

CHAPTER 518

MARRIAGE DISSOLUTION

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518.165 GUARDIANS FOR MINOR CHILDREN.

[For text of subds 1 to 2a, see M.S.2002]

Subd. 3. **Fees.** (a) 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 state courts. The costs of court-appointed counsel to the guardian ad litem shall be paid by the county in which the proceeding is being held if a party is incapable of paying for them. Until the recommendations of the task force created in Laws 1999, chapter 216, article 7, section 42, are implemented, the costs of court-appointed counsel to a guardian ad litem in the Eighth Judicial District shall be paid by the state courts if a party is incapable of paying for them. 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).

(b) In each fiscal year, the commissioner of finance shall deposit guardian ad litem reimbursements in the general fund and credit them to a separate account with the trial courts. The balance of this account is appropriated to the trial courts and does not cancel but is available until expended. Expenditures by the state court administrator's office from this account must be based on the amount of the guardian ad litem reimbursements received by the state from the courts in each judicial district.

History: 2003 c 112 art 2 s 50

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. If the county elects to conduct an investigation, the county may charge a fee. The investigation and report may be made by the county welfare agency or department of court services.

[For text of subds 2 to 5, see M.S.2002]

History: 1Sp2003 c 14 art 6 s 57

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 363A.03, 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 or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family or household member of the parent; 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.

[For text of subds 1a to 6, see M.S.2002]

518.551 MAINTENANCE AND SUPPORT PAYMENTS.

[For text of subds 1 to 6, see M.S.2002]

Subd. 7. **Fees and cost recovery fees for IV-D services.** (a) When a recipient of IV-D services is no longer receiving assistance under the state's title IV-A, IV-E foster care, medical assistance, or MinnesotaCare programs, the public authority responsible for child support enforcement must notify the recipient, within five working days of the notification of ineligibility, that IV-D services will be continued unless the public authority is notified to the contrary by the recipient. The notice must include the implications of continuing to receive IV-D services, including the available services and fees, cost recovery fees, and distribution policies relating to fees.

(b) An application fee of \$25 shall be paid by the person who applies for child support and maintenance collection services, except persons who are receiving public assistance as defined in section 256.741 and, if enacted, the diversionary work program under section 256J.95, persons who transfer from public assistance to nonpublic assistance status, and minor parents and parents enrolled in a public secondary school, area learning center, or alternative learning program approved by the commissioner of education.

(c) When the public authority provides full IV-D services to an obligee who has applied for those services, upon written notice to the obligee, the public authority must charge a cost recovery fee of one percent of the amount collected. This fee must be deducted from the amount of the child support and maintenance collected and not assigned under section 256.741 before disbursement to the obligee. This fee does not apply to an obligee who:

(1) is currently receiving assistance under the state's title IV-A, IV-E foster care, medical assistance, or MinnesotaCare programs; or

(2) has received assistance under the state's title IV-A or IV-E foster care programs, until the person has not received this assistance for 24 consecutive months.

(d) When the public authority provides full IV-D services to an obligor who has applied for such services, upon written notice to the obligor, the public authority must charge a cost recovery fee of one percent of the monthly court-ordered child support and maintenance obligation. The fee may be collected through income withholding, as well as by any other enforcement remedy available to the public authority responsible for child support enforcement.

(e) 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.

(f) Cost recovery fees collected under paragraphs (c) and (d) shall be considered child support program income according to Code of Federal Regulations, title 45, section 304.50, and shall be deposited in the cost recovery fee account established under paragraph (h). The commissioner of human services must elect to recover costs based on either actual or standardized costs.

(g) 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.

(h) The commissioner of human services is authorized to establish a special revenue fund account to receive child support cost recovery fees. A portion of the nonfederal share of these fees may be retained for expenditures necessary to administer the fee and must be transferred to the child support system special revenue account. The remaining nonfederal share of the cost recovery fee must be retained by the commissioner and dedicated to the child support general fund county performance-based grant account authorized under sections 256.979 and 256.9791.

[For text of subs 9 and 11, see M.S.2002]

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, county, or municipal 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 pursuant to section 518.553 that is approved by the court, a child support magistrate, or the public authority, 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 pursuant to section 518.553. 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 pursuant to section 518.553 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, county, or municipal 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 pursuant to section 518.553 that is approved by the court, a child support magistrate, or the public authority, the court 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, a court hearing or a hearing under section 484.702 must be held. 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 pursuant to section 518.553 that is approved by 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 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, a child support magistrate, 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, a child support magistrate, or the public authority, the court, a child support magistrate, 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.

