision 1. **Requirement.** An order for maintenance or child support shall provide for a biennial adjustment in the amount to be paid based on a change in the cost of living. An order that provides for a cost–of–living adjustment shall specify the cost–of–living index to be applied and the date on which the cost–of–living adjustment shall become effective. The court may use the consumer price index for all urban consumers, Minneapolis–St. Paul (CPI–U), the consumer price index for wage earners and clerical, Minneapolis–St. Paul (CPI–W), or another cost–of–living index published by the department of labor which it specifically finds is more appropriate. Cost–of–living increases under this section shall be compounded. The court may also increase the amount by more than the cost–of–living adjustment by agreement of the parties or by making further findings. The adjustment becomes effective on the first of May of the year in which it is made, for cases in which payment is made to the public authority. For cases in which payment is not made to the public authority, application for an adjustment may be made in any month but no application for an adjustment may be made sooner than two years after the date of the dissolution decree. A court may waive the requirement of the cost–of–living clause if it expressly finds that the obligor's occupation or income, or both, does not provide for cost–of–living adjustment or that the order for maintenance or child support has a provision such as a step increase that has the effect of a cost–of–living clause. The court may waive a cost–of–living adjustment in a maintenance order if the parties so agree in writing. The commissioner of human services may promulgate rules for child support adjustments under this section in accordance with the rulemaking provisions of chapter 14. Notice of this statute must comply with section 518.68, subdivision 2.

Subd. 2. **Conditions.** No adjustment under this section may be made unless the order provides for it and until the following conditions are met:

(a) the obligee or public authority serves notice of its application for adjustment by mail on the obligor at the obligor's last known address at least 20 days before the effective date of the adjustment;

(b) the notice to the obligor informs the obligor of the date on which the adjustment in payments will become effective; and

(c) after receipt of notice and before the effective day of the adjustment, the obligor fails to request a hearing on the issue of whether the adjustment should take effect, and ex parte, to stay imposition of the adjustment pending outcome of the hearing.

Subd. 3. **Result of hearing.** If, at a hearing pursuant to this section, the obligor establishes an insufficient cost of living or other increase in income that prevents fulfillment of the adjusted maintenance or child support obligation, the court may direct that all or part of the adjustment not take effect. If, at the hearing, the obligor does not establish this insufficient increase in income, the adjustment shall take effect as of the date it would have become effective had no hearing been requested.

Subd. 4. **Form.** The department of human services shall prepare and make available to the court and obligors a form to be submitted to the department by the obligor in support of a request for hearing under this section regarding a child support order. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form.

Subd. 5. **Request for cost–of–living clause.** A motion for enforcement or modification of an existing maintenance or child support order shall include a request for a cost–of–living clause. The court may deny the request only upon an express finding that the obligor's oc-

cupation, income, or both, does not provide for a cost–of–living adjustment or that the existing maintenance or child support order either has a cost–of–living clause or sets forth a step increase which has the effect of a cost–of–living adjustment.

History: *1983 c 308 s 24; 1984 c 654 art 5 s 58; 1988 c 668 s 25; 1991 c 266 s 8,9; 1993 c 322 s 15*

518.645 FORM OF ORDER.

Unless otherwise ordered by the court, an order for withholding of support or maintenance payments issued under this chapter shall be substantially in the following form:

IT IS ORDERED THAT:

1. The sum of ..... per ....., representing child support and/or spousal maintenance, ordered by the Court, shall be withheld from the (Husband/Wife Respondent/Petitioner)'s income on ..... by (his/her) present employer or other payor of funds, ..., and any future employer or other payor of funds, and shall be remitted to: ....., monthly or more frequently, in accordance with the provisions of Minnesota Statutes, Chapter 518. The file number above and the Obligor's name shall be included with each remittance.

2. An additional amount equal to 20 percent of the amount required to be withheld by paragraph 1 shall be withheld from the income of the Obligor by the employer or payor until the entire arrearage in paragraph 3(b) is paid.

