

## CHAPTER 518

## MARRIAGE DISSOLUTION

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**518.001** [Repealed, 1978 c 699 s 17]

**518.002 MEANING OF DIVORCE.**

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. **Scope.** 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.** "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 parenting time, 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.

Subd. 5. **Parenting time.** "Parenting time" means the time a parent spends with a child regardless of the custodial designation regarding the child.

**History:** 1979 c 259 s 2; 1981 c 349 s 2; 1990 c 574 s 6,7; 2000 c 444 art 1 s 1; art 2 s 15

### 518.005 RULES GOVERNING PROCEEDINGS.

Subdivision 1. **Applicable.** Unless otherwise specifically provided, the Rules of Civil Procedure for the district court apply to all proceedings under this chapter.

Subd. 2. **Title.** 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. **Names of pleadings.** 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. **Decree; judgment.** In sections 518.002 to 518.66, "decree" includes "judgment."

Subd. 5. **Prohibited disclosure.** In all proceedings under this chapter in which public assistance is assigned under section 256.741 or the public authority provides services to a party or parties to the proceedings, notwithstanding statutory or other authorization for the public authority to release private data on the location of a party to the action, information on the location of one party may not be released by the public authority to the other party if:

(1) the public authority has knowledge that a protective order with respect to the other party has been entered; or

(2) the public authority has reason to believe that the release of the information may result in physical or emotional harm to the other party.

**History:** 1978 c 772 s 16; 1979 c 50 s 66,67; 1979 c 259 s 3; 1997 c 203 art 6 s 35

### 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. **Meaning and effect; grounds.** 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. **Uncontested legal separation.** 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; NOTICE REGARDING PARENT EDUCATION PROGRAM REQUIREMENTS.**

**Subdivision 1. Temporary restraining orders.** (a) Every summons must include the notice in this subdivision.

**NOTICE OF TEMPORARY RESTRAINING AND ALTERNATIVE DISPUTE RESOLUTION 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.

(4) PARTIES TO A MARRIAGE DISSOLUTION PROCEEDING ARE ENCOURAGED TO ATTEMPT ALTERNATIVE DISPUTE RESOLUTION PURSUANT TO MINNESOTA LAW. ALTERNATIVE DISPUTE RESOLUTION INCLUDES MEDIATION, ARBITRATION, AND OTHER PROCESSES AS SET FORTH IN THE DISTRICT COURT RULES. YOU MAY CONTACT THE COURT ADMINISTRATOR ABOUT RESOURCES IN YOUR AREA. IF YOU CANNOT PAY FOR MEDIATION OR ALTERNATIVE DISPUTE RESOLUTION, IN SOME COUNTIES, ASSISTANCE MAY BE AVAILABLE TO YOU THROUGH A NONPROFIT PROVIDER OR A COURT PROGRAM. IF YOU ARE A VICTIM OF DOMESTIC ABUSE OR THREATS OF ABUSE AS DEFINED IN MINNESOTA STATUTES, CHAPTER 518B, YOU ARE NOT REQUIRED TO TRY MEDIATION AND YOU WILL NOT BE PENALIZED BY THE COURT IN LATER PROCEEDINGS.

(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.

**Subd. 2. Parent education program requirements.** Every summons involving custody or parenting time of a minor child must include the notice in this subdivision.

## NOTICE OF PARENT EDUCATION PROGRAM REQUIREMENTS

UNDER MINNESOTA STATUTES, SECTION 518.157, IN A CONTESTED PROCEEDING INVOLVING CUSTODY OR PARENTING TIME OF A MINOR CHILD, THE PARTIES MUST BEGIN PARTICIPATION IN A PARENT EDUCATION PROGRAM THAT MEETS MINIMUM STANDARDS PROMULGATED BY THE MINNESOTA SUPREME COURT WITHIN 30 DAYS AFTER THE FIRST FILING WITH THE COURT. IN SOME DISTRICTS, PARENTING EDUCATION MAY BE REQUIRED IN ALL CUSTODY OR PARENTING PROCEEDINGS. YOU MAY CONTACT THE DISTRICT COURT ADMINISTRATOR FOR ADDITIONAL INFORMATION REGARDING THIS REQUIREMENT AND THE AVAILABILITY OF PARENT EDUCATION PROGRAMS.

**History:** 1991 c 271 s 1; 1999 c 104 s 1; 2004 c 273 s 10

**518.10 REQUISITES OF PETITION.**

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

(a) the name, address, and, in circumstances in which child support or spousal maintenance will be addressed, Social Security number of the petitioner and any prior or other name used by the petitioner;

(b) the name and, if known, the address and, in circumstances in which child support or spousal maintenance will be addressed, Social Security number 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, Social Security number, 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;

(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; and

(j) whether an order for protection under chapter 518B or a similar law of another state that governs the parties or a party and a minor child of the parties is in effect and, if so, the district court or similar jurisdiction in which it was entered.

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; 1997 c 203 art 6 s 36; 1997 c 239 art 7 s 7; 1999 c 245 art 7 s 7

**518.11 SERVICE; ALTERNATE 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 or, if no address so qualifies, then to the respondent's last known address.

If the petitioner seeks disposition of real estate located within the state of Minnesota, the court shall order that the summons, which shall contain the legal description of the real estate, be published in the county where the real estate is located. 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; 1997 c 9 s 5*

**518.111 SUFFICIENCY OF NOTICE.**

Automated child support notices sent by the public authority which do not require service are sufficient notice when issued and mailed by first class mail to the person's last known address.

**History:** *1997 c 245 art 1 s 12*

**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. **Default.** 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. **Dispute over irretrievable breakdown.** 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. **Agreement over irretrievable breakdown.** 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. **Referee; open court.** 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 witnesses, 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. **Permissible orders.** 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 parenting time regarding 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. Impermissible orders.** No temporary order shall:

(a) Deny parenting time to a parent unless the court finds that the parenting time 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. Ex parte restraining order; limitations.** 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 parenting time 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. Hearing on restraining order; duration.** 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. Duration of temporary order.** 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. Effect of dismissal of main action.** 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. Guiding factors.** 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 parenting time), and 518.14 (concerning costs and attorney fees) in making temporary orders and restraining orders.

Subd. 8. **Basis for order.** 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. **Prejudicial effect; revocation; modification.** 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. **Misdemeanor.** 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, clause (g), (h), or (i), is a misdemeanor.

Subd. 11. **Temporary support and maintenance.** Temporary support and maintenance may be ordered during the time a parenting plan is being developed under section 518.1705.

**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; 2000 c 444 art 1 s 2; art 2 s 16-19; 2001 c 7 s 85; 2001 c 51 s 1

**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 receiving 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.

**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; 1997 c 187 art 2 s 10*

#### **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

#### **518.146 SOCIAL SECURITY NUMBERS; TAX RETURNS; IDENTITY PROTECTION.**

The Social Security numbers and tax returns required under this chapter are not accessible to the public, except that they must be disclosed to the other parties to a proceeding as provided in section 518.551, subdivision 5b.

**History:** 1999 c 227 s 20

**518.147** [Repealed, 2000 c 372 s 3]

#### **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;

(5) the date of the judgment and decree; and

(6) the Social Security number of the parties to the dissolution and the Social Security number of any living minor or dependent children identified in 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; 1997 c 203 art 6 s 37

**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 parenting

time of a parent unless the court has jurisdiction over the matter pursuant to the provisions of chapter 518D.

**History:** 1977 c 8 s 26; 1978 c 772 s 32; 1979 c 259 s 13; 1Sp1981 c 4 art 1 s 179; 1999 c 74 art 3 s 19; 2000 c 444 art 2 s 20; 2001 c 51 s 2

#### 518.156 COMMENCEMENT OF CUSTODY PROCEEDING.

Subdivision 1. **Procedure.** In a court of this state which has jurisdiction to decide child custody matters, a child custody proceeding is commenced 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 parenting time with 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.

Subd. 2. **Required notice.** Written notice of a child custody or parenting time 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; 2000 c 444 art 2 s 21; 2002 c 304 s 8

#### 518.157 PARENT EDUCATION PROGRAM IN PROCEEDINGS INVOLVING CHILDREN.

Subdivision 1. **Implementation; administration.** By January 1, 1998, the chief judge of each judicial district or a designee shall implement one or more parent education programs within the judicial district for the purpose of educating parents about the impact that divorce, the restructuring of families, and judicial proceedings have upon children and families; methods for preventing parenting time conflicts; and dispute resolution options. The chief judge of each judicial district or a designee may require that children attend a separate education program designed to deal with the impact of divorce upon children as part of the parent education program. Each parent education program must enable persons to have timely and reasonable access to education sessions.

Subd. 2. **Minimum standards; plan.** The Minnesota Supreme Court should promulgate minimum standards for the implementation and administration of a parent education program. The chief judge of each judicial district or a designee shall submit a plan to the Minnesota conference of chief judges for their approval that is designed to implement and administer a parent education program in the judicial district. The plan must be consistent with the minimum standards promulgated by the Minnesota Supreme Court.

Subd. 3. **Attendance.** In a proceeding under this chapter where custody or parenting time is contested, the parents of a minor child shall attend a minimum of eight hours in an orientation and education program that meets the minimum standards promulgated by the Minnesota Supreme Court. In all other proceedings involving custody, support, or parenting time the court may order the parents of a minor child to attend a parent education program. The program shall provide the court with names of persons who fail to attend the parent education program as ordered by the court. Persons who are separated or contemplating involvement in a dissolution, paternity, custody, or parenting time proceeding may attend a parent education program without a court order. Unless otherwise ordered by the court, participation in a parent education program must begin within 30 days after the first filing with the court or as soon as practicable after that time based on the reasonable availability of classes for the program for the parent. Parent education programs must offer an opportunity to participate at all phases of a pending or postdecree proceeding. Upon request of a party and a showing of good cause, the court may excuse the party from attending the program. If past or present domestic abuse, as defined in chapter 518B, is

alleged, the court shall not require the parties to attend the same parent education sessions and shall enter an order setting forth the manner in which the parties may safely participate in the program.

Subd. 4. **Sanctions.** The court may impose sanctions upon a parent for failure to attend or complete a parent education program as ordered.

Subd. 5. **Confidentiality.** Unless all parties agree in writing, statements made by a party during participation in a parent education program are inadmissible as evidence for any purpose, including impeachment. No record may be made regarding a party's participation in a parent education program, except a record of attendance at and completion of the program as required under this section. Instructors shall not disclose information regarding an individual participant obtained as a result of participation in a parent education program. Parent education instructors may not be subpoenaed or called as witnesses in court proceedings.