(f) In addition to the criteria established under this section for the suspension of an obligor's occupational license, a court, a child support magistrate, or the public authority may direct the licensing board or other licensing agency to suspend the license of a party who has failed, after receiving notice, to comply with a subpoena relating to a paternity or child support proceeding. Notice to an obligor of intent to suspend must be served by first class mail at the obligor's last known address. The notice must inform the obligor of the right to request a hearing. If the obligor makes a written request within ten days of the date of the hearing, a hearing must be held. At the hearing, the only issues to be considered are mistake of fact and whether the obligor received the subpoena.

(g) The license of an obligor who fails to remain in compliance with an approved written payment agreement may be suspended. Prior to suspending a license for noncompliance with an approved written payment agreement, the public authority must mail to the obligor's last known address a written notice that (1) the public authority

intends to seek suspension of the obligor's occupational license under this paragraph, and (2) the obligor must request a hearing, within 30 days of the date of the notice, to contest the suspension. If, within 30 days of the date of the notice, the public authority does not receive a written request for a hearing and the obligor does not comply with an approved written payment agreement, the public authority must direct the licensing board or other licensing agency to suspend the obligor's license under paragraph (b), and, if the obligor is a licensed attorney, must report the matter to the Lawyers Professional Responsibility Board. If the obligor makes a written request for a hearing within 30 days of the date of the notice, a court hearing must be held. 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 to the obligor's last known address. If the obligor appears at the hearing and the court determines that the obligor has failed to comply with an approved written payment agreement, the court or public authority must notify the occupational licensing board or other licensing agency to suspend the obligor's license under paragraph (b) and, if the obligor is a licensed attorney, must report the matter to the lawyers professional responsibility board. If the obligor fails to appear at the hearing, the court or public authority must notify the occupational licensing board or other licensing agency to suspend the obligor's license under paragraph (b), and if the obligor is a licensed attorney, must report the matter to the lawyers professional responsibility board.

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 pursuant to section 518.553 that is approved by the court, a child support magistrate, 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 pursuant to section 518.553. 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 pursuant to section 518.553 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 pursuant to section 518.553 that is approved by the court, a child support magistrate, 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 according 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, a court hearing must be held. 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 must

include information that apprises the obligor of the requirement to develop a written payment agreement that is approved by a court, a child support magistrate, or the public authority responsible for child support enforcement regarding child support, maintenance, and any arrearages in order to avoid license suspension. 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 pursuant to section 518.553 that is approved by 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 child support magistrate shall order the commissioner of public safety to suspend the obligor's driver's license or operating privileges unless the court or child support magistrate determines that the obligor has executed and is in compliance with a written payment agreement pursuant to section 518.553 that is approved by the court, a child support magistrate, or the public authority.

(e) An obligor whose driver's license or operating privileges are suspended may:

(1) provide proof to the public authority responsible for child support enforcement that the obligor is in compliance with all written payment agreements pursuant to section 518.553;

(2) bring a motion for reinstatement of the driver's license. At the hearing, if the court or child support magistrate orders reinstatement of the driver's license, the court or child support magistrate must establish a written payment agreement pursuant to section 518.553; or

(3) seek a limited license under section 171.30. A limited license issued to an obligor under section 171.30 expires 90 days after the date it is issued.

Within 15 days of the receipt of that proof or a court order, the 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;

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

(7) the number of limited licenses issued and number of cases in which payment agreements are executed and cases are paid in full following issuance of a limited license.

(g) In addition to the criteria established under this section for the suspension of an obligor's driver's license, a court, a child support magistrate, or the public authority may direct the commissioner of public safety to suspend the license of a party who has failed, after receiving notice, to comply with a subpoena relating to a paternity or child support proceeding. Notice to an obligor of intent to suspend must be served by first class mail at the obligor's last known address. The notice must inform the obligor of the

right to request a hearing. If the obligor makes a written request within ten days of the date of the hearing, a hearing must be held. At the hearing, the only issues to be considered are mistake of fact and whether the obligor received the subpoena.

(h) The license of an obligor who fails to remain in compliance with an approved written payment agreement may be suspended. Prior to suspending a license for noncompliance with an approved written payment agreement, the public authority must mail to the obligor's last known address a written notice that (1) the public authority intends to seek suspension of the obligor's driver's license under this paragraph, and (2) the obligor must request a hearing, within 30 days of the date of the notice, to contest the suspension. If, within 30 days of the date of the notice, the public authority does not receive a written request for a hearing and the obligor does not comply with an approved written payment agreement, the public authority must direct the Department of Public Safety to suspend the obligor's license under paragraph (b). If the obligor makes a written request for a hearing within 30 days of the date of the notice, a court hearing must be held. 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 at the obligor's last known address. If the obligor appears at the hearing and the court determines that the obligor has failed to comply with an approved written payment agreement, the court or public authority shall notify the Department of Public Safety to suspend the obligor's license under paragraph (b). If the obligor fails to appear at the hearing, the court or public authority must notify the Department of Public Safety to suspend the obligor's license under paragraph (b).