3. The parties are notified that CHILD SUPPORT AND/OR MAINTENANCE WILL BE WITHHELD FROM INCOME ONLY AFTER ALL OF THE FOLLOWING CONDITIONS HAVE BEEN MET:

(a) ..... or the Obligee determines that the Obligor is at least 30 days in arrears in the payment of child support and/or spousal maintenance;

(b) ..... or the Obligee serves written notice of income withholding on the Obligor showing the determination that child support and/or maintenance payments are 30 days in arrears;

(c) Within 15 days after service of the notice of income withholding, the Obligor fails to move the Court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding or on other grounds limited to mistakes of fact and, ex parte, to stay service of withholding on the employer or other payor of funds until the motion to deny withholding is heard. Within 45 days from the date of the notice of income withholding, the court shall hold the hearing on the motion to deny withholding and notify the parties of its decision; and

(d) Not sooner than 15 days after service of written notice of income withholding on the Obligor, ... or the Obligee serves a copy of the notice of income withholding and a copy of the Court's withholding order on the employer or other payor of funds, who will then be obligated to withhold payments from income and forward the amount withheld to .....

4. The parties and the employer or other payor of funds are further notified that NO EMPLOYER MAY DISCHARGE, SUSPEND, OR OTHERWISE PENALIZE OR DISCIPLINE AN EMPLOYEE BECAUSE THE EMPLOYER MUST WITHHOLD SUPPORT OR MAINTENANCE MONEY. Minnesota Statutes, section 518.611.

5. The payments shall begin to be withheld no later than the first pay period that occurs after 14 days following the date of mailing of the notice to the employer or other payor of funds in paragraph 3(d) and from that date the employer or other payor of funds is liable for amounts required to be withheld.

6. This order for withholding takes priority over any attachment, execution, garnishment, or wage assignment levied against the income of the Obligor. Amounts withheld are not subject to other statutory limitations on amounts levied against the income of the Obligor but must not exceed the maximum permitted under the federal Consumer Credit Protection Act, United States Code, title 15, section 1673(b)(2). If there is more than one withholding order on a single Obligor, the employer or other payor of funds shall put them into effect in the order received, up to the maximum allowed under the Consumer Credit Protection Act.

7. When the Obligor's employment is terminated or the periodic payment ends, the employer or other payor of funds is required to notify ..... within 30 days of the termination date. The notice must include the Obligor's home address of record and, if known, the name and address of the Obligor's new employer or other payor of funds.

8. Upon transmittal of the last reimbursement payment to the obligor, where lump sum severance pay, accumulated sick pay or vacation pay is paid upon termination of employment, and where the employee is in arrears in making court ordered child support payments, the employer must withhold an amount which is the lesser of (1) the amount in arrears or (2) that portion of the arrearages which is the product of the obligor's monthly court ordered support amount multiplied by the number of months of net income that the lump sum payment represents.

9. If the Obligee serves the employer or other payor of funds under paragraph 3(d), the Obligee shall also serve the determination and order on ....., together with an application and fee to use collection services.

10. Service of this Order shall be..... .

History: *1982 c 488 s 7; 1983 c 308 s 25; 1985 c 131 s 13; 1986 c 404 s 17*

518.646 NOTICE OF ORDER.

Whenever these laws require service of a court's order on an employer, union or payor of funds, service of a verified notice of order may be made in lieu thereof. The verified notice shall contain the title of the action, the name of the court, the court file number, the date of the court order, and shall recite the operative provisions of the order.

History: *1986 c 404 s 18*

518.65 PROPERTY; SALE, PARTITION.

In order to effect a division or award of property as is provided by section 518.58, the court may order property sold or partitioned. Personal property may be ordered sold in the manner directed by the court, and real estate may be partitioned in the manner provided by Minnesota Statutes 1949, chapter 558.

History: *1951 c 551 s 12; 1978 c 772 s 60*

518.66 POWER OF COURT NOT LIMITED.

Nothing contained in sections 518.54 to 518.66 shall be construed as limiting the power of the court in appropriate cases to make adequate provision for the support and education of any children of the parties to any dissolution, legal separation or annulment action where such dissolution, legal separation or annulment is denied.

History: *1951 c 551 s 13; 1974 c 107 s 27; 1979 c 259 s 32; 1Sp1981 c 4 art 1 s 180*

518.67 [Repealed, 1978 c 772 s 63]

518.68 REQUIRED NOTICES.

Subdivision 1. **Requirement.** Every court order or judgment and decree that provides for child support, spousal maintenance, custody, or visitation must contain certain notices as set out in subdivision 2. The information in the notices must be concisely stated in plain language. The notices must be in clearly legible print, but may not exceed two pages. An order or judgment and decree without the notice remains subject to all statutes. The court may waive all or part of the notice required under subdivision 2 relating to parental rights under section 518.17, subdivision 3, if it finds it is necessary to protect the welfare of a party or child.