Subd. 6. **Fee.** Except as provided in this subdivision, each person who attends a parent education program shall pay a fee to defray the cost of the program. A party who qualifies for waiver of filing fees under section 563.01 is exempt from paying the parent education program fee and the court shall waive the fee or direct its payment under section 563.01. Program providers shall implement a sliding fee scale.

**History:** 1995 c 127 s 1; 1997 c 245 art 2 s 1; 2000 c 444 art 2 s 22,23; 2004 c 273 s 11

**518.158** [Repealed, 2002 c 304 s 12]

**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 parenting time with 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 parenting time.

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 parenting time with 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 260C.007 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 parenting time. 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 parenting time 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) 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:** 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; 1999 c 139 art 4 s 2; 1999 c 216 art 7 s 35; 2000 c 444 art 2 s 24,25; 2003 c 112 art 2 s 50.

### 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. 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.

**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; 1Sp2003 c 14 art 6 s 57

### 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 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.

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; 1997 c 203 art 9 s 16*

#### 518.1705 PARENTING PLANS.

Subdivision 1. **Definition.** "Domestic abuse" for the purposes of this section has the meaning given in section 518B.01, subdivision 2.

Subd. 2. **Plan elements.** (a) A parenting plan must include the following:

(1) a schedule of the time each parent spends with the child;

(2) a designation of decision-making responsibilities regarding the child; and

(3) a method of dispute resolution.

(b) A parenting plan may include other issues and matters the parents agree to regarding the child.

(c) Parents voluntarily agreeing to parenting plans may substitute other terms for physical and legal custody, including designations of joint or sole custody, provided that the terms used in the substitution are defined in the parenting plan.

Subd. 3. **Creating parenting plan; restrictions on creation; alternative.** (a) Upon the request of both parents, a parenting plan must be created in lieu of an order for child custody and parenting time unless the court makes detailed findings that the proposed plan is not in the best interests of the child.

(b) If both parents do not agree to a parenting plan, the court may create one on its own motion, except that the court must not do so if it finds that a parent has committed domestic abuse against a parent or child who is a party to, or subject of, the matter before the court. If the court creates a parenting plan on its own motion, it must not use alternative terminology unless the terminology is agreed to by the parties.

(c) If an existing order does not contain a parenting plan, the parents must not be required to create a parenting plan as part of a modification order under section 518.64.

(d) A parenting plan must not be required during an action under section 256.87.

(e) If the parents do not agree to a parenting plan and the court does not create one on its own motion, orders for custody and parenting time must be entered under sections 518.17 and 518.175 or section 257.541, as applicable.

**Subd. 4. Custody designation.** A final judgment and decree that includes a parenting plan using alternate terms to designate decision-making responsibilities or allocation of residential time between the parents must designate whether the parents have joint legal custody or joint physical custody or which parent has sole legal custody or sole physical custody, or both. This designation is solely for enforcement of the final judgment and decree where this designation is required for that enforcement and has no effect under the laws of this state, any other state, or another country that do not require this designation.

**Subd. 5. Role of court.** If both parents agree to the use of a parenting plan but are unable to agree on all terms, the court may create a parenting plan under this section. If the court is considering a parenting plan, it may require each parent to submit a proposed parenting plan at any time before entry of the final judgment and decree. If parents seek the court's assistance in deciding the schedule for each parent's time with the child or designation of decision-making responsibilities regarding the child, the court may order an evaluation and should consider the appointment of a guardian ad litem. Parenting plans, whether entered on the court's own motion, following a contested hearing, or reviewed by the court pursuant to a stipulation, must be based on the best interests factors in section 518.17 or 257.025, as applicable.

**Subd. 6. Restrictions on preparation of parenting plan.** (a) Dispute resolution processes other than the judicial process may not be required in the preparation of a parenting plan if a parent is alleged to have committed domestic abuse toward a parent or child who is a party to, or subject of, the matter before the court. In these cases, the court shall consider the appointment of a guardian ad litem and a parenting plan evaluator.

(b) The court may not require a parenting plan that provides for joint legal custody or use of dispute resolution processes, other than the judicial process, if the court finds that section 518.179 applies or the court finds that either parent has engaged in the following toward a parent or child who is a party to, or subject of, the matter before the court:

(1) acts of domestic abuse, including physical harm, bodily injury, and infliction of fear of physical harm, assault, terroristic threats, or criminal sexual conduct;

(2) physical, sexual, or a pattern of emotional abuse of a child; or

(3) willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions.

**Subd. 7. Moving the child to another state.** Parents may agree, but the court must not require, that in a parenting plan the factors in section 518.17 or 257.025, as applicable, will govern a decision concerning removal of a child's residence from this state, provided that:

(1) both parents were represented by counsel when the parenting plan was approved; or

(2) the court found the parents were fully informed, the agreement was voluntary, and the parents were aware of its implications.

Subd. 8. **Allocation of certain expenses.** (a) Parents creating a parenting plan are subject to the requirements of the child support guidelines under section 518.551.

(b) Parents may include in the parenting plan an allocation of expenses for the child. The allocation is an enforceable contract between the parents.

Subd. 9. **Modification of parenting plans.** (a) Parents may modify the schedule of the time each parent spends with the child or the decision-making provisions of a parenting plan by agreement. To be enforceable, modifications must be confirmed by court order. A motion to modify decision-making provisions or the time each parent spends with the child may be made only within the time limits provided by section 518.18.

(b) The parties may agree, but the court must not require them, to apply the best interests standard in section 518.17 or 257.025, as applicable, for deciding a motion for modification that would change the child's primary residence, provided that:

(1) both parties were represented by counsel when the parenting plan was approved; or

(2) the court found the parties were fully informed, the agreement was voluntary, and the parties were aware of its implications.

(c) If the parties do not agree to apply the best interests standard, section 518.18, paragraph (d), applies.

**History:** 2000 c 444 art 1 s 3

#### 518.171 MEDICAL SUPPORT.

Subdivision 1. **Order.** A completed national medical support notice issued by the public authority or a court order that complies with this section is 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, last known addresses, and Social Security numbers of the parents of the dependents unless the court prohibits the inclusion of an address or Social Security number and orders the parents to provide their addresses and Social Security numbers to the administrator of the health plan. The court shall order the parent 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 parent 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, 256J, 256K, 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 518.551, subdivision 5.

(e) Payments ordered under this section are subject to section 518.6111. 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 518.6111. 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. Notice to employer or union.** (a) For purposes of this chapter, "national medical support notice" means an administrative notice issued by the public authority to enforce health insurance provisions of a support order in IV-D cases under the Code of Federal Regulations.

(b) A copy of the national medical support notice or court order for insurance coverage shall be forwarded to the obligor's employer or union or to the health or dental insurance carrier if necessary 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 obligor has applied for insurance for the child;

(2) the obligee or the public authority serves written notice of its intent to enforce medical support. The obligee or the public authority must mail the written notice to the obligor 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 obligor has applied for insurance coverage for the child.

(c) If an obligor is ordered to carry health insurance coverage for the child and has not enrolled the child in health insurance coverage, the public authority must forward a copy of the national medical support notice to the obligor's employer or union within two business days after the date the obligor is entered into the work reporting system under section 256.998.

**Subd. 4. Effect of order.** (a) The national medical support notice or court order is binding on the employer or union and the health and dental insurance plan when service under subdivision 3 has been made. In the case of an obligor who changes employment and is required to provide health coverage for the child, a new employer

that provides health care coverage shall enroll the child in the obligor's health plan upon receipt of an order or notice for health insurance, unless the obligor contests the enrollment.

(b) The obligor may contest the enrollment on the limited grounds that the enrollment is improper due to mistake of fact or that the enrollment meets the requirements of section 518.64, subdivision 2. If the obligor chooses to contest the enrollment, the obligor must do so no later than 15 days after the employer notifies the obligor of the enrollment, by doing all of the following:

(1) filing a motion in district court or according to section 484.702 and the rules of the expedited child support process if the public authority provides support enforcement services;

(2) mailing a copy of the motion to the public authority, if the public authority provides support enforcement services, and the obligee; and

(3) securing a date for the contested hearing no later than 45 days after the notice of enrollment.

The enrollment must remain in place during the time period in which the obligor contests the enrollment.

(c) An employer or union that is included under ERISA may not deny enrollment based on exclusionary clauses described in section 62A.048. Enrollment of dependents and, if necessary, 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.

(d) 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.

(e) 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 obligee or guardian, is valid for the purposes of meeting enrollment requirements of the health plan.

(f) The insurance coverage for a child eligible under subdivision 5 shall not be terminated except as authorized in subdivision 5.

**Subd. 4a. Employer, union and health plan administrator requirements.** (a) An employer or union must forward the national medical support notice or court order to its health plan within 20 business days after the date on the national medical support notice or after receipt of the court order.

(b) If a health plan administrator receives a completed national medical support notice or court order, the plan administrator must notify the parties and the public authority if the public authority provides support enforcement services within 40 business days after the date of the notice or after receipt of the court order, of the following:

(1) whether coverage is available to the child under the terms of the health plan;

(2) whether the child is covered under the health plan;

(3) the effective date of the child's coverage under the health plan; and

(4) what steps, if any, are required to effectuate the child's coverage under the health plan. The plan administrator must also provide the parties and the public authority if the public authority provides support enforcement services with a notice of enrollment of the child, description of the coverage, and any documents necessary to effectuate coverage.

(c) Upon determination by the health plan administrator that the child may be covered under the health plan, the employer or union and health plan must enroll the child as a beneficiary in the health plan and withhold any required premiums from the income or wages of the obligor.

(d) If more than one plan is offered by the employer or union and the national medical support notice or court order does not specify the plan to be carried, the plan administrator must notify the parents and the public authority if the public authority provides support enforcement services.

(e) If enrollment of the obligor is necessary to obtain dependent health care coverage under the plan and the obligor is not enrolled in the health plan, the employer or union must also enroll the obligor in the plan.

**Subd. 5. Disenrollment; coverage options.** (a) Unless a court order provides otherwise, 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, until further order of the court, or as consistent with the terms of coverage. 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 employee is no longer eligible for dependent coverage, or that the required premium has not been paid by or on behalf of the child. The health or dental insurance plan must provide 30 days' written notice to the child's parents and the public authority if the public authority provides support enforcement services prior to the disenrollment or elimination of coverage for the child.

(b) If the public authority provides support enforcement services and a plan administrator reports to the public authority that there is more than one coverage option available under the health plan, the public authority, in consultation with the parent with whom the child resides, must promptly select coverage from the available options.

**Subd. 6. Plan reimbursement; correspondence and notice.** (a) The signature of either 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 parent who has prepaid for the medical services.