[For text of subsds 13a to 15, see M.S.2002]

History: 2003 c 130 s 12; 1Sp2003 c 14 art 6 s 58; art 10 s 5,6

NOTE: The amendment to subdivision 7 by Laws 2003, First Special Session chapter 14, article 6, section 58, is effective July 1, 2004, except paragraph (d) is effective July 1, 2005. Laws 2003, First Special Session chapter 14, article 6, section 58, the effective date.

518.6111 INCOME WITHHOLDING.

[For text of subd 1, see M.S.2002]

Subd. 2. Application. This section applies to all support orders issued by a court or an administrative tribunal and orders for or notices of withholding issued by the public authority.

Subd. 3. Order. Every support order must address income withholding. Whenever a support order is initially entered or modified, the full amount of the support order must be subject to income withholding from the income of the obligor. If the obligee or obligor applies for either full IV-D services or for income withholding only services from the public authority responsible for child support enforcement, the full amount of the support order must be withheld from the income of the obligor and forwarded to the public authority. Every order for support or maintenance shall provide for a conspicuous notice of the provisions of this section that complies with section 518.68, subdivision 2. An order without this notice remains subject to this section. This section applies regardless of the source of income of the person obligated to pay the support or maintenance.

A payor of funds shall implement income withholding according to this section upon receipt of an order for or notice of withholding. The notice of withholding shall be on a form provided by the commissioner of human services.

Subd. 4. Collection services. (a) The commissioner of human services shall prepare and make available to the courts a notice of services that explains child support and maintenance collection services available through the public authority, including income withholding, and the fees for such services. Upon receiving a petition for dissolution of marriage or legal separation, the court administrator shall promptly send the notice of services to the petitioner and respondent at the addresses stated in the petition.

(b) Either the obligee or obligor may at any time apply to the public authority for either full IV-D services or for income withholding only services.

(c) For those persons applying for income withholding only services, a monthly service fee of \$15 must be charged to the obligor. This fee is in addition to the amount of the support order and shall be withheld through income withholding. The public authority shall explain the service options in this section to the affected parties and encourage the application for full child support collection services.

(d) If the obligee is not a current recipient of public assistance as defined in section 256.741, the person who applied for services may at any time choose to terminate either full IV-D services or income withholding only services regardless of whether income withholding is currently in place. The obligee or obligor may reapply for either full IV-D services or income withholding only services at any time. Unless the applicant is a recipient of public assistance as defined in section 256.741, a \$25 application fee shall be charged at the time of each application.

(e) When a person terminates IV-D services, if an arrearage for public assistance as defined in section 256.741 exists, the public authority may continue income withholding, as well as use any other enforcement remedy for the collection of child support, until all public assistance arrears are paid in full. Income withholding shall be in an amount equal to 20 percent of the support order in effect at the time the services terminated.

[For text of subs 5 to 15, see M.S.2002]

Subd. 16. **Waiver.** (a) If the public authority is providing child support and maintenance enforcement services and child support or maintenance is not assigned under section 256.741, the court may waive the requirements of this section if:

(1) one party demonstrates and the court determines there is good cause to waive the requirements of this section or to terminate an order for or notice of income withholding previously entered under this section. The court must make written findings to include the reasons income withholding would not be in the best interests of the child. In cases involving a modification of support, the court must also make a finding that support payments have been timely made; or

(2) the obligee and obligor sign a written agreement providing for an alternative payment arrangement which is reviewed and entered in the record by the court.

(b) If the public authority is not providing child support and maintenance enforcement services and child support or maintenance is not assigned under section 256.741, the court may waive the requirements of this section if the parties sign a written agreement.

(c) If the court waives income withholding, the obligee or obligor may at any time request income withholding under subdivision 7.

[For text of subs 17 to 19, see M.S.2002]

History: 1Sp2003 c 14 art 6 s 59-62

NOTE: The amendments to subdivisions 2, 3, 4, and 16 by Laws 2003, First Special Session chapter 14, article 6, sections 59 through 62, are effective July 1, 2004. Laws 2003, First Special Session chapter 14, article 6, sections 59 through 62, the effective dates.