Subd. 2. **Contents.** The required notices must be substantially as follows:

IMPORTANT NOTICE

1. PAYMENTS TO PUBLIC AGENCY

Pursuant to Minnesota Statutes, section 518.551, subdivision 1, payments ordered for maintenance and support must be paid to the public agency responsible for

child support enforcement as long as the person entitled to receive the payments is receiving or has applied for public assistance or has applied for support and maintenance collection services. MAIL PAYMENTS TO:

2. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS — A FELONY

A person may be charged with a felony who conceals a minor child or takes, obtains, retains, or fails to return a minor child from or to the child's parent (or person with custodial or visitation rights), pursuant to Minnesota Statutes, section 609.26. A copy of that section is available from any district court clerk.

3. RULES OF SUPPORT, MAINTENANCE, VISITATION

(a) Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

(b) Payment of support must be made as it becomes due, and failure to secure or denial of rights of visitation is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.

(c) Nonpayment of support is not grounds to deny visitation. The party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.

(d) The payment of support or spousal maintenance takes priority over payment of debts and other obligations.

(e) A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.

(f) Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.

(g) If there is a layoff or a pay reduction, support may be reduced as of the time of the layoff or pay reduction if a motion to reduce the support is served and filed with the court at that time, but any such reduction must be ordered by the court. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (c).

4. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3

Unless otherwise provided by the Court:

(a) Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.

(b) Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.

(c) In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment.

(d) Each party has the right of reasonable access and telephone contact with the minor children.

5. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE

Child support and/or spousal maintenance may be withheld from income, with or without notice to the person obligated to pay, when the conditions of Minnesota Statutes, sections 518.611 and 518.613, have been met. A copy of those sections is available from any district court clerk.

6. CHANGE OF ADDRESS OR RESIDENCE

Unless otherwise ordered, the person responsible to make support or maintenance payments shall notify the person entitled to receive the payment and the public authority responsible for collection, if applicable, of a change of address or residence within 60 days of the address or residence change.

7. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE

Child support and/or spousal maintenance may be adjusted every two years based upon a change in the cost of living (using Department of Labor Consumer Price Index ....., unless otherwise specified in this order) when the conditions of Minnesota Statutes, section 518.641, are met. Cost of living increases are compounded. A copy of Minnesota Statutes, section 518.641, and forms necessary to request or contest a cost of living increase are available from any district court clerk.

8. JUDGMENTS FOR UNPAID SUPPORT

If a person fails to make a child support payment, the payment owed becomes a judgment against the person responsible to make the payment by operation of law on or after the date the payment is due, and the person entitled to receive the payment or the public agency may obtain entry and docketing of the judgment WITHOUT NOTICE to the person responsible to make the payment under Minnesota Statutes, section 548.091. Interest begins to accrue on a payment or installment of child support whenever the unpaid amount due is greater than the current support due, pursuant to Minnesota Statutes, section 548.091, subdivision 1a.

9. JUDGMENTS FOR UNPAID MAINTENANCE

A judgment for unpaid spousal maintenance may be entered when the conditions of Minnesota Statutes, section 548.091, are met. A copy of that section is available from any district court clerk.

10. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT

A judgment for attorney fees and other collection costs incurred in enforcing a child support order will be entered against the person responsible to pay support when the conditions of section 518.14, subdivision 2, are met. A copy of section 518.14 and forms necessary to request or contest these attorney fees and collection costs are available from any district court clerk.

11. VISITATION EXPEDITOR PROCESS

On request of either party or on its own motion, the court may appoint a visitation expeditor to resolve visitation disputes under Minnesota Statutes, section 518.1751. A copy of that section and a description of the expeditor process is available from any district court clerk.

12. VISITATION REMEDIES AND PENALTIES

Remedies and penalties for the wrongful denial of visitation rights are available under Minnesota Statutes, section 518.175, subdivision 6. These include compensatory visitation; civil penalties; bond requirements; contempt; and reversal of custody. A copy of that subdivision and forms for requesting relief are available from any district court clerk.

Subd. 3. **Copies of law and forms.** The district court administrator shall make available at no charge copies of the sections referred to in subdivision 2, and shall provide forms to request or contest attorney fees and collection costs or a cost-of-living increase under section 518.14, subdivision 2, or 518.641.

History: *1993 c 322 s 16; 1994 c 630 art 11 s 13–15; 1996 c 391 art 1 s 4,5*