(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 268.044 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 obligee 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 518.6111. 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; 1997 c 66 s 79; 1997 c 203 art 6 s 38,39,92; 1999 c 159 s 135; 1999 c 196 art 2 s 8; 2001 c 51 s 3-7; 2002 c 344 s 8-12

### 518.175 PARENTING TIME.

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 parenting time on behalf of the child and a parent as will enable the child and the 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 parenting time with a parent is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the 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 parenting time.

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

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

(d) The court administrator shall provide a form for a pro se motion regarding parenting time 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 parenting time 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. 1a. Domestic abuse; supervised parenting time.** (a) If a parent requests supervised parenting time under subdivision 1 or 5 and an order for protection under chapter 518B or a similar law of another state is in effect against the other parent to protect the parent with whom the child resides or the child, the judge or judicial officer must consider the order for protection in making a decision regarding parenting time.

(b) The state court administrator, in consultation with representatives of parents and other interested persons, shall develop standards to be met by persons who are responsible for supervising parenting time. Either parent may challenge the appropriateness of an individual chosen by the court to supervise parenting time.

**Subd. 2. Rights of children and parents.** 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 each parent under the order or decree or any substantial amendment thereof. The parent with whom the child resides shall present the child for parenting time with the other parent, at such times as the court directs.

**Subd. 3. Move to another state.** The parent with whom the child resides shall not move the residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree. If the purpose of the move is to interfere with parenting time given to the other 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. Modification of parenting plan or order for parenting time.** If modification would serve the best interests of the child, the court shall modify the decision-making provisions of a parenting plan or an order granting or denying parenting time, if the modification would not change the child's primary residence. Except as provided in section 631.52, the court may not restrict parenting time unless it finds that:

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

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

If a parent makes specific allegations that parenting time by the other parent places the 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 parenting time. Consistent with subdivision 1a, the court may require a third party, including the local social services agency, to supervise the parenting time or may restrict a parent's parenting time if necessary to protect the other parent or child from harm. If there is an existing order for protection governing the parties, the court shall consider the use of an independent, neutral exchange location for parenting time.

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

(b) If the court finds that a person has been deprived of court-ordered parenting time, the court shall order the parent who has interfered to allow compensatory parenting time to the other parent or the court shall make specific findings as to why a request for compensatory parenting time is denied. If compensatory parenting time is awarded, additional parenting time must be:

(1) at least of the same type and duration as the deprived parenting time and, at the discretion of the court, may be in excess of or of a different type than the deprived parenting time;

- (2) taken within one year after the deprived parenting time; and
- (3) at a time acceptable to the parent deprived of parenting time.
- (c) If the court finds that a party has wrongfully failed to comply with a parenting time 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;
  - (2) require the party to post a bond with the court for a specified period of time to secure the party's compliance;
  - (3) award reasonable attorney's fees and costs;
  - (4) require the party who violated the parenting time order or binding agreement or decision of the parenting time expeditor to reimburse the other party for costs incurred as a result of the violation of the order or agreement or decision; or
  - (5) award any other remedy that the court finds to be in the best interests of the children involved.

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 parenting time 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 parenting time and has incurred expenses in connection with the denied parenting time, the court may require the party who denied parenting time to post a bond in favor of the other party in the amount of prepaid expenses associated with upcoming planned parenting time.

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

Subd. 7. [Renumbered 518.1752]

Subd. 8. **Additional parenting time for child care parent.** The court may allow additional parenting time to a parent to provide child care while the other 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; 1997 c 239 art 7 s 8,9; 1997 c 245 art 2 s 2; 2000 c 444 art 1 s 4; art 2 s 26-31; 2001 c 51 s 8,17

### 518.1751 PARENTING TIME DISPUTE RESOLUTION.

Subdivision 1. **Parenting time expeditor.** Upon request of either party, the parties' stipulation, or upon the court's own motion, the court may appoint a parenting time expeditor to resolve parenting time disputes that occur under a parenting time order while a matter is pending under this chapter, chapter 257 or 518A, or after a decree is entered.

Subd. 1a. **Exceptions.** A party may not be required to refer a parenting time dispute to a parenting time expeditor under this section if:

- (1) one of the parties claims to be the victim of domestic abuse by the other party;
- (2) the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party; or
- (3) the party is unable to pay the costs of the expeditor, as provided under subdivision 2a.

If the court is satisfied that the parties have been advised by counsel and have agreed to use the parenting time expeditor process and the process does not involve face-to-face meeting of the parties, the court may direct that the parenting time expeditor process be used.

**Subd. 1b. Purpose; definitions.** (a) The purpose of a parenting time expeditor is to resolve parenting time disputes by enforcing, interpreting, clarifying, and addressing circumstances not specifically addressed by an existing parenting time order and, if appropriate, to make a determination as to whether the existing parenting time order has been violated. A parenting time expeditor may be appointed to resolve a onetime parenting time dispute or to provide ongoing parenting time dispute resolution services.

(b) For purposes of this section, "parenting time dispute" means a disagreement among parties about parenting time with a child, including a dispute about an anticipated denial of future scheduled parenting time. "Parenting time dispute" includes a claim by a parent that the other parent is not spending time with a child as well as a claim by a parent that the other parent is denying or interfering with parenting time.

(c) A "parenting time expeditor" is a neutral person authorized to use a mediation-arbitration process to resolve parenting time disputes. A parenting time expeditor shall attempt to resolve a parenting time dispute by facilitating negotiations between the parties to promote settlement and, if it becomes apparent that the dispute cannot be resolved by an agreement of the parties, the parenting time expeditor shall make a decision resolving the dispute.

**Subd. 2. Appointment.** (a) The parties may stipulate to the appointment of a parenting time expeditor or a team of two expeditors without appearing in court by submitting to the court a written agreement identifying the names of the individuals to be appointed by the court; the nature of the dispute; the responsibilities of the parenting time expeditor, including whether the expeditor is appointed to resolve a specific issue or on an ongoing basis; the term of the appointment; and the apportionment of fees and costs. The court shall review the agreement of the parties.

(b) If the parties cannot agree on a parenting time expeditor, the court shall provide to the parties a copy of the court administrator's roster of parenting time expeditors and require the parties to exchange the names of three potential parenting time expeditors by a specific date. If after exchanging names the parties are unable to agree upon a parenting time expeditor, the court shall select the parenting time expeditor and, in its discretion, may appoint one expeditor or a team of two expeditors. In the selection process the court must give consideration to the financial circumstances of the parties and the fees of those being considered as parenting time expeditors. Preference must be given 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.

(c) An order appointing a parenting time expeditor must identify the name of the individual to be appointed, the nature of the dispute, the responsibilities of the expeditor including whether the expeditor is appointed to resolve a specific issue or on an ongoing basis, the term of the appointment, the apportionment of fees, and notice that if the parties are unable to reach an agreement with the assistance of the expeditor, the expeditor is authorized to make a decision resolving the dispute which is binding upon the parties unless modified or vacated by the court.

**Subd. 2a. Fees.** Prior to appointing the parenting time expeditor, the court shall give the parties notice that the fees of the expeditor will be apportioned among the parties. In its order appointing the expeditor, the court shall apportion the fees of the expeditor among the parties, with each party bearing the portion of fees that the court determines is just and equitable under the circumstances. If a party files a pro se motion regarding a parenting time dispute and there is not a court order that provides for apportionment of the fees of an expeditor, the court administrator may require the party requesting the appointment of an expeditor to pay the fees 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 fees of an expeditor and an affordable expeditor

is not available, unless the other party agrees to pay the fees. After fees are incurred, a party may by motion request that the fees 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. 2b. Roster of parenting time expeditors.** Each court administrator shall maintain and make available to the public and judicial officers a roster of individuals available to serve as parenting time expeditors, including each individual's name, address, telephone number, and fee charged, if any. A court administrator shall not place on the roster the name of an individual who has not completed the training required in subdivision 2c. If the use of a parenting time expeditor is initiated by stipulation of the parties, the parties may agree upon a person to serve as an expeditor even if that person has not completed the training described in subdivision 2c. The court may appoint a person to serve as an expeditor even if the person is not on the court administrator's roster, but may not appoint a person who has not completed the training described in subdivision 2c, unless so stipulated by the parties. To maintain one's listing on a court administrator's roster of parenting time expeditors, an individual shall annually submit to the court administrator proof of completion of continuing education requirements.

**Subd. 2c. Training and continuing education requirements.** To qualify for listing on a court administrator's roster of parenting time expeditors, an individual shall complete a minimum of 40 hours of family mediation training that has been certified by the Minnesota supreme court, which must include certified training in domestic abuse issues as required under Rule 114 of the Minnesota General Rules of Practice for the District Courts. To maintain one's listing on a court administrator's roster of parenting time expeditors, an individual shall annually attend three hours of continuing education about alternative dispute resolution subjects.

**Subd. 3. Agreement or decision.** (a) Within five days of notice of the appointment, or within five days of notice of a subsequent parenting time dispute between the same parties, the parenting time expeditor shall meet with the parties together or separately and shall make a diligent effort to facilitate an agreement to resolve the dispute. If a parenting time dispute requires immediate resolution, the parenting time 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 receiving all information necessary to make a decision and after the final meeting or conference with the parties. The expeditor is authorized to award compensatory parenting time under section 518.175, subdivision 6, and may recommend to the court that the noncomplying party pay attorney's fees, court costs, and other costs under section 518.175, subdivision 6, paragraph (d), if the parenting time order has been violated. The expeditor shall not lose authority to make a decision if circumstances beyond the expeditor's control make it impracticable to meet the five-day timelines.

(c) Unless the parties mutually agree, the parenting time expeditor shall not make a decision that is inconsistent with an existing parenting time order, but may make decisions interpreting or clarifying a parenting time order, including the development of a specific schedule when the existing court order grants "reasonable parenting time."

(d) The expeditor shall put an agreement or decision in writing and provide a copy to the parties. The expeditor may include or omit reasons for the agreement or decision. An agreement of the parties or a decision of the expeditor is binding on the parties unless vacated or modified by 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 and shall attach a copy of the parties' written agreement or decision of

the expeditor. The court may enforce, modify, or vacate the agreement of the parties or the decision of the expeditor.

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

Subd. 4a. **Confidentiality.** (a) Statements made and documents produced as part of the parenting time expeditor process which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at trial or in any other proceeding, including impeachment.

(b) Sworn testimony may be used in subsequent proceedings for any purpose for which it is admissible under the Rules of Evidence. Parenting time expeditors, and lawyers for the parties to the extent of their participation in the parenting time expeditor process, must not be subpoenaed or called as witnesses in court proceedings.

(c) Notes, records, and recollections of parenting time expeditors are confidential and must not be disclosed to the parties, the public, or anyone other than the parenting time expeditor unless:

- (1) all parties and the expeditor agree in writing to the disclosure; or
- (2) disclosure is required by law or other applicable professional codes.

Notes and records of parenting time expeditors must not be disclosed to the court unless after a hearing the court determines that the notes or records should be reviewed in camera. Those notes or records must not be released by the court unless it determines that they disclose information showing illegal violation of the criminal law of the state.

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

Subd. 5a. **Removal.** If a parenting time expeditor has been appointed on a long-term basis, a party or the expeditor may file a motion seeking to have the expeditor removed for good cause shown.

Subd. 6. **Mandatory parenting time dispute resolution.** Subject to subdivision 1a, a judicial district may establish a mandatory parenting time dispute resolution program as provided in this subdivision. In a district where a program has been established, parties may be required to submit parenting time disputes to a parenting time expeditor as a prerequisite to a motion on the dispute being heard by the court, or either party may submit the dispute to an 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 parenting time expeditor. The appointment of an expeditor must be in accordance with subdivision 2. Expeditor fees must be paid in accordance with subdivision 2a.

Subd. 7. [Repealed by amendment, 1997 c 245 art 2 s 3]

**History:** 1989 c 248 s 6; 1996 c 391 art 1 s 3; 1997 c 245 art 2 s 3; 2000 c 444 art 2 s 32; 2001 c 51 s 9

#### 518.1752 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 257C.08, subdivision 2.

**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; 1997 c 239 art 7 s 8,9; 1997 c 245 art 2 s 2; 2000 c 444 art 1 s 4; art 2 s 26-31; 2001 c 51 s 8,17; 2002 c 304 s 13

**518.176 JUDICIAL SUPERVISION.**

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

Subd. 2. **Court order.** 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 parenting time 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; 2000 c 444 art 2 s 33; 2001 c 51 s 10

**518.177 NOTIFICATION REGARDING DEPRIVATION OF PARENTAL RIGHTS LAW.**

Every court order and judgment and decree concerning custody of or parenting time 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; 2000 c 444 art 2 s 34

**518.178 PARENTING TIME AND SUPPORT REVIEW HEARING.**

Upon motion of either party, the court shall conduct a hearing to review compliance with the parenting time and child support provisions set forth in a decree of dissolution or legal separation or an order that establishes child custody, parenting time, and support rights and obligations of parents. The state court administrator shall prepare, and each court administrator shall make available, simplified pro se forms for reviewing parenting time and child support disputes. The court may impose any parenting time enforcement remedy available under sections 518.175 and 518.1751, and any support enforcement remedy available under section 518.551.

**History:** 1999 c 196 art 1 s 4; 2000 c 444 art 2 s 35

**518.179 PARTICIPATION IN A PARENTING PLAN WHEN PERSON CONVICTED OF CERTAIN OFFENSES.**

Subdivision 1. **Seeking custody or parenting time.** Notwithstanding any contrary provision in section 518.17 or 518.175, if a person seeking child custody or parenting time has been convicted of a crime described in subdivision 2, the person seeking custody or parenting time has the burden to prove that custody or parenting time 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 parenting time to the person unless it finds that the custody or parenting time 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. A guardian ad litem must be appointed in any case where this section applies.

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, promoting, or receiving profit derived from prostitution involving a minor under section 609.322;
- (7) criminal sexual conduct in the first degree under section 609.342;
- (8) criminal sexual conduct in the second degree under section 609.343;
- (9) criminal sexual conduct in the third degree under section 609.344, subdivision 1, paragraph (c), (f), or (g);
- (10) solicitation of a child to engage in sexual conduct under section 609.352;
- (11) incest under section 609.365;
- (12) malicious punishment of a child under section 609.377;
- (13) neglect of a child under section 609.378;
- (14) terroristic threats under section 609.713; or
- (15) felony harassment or stalking under section 609.749, subdivision 4.

**History:** 1990 c 574 s 16; 1997 c 239 art 7 s 10; 1997 c 245 art 2 s 4; 1998 c 367 art 2 s 2; 2000 c 444 art 2 s 36

#### 518.18 MODIFICATION OF ORDER.

(a) Unless agreed to in writing by the parties, no motion to modify a custody order or parenting plan 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 or parenting plan if the court finds that there is persistent and willful denial or interference with parenting time, 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 or a parenting plan provision which specifies the child's primary residence unless it finds, upon the basis of facts, including unwarranted denial of, or interference with, a duly established parenting time 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 or the parenting plan provision specifying the child's primary residence that was established by the prior order unless:

(i) the court finds that a change in the custody arrangement or primary residence is in the best interests of the child and the parties previously agreed, in a writing approved by a court, to apply the best interests standard in section 518.17 or 257.025, as applicable; and, with respect to agreements approved by a court on or after April 28, 2000, both parties were represented by counsel when the agreement was approved or the court found the parties were fully informed, the agreement was voluntary, and the parties were aware of its implications;

(ii) both parties agree to the modification;

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

(iv) 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 or parenting plan 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 parent has been granted sole physical custody of a minor and the child subsequently lives with the other parent, and temporary sole physical custody has been approved by the court or by a court-appointed referee, the court may suspend the obligor'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; 2000 c 444 art 1 s 5; 2001 c 51 s 11*

#### 518.183 REPLACING CERTAIN ORDERS.

Upon request of both parties the court must modify an order entered under section 518.17 or 518.175 before January 1, 2001, by entering a parenting plan that complies with section 518.1705, unless the court makes detailed findings that entering a parenting plan is not in the best interests of the child. If only one party makes the request, the court may modify the order by entering a parenting plan that complies with section 518.1705. The court must apply the standards in section 518.18 when considering a motion to enter a parenting plan that would change the child's primary residence. The court must apply the standards in section 518.17 when considering a motion to enter a parenting plan that would:

- (1) change decision-making responsibilities of the parents; or
- (2) change the time each parent spends with the child, but not change the child's primary residence.

**History:** *2000 c 444 art 1 s 6; 2000 c 499 s 4*

#### 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 order 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 SUMMARY DISSOLUTION PROCESS.

Subdivision 1. **Criteria.** 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 eight 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 \$8,000 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. District court administrators shall make the forms for the summary process available upon request and shall accept joint declarations for filing on and after July 1, 1997.

Subd. 4. [Repealed by amendment, 1997 c 245 art 2 s 5]

**History:** 1991 c 271 s 5,9; 1996 c 408 art 11 s 9; 1997 c 245 art 2 s 5; 1999 c 37 s 1

**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.**

Subdivision 1. **General.** (a) 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.

(b) 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.

(c) 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), under subdivision 2, and in order to obtain, modify or enforce child support, medical support, and parentage determinations.

(d) 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.

Subd. 2. **Access to address for service of process.** (a) If there is a IV-D case as defined in section 518.54, a party may obtain an ex parte order under this subdivision. The party may obtain an ex parte order requiring the public authority to serve legal documents on the other party by mail if the party submits a sworn affidavit to the court stating that:

(1) the party needs to serve legal process in a support proceeding and does not have access to the address of the other party;

(2) the party has made reasonable efforts to locate the other party; and

(3) the other party is not represented by counsel.

(b) The public authority shall serve legal documents provided by the moving party at the last known address of the other party upon receipt of a court order under paragraph (a). The public authority shall provide for appropriate service and shall certify to all parties the date of service by mail. The public authority's proof of service must not include the place or address of service.

(c) The state court administrator shall prepare and make available forms for use in seeking access to an address under this subdivision.

**History:** 1995 c 257 art 4 s 13; 2000 c 458 s 4

**518.26** [Repealed, 1974 c 107 s 29]

**518.27 NAME OF PARTY.**

Except as provided in section 259.13, 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, unless the name change is subject to section 259.13, in which case the requirements of that section apply. The court shall notify the parties that use of a different surname after dissolution or legal separation without complying with section 259.13, if applicable, is a gross misdemeanor. 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; 2000 c 311 art 3 s 6

**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. 4a. **Support order.** "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, child care, medical support including expenses for confinement and pregnancy, arrearages, or reimbursement, and that may include related costs and fees, interest and

penalties, income withholding, and other relief. This definition applies to orders issued under this chapter and chapters 256, 257, and 518C.

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 co-ownership 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, unemployment benefits, annuity, military and naval retirement, pension and disability payments. Benefits received under Title IV-A of the Social Security Act and chapter 256J 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. A person who is designated as the sole physical custodian of a child is presumed not to be an obligor for purposes of calculating current support under section 518.551 unless the court makes specific written findings to overcome this presumption.

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.

Subd. 13. **Arrears.** Arrears are amounts that accrue pursuant to an obligor's failure to comply with a support order. Past support and pregnancy and confinement expenses contained in a support order are arrears if the court order does not contain repayment terms. Arrears also arise by the obligor's failure to comply with the terms of a court order for repayment of past support or pregnancy and confinement expenses. An obligor's failure to comply with the terms for repayment of amounts owed for past support or pregnancy and confinement turns the entire amount owed into arrears.

Subd. 14. **IV-D case.** "IV-D case" means a case where a party has assigned to the state rights to child support because of the receipt of public assistance as defined in section 256.741 or has applied for child support services under title IV-D of the Social Security Act, United States Code, title 42, section 654(4).

**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; 1997 c 203 art 6 s 40,41; 1997 c 245 art 3 s 9; 1998 c 382 art 1 s 3-5; 1999 c 107 s 66; 1999 c 196 art 1 s 5; 2000 c 343 s 4

#### 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 parent with whom the child resides is presumed to be maintenance and an award of payments from the future income or earnings of the parent with whom the child does not reside 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.

Subd. 4. **Determination of controlling order.** The public authority or a party may request the district court to determine a controlling order in situations in which more than one order involving the same obligor and child exists.

**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; 1998 c 382 art 1 s 6; 2001 c 51 s 12

#### 518.551 MAINTENANCE AND SUPPORT PAYMENTS.

Subdivision 1. **Scope; payment to public agency.** (a) This section applies to all proceedings involving a support order, including, but not limited to, a support order establishing an order for past support or reimbursement of public assistance.

(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

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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.

(c) Payments made to the public authority other than payments under section 518.6111 must be credited as of the date the payment is received by the central collections unit.

(d) 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 public assistance 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%

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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 obligor’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 obligee. 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 parenting time 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 obligor parent to care for the child while the obligee parent is working, as provided in section 518.175, subdivision 8, but this 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 public assistance under the AFDC program formerly codified under sections 256.72 to 256.82 or 256B.01 to 256B.40 and chapter 256J or 256K.

(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 256.741;

(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 256.741, 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 256.741, 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.

(l) In establishing or modifying child support, if a child receives a child's insurance benefit under United States Code, title 42, section 402, because the obligor is entitled to old age or disability insurance benefits, the amount of support ordered shall be offset by the amount of the child's benefit. The court shall make findings regarding the obligor's income from all sources, the child support amount calculated under this section, the amount of the child's benefit, and the obligor's child support obligation. Any benefit received by the child in a given month in excess of the child support obligation shall not be treated as an arrearage payment or a future payment.

**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, unemployment benefits 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 Employment and Economic Development under section 268.044.

(d) If the court finds that a parent is voluntarily unemployed or underemployed or was voluntarily unemployed or underemployed during the period for which past support is being sought, 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.

(e) If there is insufficient information to determine actual income or to impute income pursuant to paragraph (d), the court may calculate support based on full-time employment of 40 hours per week at 150 percent of the federal minimum wage or the Minnesota minimum wage, whichever is higher. If a parent is a recipient of public assistance under section 256.741, or is physically or mentally incapacitated, it shall be presumed that the parent is not voluntarily unemployed or underemployed.

(f) Income from self employment is equal to gross receipts minus ordinary and necessary expenses. Ordinary and necessary expenses do not include amounts allowed by the Internal Revenue Service for accelerated depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining income for purposes of child support. The person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary. Net income under this section may be different from taxable income.

**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 postsecondary education.

**Subd. 5e. Adjustment to support order.** A support order issued under this section may provide that during any period of time of 30 consecutive days or longer that the child is residing with the obligor, the amount of support otherwise due under the order may be reduced.

**Subd. 5f. Subsequent children.** The needs of subsequent children shall not be factored into a support guidelines calculation under subdivision 5. The fact that an obligor had additional children after the entry of a child support order is not grounds for a modification to decrease the amount of support owed. However, the fact that an obligor has subsequent children shall be considered in response to a request by an obligee for a modification to increase child support. In order to deviate from the

support guidelines in subdivision 5 to consider the needs of subsequent children, the trial court must:

(1) find the obligor's total ability to contribute to dependent children, taking into account the obligor's income and reasonable expenses exclusive of child care. The obligor's expenses must be:

(i) reduced as appropriate to take into account contributions to those costs by other adults who share the obligor's current household; and

(ii) apportioned between the parent and any subsequent child with regard to shared benefits, including but not limited to, housing and transportation;

(2) find the total needs of all the obligor's children, and if these needs are less than the obligor's ability to pay, the needs may become the obligor's child support obligation. When considering the needs of subsequent children, the trial court must reduce those amounts as appropriate to take into account the ability to contribute to those needs by another parent of the children;

(3) make specific findings on the needs of the child or children who are the subject of the support order under consideration; and

(4) exercise discretion to fairly determine the current support obligation and the contribution left available for other children, considering that the support obligation being determined should be in an amount at least equal to the contribution for a subsequent child.

**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. 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.

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

Subd. 9. **Assignment of rights; judgment.** (a) The public agency responsible for child support enforcement is joined as a party in each case in which rights are assigned under section 256.741, subdivision 2. 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.

(b) The public authority is a real party in interest in any IV-D case where there has been an assignment of support. In all other IV-D cases, the public authority has a pecuniary interest, as well as an interest in the welfare of the children involved in those cases. The public authority may intervene as a matter of right in those cases to ensure that child support orders are obtained and enforced which provide for an appropriate and accurate level of child, medical, and child care support. If the public authority participates in a IV-D case where the action taken by the public authority requires the use of an attorney's services, the public authority shall be represented by an attorney consistent with the provisions in section 518.255.

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, 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

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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 appraises 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).

**Subd. 13a. Data on suspensions for support arrears.** Notwithstanding section 13.03, subdivision 4, paragraph (c), data on an occupational license suspension under subdivision 12 or a driver's license suspension under subdivision 13 that are transferred by the Department of Human Services to respectively the Department of Public Safety or any state, county, or municipal occupational licensing agency must have the same classification at the Department of Public Safety or other receiving agency under section 13.02 as other license suspension data held by the receiving agency. The transfer of the data does not affect the classification of the data in the hands of the Department of Human Services.

**Subd. 14. Motor vehicle lien.** (a) Upon motion of an obligee, if a court finds that 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 pursuant to section 518.553 that is approved by the court, a child support magistrate, or the public authority. 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, which shall 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 that is approved by the court, a child support magistrate, or the public authority within the 90-day period, the court's order becomes effective and the commissioner of public safety shall record the lien on any motor vehicle certificate of title subsequently issued in the name of the obligor. 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 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, on any motor vehicle certificate of title subsequently issued in the name of the obligor unless the public authority determines that the obligor 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. 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 any motor vehicle certificate of title subsequently issued in the name of the obligor 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, 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. 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 or is not in compliance with 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 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 child support magistrate shall order the commissioner of public safety to record the lien 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 determined to be acceptable by the court, a child support magistrate, or the public authority.

(e) An obligor 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 pursuant to section 518.553 or that the value of the motor vehicle is less than the exemption provided under section 550.37. Within 15 days of the receipt of that proof, the court or public authority shall either 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 or shall direct the commissioner of public safety not to enter a lien on any motor vehicle certificate of title subsequently issued in the name of the obligor in instances where a lien has not yet been entered.

(f) Any lien recorded against a motor vehicle certificate of title under this section and section 168A.05, subdivision 8, attaches only to the nonexempt value of the motor vehicle as determined in accordance with section 550.37. The value of a motor vehicle must be determined in accordance with the retail value described in the N.A.D.A. Official Used Car Guide, Midwest Edition, for the current year, or in accordance with the purchase price as defined in section 297B.01, subdivision 8.

Subd. 15. **License suspension.** (a) Upon motion of an obligee or the public authority, which has been properly served on the obligor by first class mail at the last known address or in person, and if at a hearing, the court finds that (1) the obligor is in arrears in court-ordered child support or maintenance payments, or both, in an amount equal to or greater than six 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, or (2) has failed, after receiving notice, to comply with a subpoena relating to a paternity or child support proceeding, the court may direct the commissioner of natural resources to suspend or bar receipt of the obligor's recreational license or licenses. Prior to utilizing this subdivision, the court must find that other substantial enforcement mechanisms have been attempted but have not resulted in compliance.

(b) For purposes of this subdivision, a recreational license includes all licenses, permits, and stamps issued centrally by the commissioner of natural resources under sections 97B.301, 97B.401, 97B.501, 97B.515, 97B.601, 97B.715, 97B.721, 97B.801, 97C.301, and 97C.305.

(c) An obligor whose recreational license or licenses have been suspended or barred may provide proof to the court that the obligor is in compliance with all written payment agreements pursuant to section 518.553. Within 15 days of receipt of that proof, the court shall notify the commissioner of natural resources that the obligor's recreational license or licenses should no longer be suspended nor should receipt be barred.

**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; 1997 c 66 s 79; 1997 c 203 art 6 s 42,43; 1997 c 245 art 1 s 13-17; art 3 s 10; 1998 c 382 art 1 s 7-11; 1999 c 107 s 66; 1999 c 159 s 136; 1999 c 196 art 1 s 6; art 2 s 9-11; 1999 c 245 art 7 s 8; 2000 c 343 s 4; 2000 c 444 art 2 s 37; 2001 c 51 s 13,14; 2001 c 134 s 1; 2001 c 158 s 1; 2002 c 344 s 13-16; 2003 c 130 s 12; 1Sp2003 c 14 art 6 s 58; art 10 s 5,6; 2004 c 206 s 52

**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.

**518.5511** [Repealed, 1999 c 196 art 2 s 24]

**518.5512** [Repealed, 1999 c 196 art 2 s 24]

### **518.5513 PROCEDURES FOR CHILD AND MEDICAL SUPPORT ORDERS AND PARENTAGE ORDERS IN THE EXPEDITED PROCESS.**

Subdivision 1. **General.** This section applies in cases in which support rights are assigned under section 256.741, subdivision 2, or where the public authority is providing services under an application for child support services.

Subd. 2. **Role of nonattorney employees; general provisions.** (a) The county attorney shall review and approve as to form and content all pleadings and other legal documents prepared by nonattorney employees of the county agency for use in the expedited child support process.

(b) Under the direction of, and in consultation with, the county attorney, nonattorney employees of the county agency shall have authority to perform the following legal duties:

(1) meet and confer with parties by mail, telephone, electronic, or other means regarding legal issues;

(2) explain to parties the purpose, procedure, and function of the expedited child support process and the role and authority of nonattorney employees of the county agency regarding legal issues;

(3) prepare pleadings, including, but not limited to, summonses and complaints, notices, motions, subpoenas, orders to show cause, proposed orders, administrative orders, and stipulations and agreements;

(4) issue administrative subpoenas;

(5) prepare judicial notices;

(6) negotiate settlement agreements;

(7) attend and participate as a witness in hearings and other proceedings and, if requested by the child support magistrate, present evidence, agreements and stipulations of the parties, and any other information deemed appropriate by the magistrate;

(8) participate in such other activities and perform such other duties as delegated by the county attorney; and

(9) exercise other powers and perform other duties as permitted by statute or court rule.

(c) Nonattorney employees of the county agency may perform the following duties without direction from the county attorney:

(1) gather information on behalf of the public authority;

(2) prepare financial worksheets;

(3) obtain income information from the Department of Employment and Economic Development and other sources;

(4) serve documents on parties;

(5) file documents with the court;

(6) meet and confer with parties by mail, telephone, electronic, or other means regarding nonlegal issues;

(7) explain to parties the purpose, procedure, and function of the expedited child support process and the role and authority of nonattorney employees of the county agency regarding nonlegal issues; and

(8) perform such other routine nonlegal duties as assigned.

(d) Performance of the duties prescribed in paragraphs (b) and (c) by nonattorney employees of the county agency does not constitute the unauthorized practice of law for purposes of section 481.02.

Subd. 3. **Contents of pleadings.** (a) In cases involving establishment or modification of a child support order, the initiating party shall include the following information, if known, in the pleadings:

(1) names, addresses, and dates of birth of the parties;

(2) Social Security numbers of the parties and the minor children of the parties, which information shall be considered private information and shall be available only to the parties, the court, and the public authority;

(3) other support obligations of the obligor;

(4) names and addresses of the parties' employers;

(5) net income of the parties as defined in section 518.551, subdivision 5, with the authorized deductions itemized;

(6) amounts and sources of any other earnings and income of the parties;

(7) health insurance coverage of parties;

(8) types and amounts of public assistance received by the parties, including Minnesota family investment plan, child care assistance, medical assistance, Minnesota-Care, title IV-E foster care, or other form of assistance as defined in section 256.741, subdivision 1; and

(9) any other information relevant to the determination of child or medical support under section 518.171 or 518.551, subdivision 5.

(b) For all matters scheduled in the expedited process, whether or not initiated by the public authority, the nonattorney employee of the public authority shall file with the court and serve on the parties the following information:

(1) information pertaining to the income of the parties available to the public authority from the Department of Employment and Economic Development;

(2) a statement of the monthly amount of child support, medical support, child care, and arrears currently being charged the obligor on Minnesota IV-D cases;

(3) a statement of the types and amount of any public assistance, as defined in section 256.741, subdivision 1, received by the parties; and

(4) any other information relevant to the determination of support that is known to the public authority and that has not been otherwise provided by the parties.

The information must be filed with the court or child support magistrate at least five days before any hearing involving child support, medical support, or child care reimbursement issues.

**Subd. 4. Noncontested matters.** Under the direction of the county attorney and based on agreement of the parties, nonattorney employees may prepare a stipulation, findings of fact, conclusions of law, and proposed order. The documents must be approved and signed by the county attorney as to form and content before submission to the court or child support magistrate for approval.

**Subd. 5. Administrative authority.** (a) The public authority may take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any judicial or administrative tribunal:

(1) recognize and enforce orders of child support agencies of other states;

(2) upon request for genetic testing by a child, parent, or any alleged parent, and using the procedure in paragraph (b), order the child, parent, or alleged parent to submit to blood or genetic testing for the purpose of establishing paternity;

(3) subpoena financial or other information needed to establish, modify, or enforce a child support order and sanction a party for failure to respond to a subpoena;

(4) upon notice to the obligor, obligee, and the appropriate court, direct the obligor or other payor to change the payee to the central collections unit under sections 518.5851 to 518.5853;

(5) order income withholding of child support under section 518.6111 and sanction an employer or payor of funds pursuant to section 393.07, subdivision 9a, for failing to comply with an income withholding notice;

(6) secure assets to satisfy the debt or arrearage in cases in which there is a support debt or arrearage by:

(i) intercepting or seizing periodic or lump sum payments from state or local agencies, including unemployment benefits, workers' compensation payments, judgments, settlements, lotteries, and other lump sum payments;

(ii) attaching and seizing assets of the obligor held in financial institutions or public or private retirement funds; and

(iii) imposing liens in accordance with section 548.091 and, in appropriate cases, forcing the sale of property and the distribution of proceeds;

(7) for the purpose of securing overdue support, increase the amount of the monthly support payments by an additional amount equal to 20 percent of the monthly support payment to include amounts for debts or arrearages; and

(8) subpoena an employer or payor of funds to provide promptly information on the employment, compensation, and benefits of an individual employed by that employer as an employee or contractor, and sanction an employer or payor of funds pursuant to section 393.07, subdivision 9a, for failure to respond to the subpoena.

(b) A request for genetic testing by a child, parent, or alleged parent must be supported by a sworn statement by the person requesting genetic testing alleging paternity, which sets forth facts establishing a reasonable possibility of the requisite sexual contact between the parties, or denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the alleged parties. The order for genetic tests may be served anywhere within the state and served outside the state in the same manner as prescribed by law for service of subpoenas issued by the district court of this state. If the child, parent, or alleged parent fails to comply with the genetic testing order, the public authority may seek to enforce that order in district court through a motion to compel testing. No results obtained through genetic testing done in response to an order issued under this section may be used in any criminal proceeding.

(c) Subpoenas may be served anywhere within the state and served outside the state in the same manner as prescribed by law for service of process of subpoenas issued by the district court of this state. When a subpoena under this subdivision is served on a third-party recordkeeper, written notice of the subpoena shall be mailed to the person who is the subject of the subpoenaed material at the person's last known address within three days of the day the subpoena is served. This notice provision does not apply if there is reasonable cause to believe the giving of the notice may lead to interference with the production of the subpoenaed documents.

(d) A person served with a subpoena may make a written objection to the public authority or court before the time specified in the subpoena for compliance. The public authority or the court shall cancel or modify the subpoena, if appropriate. The public authority shall pay the reasonable costs of producing the documents, if requested.

(e) Subpoenas are enforceable in the same manner as subpoenas of the district court. Upon motion of the county attorney, the court may issue an order directing the production of the records. Failure to comply with the court order may subject the person who fails to comply to civil or criminal contempt of court.

(f) The administrative actions under this subdivision are subject to due process safeguards, including requirements for notice, opportunity to contest the action, and opportunity to appeal the order to the judge, judicial officer, or child support magistrate.

**Subd. 6. Sharing of information.** The public authority may share available and relevant information on the parties in order to perform its duties under this section or under Supreme Court rules governing the expedited child support hearing process under section 484.702, subject to the limitations of sections 256.87, subdivision 8; 257.70; and 518.005, subdivision 5.

**History:** 1999 c 107 s 66; 1999 c 196 art 1 s 7; 2000 c 343 s 4; 2000 c 403 s 1-3; 1Sp2001 c 9 art 12 s 8; 2002 c 379 art 1 s 113; 2004 c 206 s 52

### 518.552 MAINTENANCE.

Subdivision 1. **Grounds.** 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 appropri-

ate 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. **Amount; duration.** 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. **Permanency of award.** 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, a child support magistrate, 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. The court, child support magistrate, or public authority shall consider the individual financial circumstances of each obligor in evaluating the obligor's ability to pay any proposed payment agreement and shall propose a reasonable payment agreement tailored to the individual financial circumstances of each obligor. The court, child support magistrate,

or public authority also shall consider a graduated payment plan tailored to the individual financial circumstances of each obligor.

**History:** 1995 c 257 art 1 s 27; 1997 c 245 art 1 s 25; 1999 c 196 art 2 s 12; 2002 c 344 s 17

**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 256.741.

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; 1999 c 159 s 137; 2000 c 260 s 80

### **518.575 PUBLICATION OF NAMES OF DELINQUENT CHILD SUPPORT OBLIGORS.**

Subdivision 1. **Making names public.** At least once each year, the commissioner of human services, in consultation with the attorney general, may publish a list of the names and other identifying information of no more than 25 persons who (1) are child support obligors, (2) are at least \$10,000 in arrears, (3) are not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, a child support magistrate, or the public authority, (4) cannot currently be located by the public authority for the purposes of enforcing a support order, and (5) have not made a support payment except tax intercept payments, in the preceding 12 months.

Identifying information may include the obligor's name, last known address, amount owed, date of birth, photograph, the number of children for whom support is owed, and any additional information about the obligor that would assist in identifying or locating the obligor. The commissioner and attorney general may use posters, media presentations, electronic technology, and other means that the commissioner and attorney general determine are appropriate for dissemination of the information, including publication on the Internet. The commissioner and attorney general may make any or all of the identifying information regarding these persons public. Information regarding an obligor who meets the criteria in this subdivision will only be made public subsequent to that person's selection by the commissioner and attorney general.

Before making public 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 make public information on the obligor. 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, or by providing information to the public authority that there is good cause not to make the information public. The notice must include the final date when the payment or agreement can be accepted.

The Department of Human Services shall obtain the written consent of the obligee to make the name of the obligor public.

**Subd. 2. Names published in error.** If the commissioner makes public a name under subdivision 1 which is in error, the commissioner must also offer to publish a printed retraction and a public apology acknowledging that the name was made public in error. If the person whose name was made public in error elects the public retraction and apology, the retraction and apology must appear in the same medium and the same format as the original notice with the name listed in error. In addition to the right of a public retraction and apology, a person whose name was made public in error has a civil action for damages caused by the error.

**History:** 1994 c 630 art 11 s 11; 1995 c 257 art 3 s 2; 1997 c 203 art 6 s 47; 1999 c 196 art 2 s 13; 1Sp2001 c 9 art 12 s 9; 2002 c 379 art 1 s 113

### **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** [Repealed, 2000 c 372 s 3]

#### **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 260B.331 or 260C.331 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; 1999 c 139 art 4 s 2

#### **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.

Subd. 6. **Creditor collections.** The central collections unit under this section is not a third party under chapters 550, 552, and 571 for purposes of creditor collection efforts against child support and maintenance order obligors or obligees, and shall not be subject to creditor levy, attachment, or garnishment.

Subd. 7. **Unclaimed support funds.** "Unclaimed support funds" means any support payments collected by the public authority from the obligor, which have not been disbursed to the obligee or public authority.

**History:** 1995 c 257 art 2 s 1; 1999 c 245 art 7 s 9; 1Sp2001 c 9 art 12 s 10; 2002 c 379 art 1 s 113

#### **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 may contract for services to carry out these provisions, provided that the commissioner first meets and negotiates with the affected exclusive representatives.

**History:** 1995 c 257 art 2 s 2; 1997 c 245 art 1 s 26

#### **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 518.6111. 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 child support magistrate 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 518.6111.

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.

Subd. 11. **Collections unit recoupment account.** The commissioner of human services may establish a revolving account to cover funds issued in error due to insufficient funds or other reasons. Appropriations for this purpose and all recoupments against payments from the account shall be deposited in the collections unit's recoupment account and are appropriated to the commissioner. Any unexpended balance in the account does not cancel, but is available until expended.

Subd. 12. **Unclaimed support funds.** (a) If support payments have not been disbursed to an obligee because the obligee is not located, the public authority shall continue locate efforts for one year from the date the public authority determines that the obligee is not located.

(b) If the public authority is unable to locate the obligee after one year, the public authority shall mail a written notice to the obligee at the obligee's last known address. The notice shall give the obligee 60 days to contact the public authority. If the obligee does not contact the public authority within 60 days from the date of notice, the public authority shall:

(1) close the nonpublic assistance portion of the case;

(2) disburse unclaimed support funds to pay public assistance arrears. If public assistance arrears remain after disbursing the unclaimed support funds, the public authority may continue enforcement and collection of child support until all public assistance arrears have been paid. If there are no public assistance arrears, or unclaimed support funds remain after paying public assistance arrears, remaining unclaimed support funds shall be returned to the obligor; and

(3) mail, when all public assistance arrears have been paid the public authority, to the obligor at the obligor's last known address a written notice of termination of income withholding and case closure due to the public authority's inability to locate the obligee. The notice must indicate that the obligor's support or maintenance obligation will remain in effect until further order of the court and must inform the obligor that the obligor can contact the public authority for assistance to modify the order. A copy of the form prepared by the state court administrator's office under section 518.64, subdivision 5, must be included with the notice.

(c) If the obligor is not located when attempting to return unclaimed support funds, the public authority shall continue locate efforts for one year from the date the public authority determines that the obligor is not located. If the public authority is unable to locate the obligor after one year, the funds shall be treated as unclaimed property according to federal law and chapter 345.

**History:** 1995 c 257 art 2 s 3; 1995 c 203 art 6 s 92; 1999 c 196 art 2 s 14; 1999 c 245 art 7 s 10; 1Sp2001 c 9 art 12 s 11; 2002 c 379 art 1 s 113

**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** [Repealed, 1997 c 203 art 6 s 93]

**518.6111 INCOME WITHHOLDING.**

Subdivision 1. **Definitions.** (a) For the purpose of this section, the following terms have the meanings provided in this subdivision unless otherwise stated.

(b) "Payor of funds" means any person or entity that provides funds to an obligor, including an employer as defined under chapter 24 of the Internal Revenue Code, section 3401(d), an independent contractor, payor of worker's compensation benefits or unemployment benefits, or a financial institution as defined in section 13B.06.

(c) "Business day" means a day on which state offices are open for regular business.

(d) "Arrears" means amounts owed under a support order that are past due.

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.

**Subd. 5. Payor of funds responsibilities.** (a) An order for or notice of withholding is binding on a payor of funds upon receipt. Withholding must begin no later than the first pay period that occurs after 14 days following the date of receipt of the order for or notice of withholding. In the case of a financial institution, preauthorized transfers must occur in accordance with a court-ordered payment schedule.

(b) A payor of funds shall withhold from the income payable to the obligor the amount specified in the order or notice of withholding and amounts specified under subdivisions 6 and 9 and shall remit the amounts withheld to the public authority within seven business days of the date the obligor is paid the remainder of the income. The payor of funds shall include with the remittance the Social Security number of the obligor, the case type indicator as provided by the public authority and 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. A payor of funds may combine all amounts withheld from one pay period into one payment to each public authority, but shall separately identify each obligor making payment.

(c) A payor of funds shall not discharge, or refuse to hire, or otherwise discipline an employee as a result of wage or salary withholding authorized by this section. A



payor of funds shall be liable to the obligee for any amounts required to be withheld. A 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. A payor of funds is liable for reasonable attorney fees of the obligee or public authority incurred in enforcing the liability under this paragraph. A payor of funds that has failed to comply with the requirements of this section is subject to contempt sanctions under section 518.615. If the payor of funds is an employer or independent contractor and violates this subdivision, a court may award the obligor twice the wages lost as a result of this violation. If a court finds a payor of funds violated this subdivision, the court shall impose a civil fine of not less than \$500. The liabilities in this paragraph apply to intentional noncompliance with this section.

(d) If a single employee is subject to multiple withholding orders or multiple notices of withholding for the support of more than one child, the payor of funds shall comply with all of the orders or notices to the extent that the total amount withheld from the obligor's income does not exceed the limits imposed under the Consumer Credit Protection Act, United States Code, title 15, section 1673(b), giving priority to amounts designated in each order or notice as current support as follows:

(1) if the total of the amounts designated in the orders for or notices of withholding as current support exceeds the amount available for income withholding, the payor of funds shall allocate to each order or notice an amount for current support equal to the amount designated in that order or notice as current support, divided by the total of the amounts designated in the orders or notices 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 for or notices of withholding 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 or notice an amount for past due support, equal to the amount designated in that order or notice as past due support, divided by the total of the amounts designated in the orders or notices as past due support, multiplied by the amount of income remaining available for income withholding after the payment of current support.

(e) When an order for or notice of withholding is in effect and the obligor's employment is terminated, the obligor and the payor of funds shall notify the public authority of the termination within ten days of the termination date. The termination notice shall include the obligor's home address and the name and address of the obligor's new payor of funds, if known.

(f) A payor of funds may deduct one dollar from the obligor's remaining salary for each payment made pursuant to an order for or notice of withholding under this section to cover the expenses of withholding.

**Subd. 6. Financial institutions.** (a) If 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 for preauthorized transfers from the obligor's child support account payable to an account of the public authority. 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 for 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 information regarding accounts owned in whole or in part by the obligor.

An obligor who fails to comply with this subdivision, 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.

(b) A financial institution shall execute preauthorized transfers for the deposit accounts of the obligor in the amount specified in the order and amounts required under this section as directed by the public authority. 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.

**Subd. 7. Subsequent income withholding.** (a) This subdivision applies to support orders that do not contain provisions for income withholding.

(b) For cases in which the public authority is providing child support enforcement services to the parties, the income withholding under this subdivision shall take effect without prior judicial notice to the obligor and without the need for judicial or administrative hearing. Withholding shall result when:

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

(2) the obligee or obligor 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; or

(3) the public authority commences withholding according to section 518.5513, subdivision 6, paragraph (a), clause (5).

(c) For cases in which the public authority is not providing child support services to the parties, income withholding under this subdivision shall take effect when an obligee requests it by making a written motion to the court and the court finds that previous support has not been paid on a timely consistent basis or that the obligor has threatened expressly or otherwise to stop or reduce payments.

(d) Within two days after the public authority commences withholding under this subdivision, the public authority shall send to the obligor at the obligor's last known address, notice that withholding has commenced. The notice shall include the information provided to the payor of funds in the notice of withholding.

**Subd. 8. Contest.** (a) The obligor may contest withholding under subdivision 7 on the limited grounds that the withholding or the amount withheld is improper due to mistake of fact. If the obligor chooses to contest the withholding, the obligor must do so no later than 15 days after the employer commences withholding, upon proper motion pursuant to section 484.702 and the rules of the expedited child support process.

(b) The income withholding must remain in place while the obligor contests the withholding.

(c) If the court finds a mistake in the amount of the arrearage to be withheld, the court shall continue the income withholding, but it shall correct the amount of the arrearage to be withheld.

**Subd. 9. Priority.** (a) An order for or notice of withholding under this section or execution or garnishment upon a judgment for child support arrearage 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, title 15 of the United States Code, section 1673(b).

(b) If more than one order for or notice of withholding exists involving the same obligor and child, the public authority shall enforce the most recent order or notice. An order for or notice of withholding that was previously implemented according to this section shall end as of the date of the most recent order. The public authority shall notify the payor of funds to withhold under the most recent withholding order or notice.

Subd. 10. **Arrearage order.** (a) This section does not prevent the court from ordering the payor of funds to withhold amounts to satisfy the obligor's previous arrearage in support order payments. This remedy shall not operate to exclude availability of other remedies to enforce judgments. 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.

(b) 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 arrearage.

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

Subd. 11. **Lump-sum payments.** Before transmittal to the obligor of a lump-sum payment of \$500 or more including, but not limited to, severance pay, accumulated sick pay, vacation pay, bonuses, commissions, or other pay or benefits, a payor of funds:

(1) who has been served with an order for or notice of income withholding under this section shall:

(i) notify the public authority of the lump-sum payment 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 176.221, 176.225, 176.521, 181.08, 181.101, 181.11, 181.13, and 181.145, and Minnesota Rules, part 1415.2000, subpart 10; and

(iii) 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) shall pay the lesser of the amount of the lump-sum payment or the total amount of the judgment and arrearages upon service by United States mail of a sworn affidavit from the public authority or a court order that includes the following information:

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

(ii) the current balance of the judgment or arrearage; and

(iii) that a portion of the judgment or arrearage remains unpaid.

The Consumer Credit Protection Act, title 15 of the United States Code, section 1673(b), does not apply to lump-sum payments.

Subd. 12. **Interstate income withholding.** (a) Upon receipt of an order for support entered in another state and the specified documentation from an authorized agency, the public authority shall implement income withholding. A payor of funds in this state shall withhold income under court orders for withholding issued by other states or territories.

(b) An employer receiving an income withholding notice from another state shall withhold and distribute the funds as directed in the withholding notice and shall apply the law of the obligor's principal place of employment when determining:

(1) the employer's fee for processing an income withholding notice;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) deadlines for implementing and forwarding the child support payment.

(c) An obligor may contest withholding under this subdivision pursuant to section 518C.506.

Subd. 13. **Order terminating income withholding.** An order terminating income withholding must specify the effective date of the order and reference the initial order or decree that establishes the support obligation and shall 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 on the public authority;

(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 payor 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 contested 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 payor of funds, pending the outcome of the contested hearing.

**Subd. 14. Termination by the public authority.** If the public authority determines that income withholding is no longer applicable, the public authority shall notify the obligee and the obligor of intent to terminate income withholding.

Five days following notification to the obligee and obligor, the public authority shall issue a notice to the payor of funds terminating income withholding, without a requirement for a court order unless the obligee has requested an expedited child support hearing under section 484.702.

**Subd. 15. 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. 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.

**Subd. 17. Nonliability; payor of funds.** A payor of funds who complies with an income withholding order or notice of withholding according to this chapter or chapter 518C, that appears regular on its face shall not be subject to civil liability to any individual or agency for taking action in compliance with the order or notice.

**Subd. 18. Electronic transmission.** Orders or notices for withholding under this section may be transmitted for enforcement purposes by electronic means.

**Subd. 19. Timing of automated enforcement remedies.** The public authority shall make reasonable efforts to ensure that automated enforcement remedies take into consideration the time periods allowed under this section.

**History:** 1997 c 203 art 6 s 48; 1Sp1997 c 5 s 18; 1998 c 382 art 1 s 14-16; 1999 c 86 art 1 s 77; 1999 c 107 s 66; 1999 c 196 art 2 s 15-18; 2000 c 343 s 4; 2001 c 134 s 2; 2001 c 158 s 2; 1Sp2001 c 9 art 12 s 12; 2002 c 344 s 18; 2002 c 379 art 1 s 113; 1Sp2003 c 14 art 6 s 59-62

**518.612 INDEPENDENCE OF PROVISIONS OF DECREE OR TEMPORARY ORDER.**

Failure by a party to make support payments is not a defense to:

- (1) interference with parenting time; or
- (2) without the permission of the court or the other parent, removing a child from this state.

Interference with parenting time or taking a child from this state without permission of the court or the other parent is not a defense to nonpayment of support. If a party fails to make support payments, interferes with parenting time, or removes a child from the state without permission of the court or the other parent, the other party may petition the court for an appropriate order.

**History:** 1978 c 772 s 56; 1979 c 259 s 29; 2000 c 444 art 2 s 38; 2001 c 51 s 15

**518.613 [Repealed, 1997 c 203 art 6 s 93]****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 518.6111 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 256.741 as current support or maintenance. The public authority shall also serve a copy of the court's order and the provisions of section 518.6111 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 makes a proper motion pursuant to section 484.702 and the rules of the expedited child support process. The public authority shall instruct the employer or payor of funds pursuant to section 518.6111 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 principal 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 if a motion is brought by the obligor as set forth in subdivision 2. If the court finds that there was a default, the court shall order the immediate withholding of support or maintenance 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; 1997 c 203 art 6 s 92; 1999 c 159 s 138; 2002 c 344 s 19,20

#### 518.615 EMPLOYER CONTEMPT.

Subdivision 1. **Orders binding.** Notices or orders for income withholding or medical support issued pursuant to sections 518.171 and 518.6111 are binding on the employer, trustee, or other payor of funds after the order or notice for income withholding or enforcement of medical support has been transmitted pursuant to section 518.6111 to 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 or notice for 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; 1995 c 203 art 6 s 92; 1998 c 382 art 1 s 17,18

#### 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 518.6111 or entered into a written payment plan approved by the court, a child support magistrate, 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; 1997 c 203 art 6 s 92; 1999 c 196 art 2 s 19

#### 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, a child support magistrate, 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, a child support magistrate, or the public authority to be released from the community service work requirement if the person:

(1) provides proof to the court, a child support magistrate, or the public authority that the person is gainfully employed and submits to an order for income withholding under section 518.6111;

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

(3) provides proof to the court, a child support magistrate, 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; 1997 c 203 art 6 s 92; 1999 c 196 art 2 s 20; 2002 c 344 s 21

#### 518.618 CASE REVIEWER.

The commissioner shall make a case reviewer available to obligors and obligees. The reviewer must be available to answer questions concerning the collection process and to review the collection activity taken. A reviewer who reasonably believes that a particular action being taken is unreasonable or unfair may make recommendations to the commissioner and the applicable county in regard to the collection action.

**History:** 1997 c 245 art 1 s 27

#### 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 parenting time is contested, or that any issue pertinent to a custody or parenting time determination, including parenting time 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 parenting time 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; 2000 c 444 art 2 s 39

#### **518.6195 COLLECTION; ARREARS ONLY.**

(a) Remedies available for the collection and enforcement of support in this chapter and chapters 256, 257, and 518C also apply to cases in which the child or children for whom support is owed are emancipated and the obligor owes past support or has an accumulated arrearage as of the date of the youngest child's emancipation. Child support arrearages under this section include arrearages for child support, medical support, child care, pregnancy and birth expenses, and unreimbursed medical expenses as defined in section 518.171.

(b) This section applies retroactively to any support arrearage that accrued on or before the date of enactment and to all arrearages accruing after the date of enactment.

(c) Past support or pregnancy and confinement expenses ordered for which the obligor has specific court ordered terms for repayment may not be enforced using drivers' and occupational or professional license suspension, credit bureau reporting, and additional income withholding under section 518.6111, subdivision 10, paragraph (a), unless the obligor fails to comply with the terms of the court order for repayment.

(d) If an arrearage exists at the time a support order would otherwise terminate and section 518.6111, subdivision 10, paragraph (c), does not apply to this section, the arrearage shall be repaid in an amount equal to the current support order until all arrears have been paid in full, absent a court order to the contrary.

(e) If an arrearage exists according to a support order which fails to establish a monthly support obligation in a specific dollar amount, the public authority, if it provides child support services, or the obligee, may establish a payment agreement which shall equal what the obligor would pay for current support after application of section 518.551, plus an additional 20 percent of the current support obligation, until

all arrears have been paid in full. If the obligor fails to enter into or comply with a payment agreement, the public authority, if it provides child support services, or the obligee, may move the district court or child support magistrate, if section 484.702 applies, for an order establishing repayment terms.

**History:** 1997 c 245 art 1 s 28; 1998 c 382 art 1 s 19; 1Sp2001 c 9 art 12 s 13; 2002 c 379 art 1 s 113

#### 518.6196 COLLECTION; REVENUE RECAPTURE.

The public authority may submit debt under chapter 270A only if the obligor is in arrears in court-ordered child support or maintenance payments, or both, in an amount greater than the obligor's total monthly support and maintenance payments or if the debt has been entered and docketed as a judgment.

**History:** 2001 c 134 s 3; 2001 c 158 s 3; 2002 c 344 s 22

#### 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 518.6111.

**History:** 1951 c 551 s 10; 1969 c 1028 s 8; 1974 c 107 s 25; 1978 c 772 s 58; 1997 c 203 art 6 s 92

#### 518.64 MODIFICATION OF ORDERS OR DECREES.

Subdivision 1. **Authority.** 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 the AFDC program formerly codified under sections 256.72 to 256.87 or 256B.01 to 256B.40, or chapter 256J or 256K; (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.

On a motion to modify support, the needs of any child the obligor has after the entry of the support order that is the subject of a modification motion shall be considered as provided by section 518.551, subdivision 5f.

(b) It is presumed that there has been a substantial change in circumstances under paragraph (a) and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if:

(1) 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;

(2) the medical support provisions of the order established under section 518.171 are not enforceable by the public authority or the obligee;

(3) health coverage ordered under section 518.171 is not available to the child for whom the order is established by the parent ordered to provide; or

(4) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount.

(c) 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.

(d) A modification of support or maintenance, including interest that accrued pursuant to section 548.091, 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:

(1) 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;

(2) the party seeking modification was a recipient of federal Supplemental Security Income (SSI), Title II Older Americans, Survivor's Disability Insurance (OASDI), other disability benefits, or public assistance based upon need during the period for which retroactive modification is sought;

(3) the order for which the party seeks amendment was entered by default, the party shows good cause for not appearing, and the record contains no factual evidence, or clearly erroneous evidence regarding the individual obligor's ability to pay; or

(4) the party seeking modification was institutionalized or incarcerated for an offense other than nonsupport of a child during the period for which retroactive modification is sought and lacked the financial ability to pay the support ordered during that time period. In determining whether to allow the retroactive modification, the court shall consider whether and when a request was made to the public authority for support modification.

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.

(e) 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.

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

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

**Subd. 3. Maintenance on death or remarriage.** 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. Child support on death of obligor.** 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 state court administrator's office shall prepare and make available to court administrators, 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.

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; 1997 c 187 art 2 s 13; 1997 c 245 art 1 s 29; 1998 c 382 art 1 s 20; 1999 c 159 s 139; 1999 c 245 art 7 s 11; 2000 c 458 s 5; 2001 c 51 s 16; 1Sp2001 c 9 art 12 s 14; 2002 c 379 art 1 s 113

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

Subdivision 1. **Requirement.** (a) An order establishing, modifying, or enforcing 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.

(b) 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. **Notice.** No adjustment under this section may be made unless the order provides for it and the public authority or the obligee, if the obligee is requesting the cost-of-living adjustment, sends notice of the intended adjustment to the obligor at the obligor's last known address at least 20 days before the effective date of the adjustment. The notice shall inform the obligor of the date on which the adjustment will become effective and the procedures for contesting the adjustment.

Subd. 2a. **Procedures for contesting adjustment.** (a) To contest cost-of-living adjustments initiated by the public authority or an obligee who has applied for or is receiving child support and maintenance collection services from the public authority, other than income withholding only services, the obligor, before the effective date of the adjustment, must:

- (1) file a motion contesting the cost-of-living adjustment with the court administrator; and
- (2) serve the motion by first-class mail on the public authority and the obligee.

The hearing shall take place in the expedited child support process as governed by section 484.702.

(b) To contest cost-of-living adjustments initiated by an obligee who is not receiving child support and maintenance collection services from the public authority, or for an obligee who receives income withholding only services from the public authority, the obligor must, before the effective date of the adjustment:

- (1) file a motion contesting the cost-of-living adjustment with the court administrator; and
- (2) serve the motion by first-class mail on the obligee.

The hearing shall take place in district court.

(c) Upon receipt of a motion contesting the cost-of-living adjustment, the cost-of-living adjustment shall be stayed pending further order of the court.

(d) The court administrator shall make available pro se motion forms for contesting a cost-of-living adjustment under this subdivision.

**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 or child support magistrate 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. [Repealed, 1Sp2001 c 9 art 12 s 20]

Subd. 5. [Repealed, 1Sp2001 c 9 art 12 s 20]

**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; 1997 c 187 art 2 s 14; 1997 c 245 art 1 s 30; 1999 c 196 art 2 s 21; 1Sp2001 c 9 art 12 s 15-18; 2002 c 379 art 1 s 113

#### 518.642 OVERPAYMENTS.

If child support or maintenance is not assigned under section 256.741, and an obligor has overpaid a child support or maintenance obligation because of a modification 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 exists after the reduction of any arrearage or debt, reduce the amount of the child support remitted to the obligee by an amount no greater 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.

**History:** 1998 c 382 art 1 s 21

518.645 [Repealed, 1997 c 203 art 6 s 93]

#### 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 parenting time 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**

According 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), according to Minnesota Statutes, section 609.26. A copy of that section is available from any district court clerk.

**3. NONSUPPORT OF A SPOUSE OR CHILD -- CRIMINAL PENALTIES**

A person who fails to pay court-ordered child support or maintenance may be charged with a crime, which may include misdemeanor, gross misdemeanor, or felony charges, according to Minnesota Statutes, section 609.375. A copy of that section is available from any district court clerk.

**4. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME**

(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 parenting time 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 parenting time. 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 the obligor is laid off from employment or receives a pay reduction, support may be reduced, but only if a motion to reduce the support is served and filed with the court. Any reduction will take effect only if ordered by the court and may only relate back to the time that the motion is filed. If a motion is not filed, the support obligation will continue at the current level. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2; paragraph (c).

(h) Reasonable parenting time guidelines are contained in Appendix B, which is available from the court administrator.

(i) The nonpayment of support may be enforced through the denial of student grants; interception of state and federal tax refunds; suspension of driver's, recreational, and occupational licenses; referral to the department of revenue or private collection agencies; seizure of assets, including bank accounts and other assets held by financial institutions; reporting to credit bureaus; interest charging, income withholding, and contempt proceedings; and other enforcement methods allowed by law.

#### 5. 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.

#### 6. 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, section 518.6111 have been met. A copy of those sections is available from any district court clerk.

#### 7. CHANGE OF ADDRESS OR RESIDENCE

Unless otherwise ordered, each party shall notify the other party, the court, and the public authority responsible for collection, if applicable, of the following information within ten days of any change: the residential and mailing address, telephone number, driver's license number, Social Security number, and name, address, and telephone number of the employer.



## 8. 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.

## 9. 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, according to Minnesota Statutes, section 548.091, subdivision 1a.

## 10. 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.

## 11. 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.

## 12. PARENTING TIME EXPEDITOR PROCESS

On request of either party or on its own motion, the court may appoint a parenting time expeditor to resolve parenting time 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.

## 13. PARENTING TIME REMEDIES AND PENALTIES

Remedies and penalties for the wrongful denial of parenting time are available under Minnesota Statutes, section 518.175, subdivision 6. These include compensatory parenting time; 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; 1997 c 203 art 6 s 49,92; 1997 c 245 art 2 s 6; 2000 c 444 art 2 s 40,41; 2000 c 458 s 6; 2001 c 158 s 4