

## CHAPTER 518

### MARRIAGE DISSOLUTION

- |                    |   |                                       |  |
|--------------------|---|---------------------------------------|--|
| 518.002            | Use term dissolution.   | 518.17                                | Custody and support of children on judgment.               |
| 518.003            | Definitions.  | 518.175                               | Visitation of children and noncustodial parent.            |
| 518.005            | Rules governing proceedings.  | 518.176                               | Judicial supervision.                                      |
| 518.01             | Void marriages.   | 518.177                               | Notification regarding deprivation of parental rights law. |
| 518.02             | Voidable marriages.   | 518.18                                | Modification of order.                                     |
| 518.03             | Action to annul; decree.  | 518.185                               | Affidavit practice.  |
| 518.04             | Insufficient grounds for annulment.   | 518.24                                | Security; sequestration; contempt.                         |
| 518.05             | Annulment; when to bring.   | 518.25                                | Remarriage; revocation.                                    |
| 518.055            | Putative spouse.  | 518.27                                | Name of party.   |
| <b>PROCEEDINGS</b> |   |                                       |  |
| 518.06             | Dissolution of marriage: legal separation; grounds; uncontested legal separation. | <b>MAINTENANCE, SUPPORT, PROPERTY</b> |  |
| 518.07             | Residence of parties.   | 518.54                                | Definitions.   |
| 518.09             | Proceeding; how and where brought; venue.   | 518.55                                | Maintenance or support money.                              |
| 518.10             | Requisites of petition.   | 518.551                               | Maintenance and support payments made to welfare agencies. |
| 518.11             | Service; publication.   | 518.552                               | Maintenance.   |
| 518.12             | Time for answering.   | 518.57                                | Minor children, support.                                   |
| 518.13             | Failure to answer; findings; hearing.   | 518.58                                | Division of marital property.                              |
| 518.131            | Temporary orders and restraining orders.  | 518.61                                | Trustee.   |
| 518.14             | Costs and disbursements and attorney's fees.                                      | 518.611                               | Income withholding.  |
| 518.145            | Decree.   | 518.612                               | Independence of provisions of decree or temporary order.   |
| 518.147            | Statistical report form.  | 518.62                                | Temporary maintenance.                                     |
| 518.155            | Custody determinations.   | 518.63                                | Homestead, occupancy.                                      |
| 518.156            | Commencement of custody proceeding.   | 518.64                                | Modification of orders or decrees.                         |
| 518.165            | Guardians for minor children.   | 518.641                               | Cost-of-living adjustments in child support order.         |
| 518.166            | Interviews.   | 518.645                               | Form of order.   |
| 518.167            | Investigations and reports.   | 518.65                                | Property; sale, partition.                                 |
| 518.168            | Hearings.   | 518.66                                | Power of court not limited.                                |

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

#### **518.002 USE TERM DISSOLUTION.**

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

**History:** 1974 c 107 s 28

#### **518.003 DEFINITIONS.**

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

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

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

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

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

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

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

# MINNESOTA STATUTES 1984

## 518.003 MARRIAGE DISSOLUTION

9300

(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.

**History:** 1979 c 259 s 2; 1981 c 349 s 2

## 518.005 RULES GOVERNING PROCEEDINGS.

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

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

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

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

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

## 518.01 VOID MARRIAGES.

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

**History:** 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 (8580)

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

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

#### **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 his restoration to reason, if it appears that the parties freely cohabited together as husband and wife after such restoration.

**History:** *RL s 3572 (8583)*

#### **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, his parent or guardian, before the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

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

#### **518.055 PUTATIVE SPOUSE.**

Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his 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 his 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*

### **PROCEEDINGS**

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

Subdivision 1. A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the marital status of both parties. A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. A decree of legal separation does not terminate the marital

# MINNESOTA STATUTES 1984

## 518.06 MARRIAGE DISSOLUTION

9302

status of the parties. A dissolution of a marriage shall be granted by a county or district court when the court finds that there has been an irretrievable breakdown of the marriage relationship.

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

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

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

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

**History:** *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 (8585)*

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

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:** *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 (8588)*

## 518.10 REQUISITES OF PETITION.

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

- (a) The name and address of the petitioner;
- (b) The name and, if known, the address of the respondent;
- (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, age and date of birth of each living minor or dependent child of the parties born before the marriage or born or adopted during the marriage and a reference to, and the expected date of birth of, a child of the parties conceived during the marriage but not born;

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

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

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

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

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

**History:** *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 (8589)*

#### **518.11 SERVICE; PUBLICATION.**

Unless a proceeding is brought by both parties, copies of the summons and petition shall be served on the respondent personally. 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. But, if personal service cannot be made, the court may order service of the summons by publication, which publication shall be made as in other actions.

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

#### **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 counter-petition for dissolution or legal separation to a petition for dissolution or legal separation, no answer shall be

required to the counter-petition and the original petitioner shall be deemed to have denied each and every statement, allegation and claim in the counter-petition.

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

## **518.13 FAILURE TO ANSWER; FINDINGS; HEARING.**

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

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

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

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

Subd. 4. The court or judge, upon application, may refer the proceeding to a referee to take and report the evidence therein. Hearings for dissolution of marriage shall be heard in open court or before a referee appointed by the court to receive the testimony of the witnesses, or depositions taken as in other equitable actions. However, the court may in its discretion close the hearing.

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

## **518.131 TEMPORARY ORDERS AND RESTRAINING ORDERS.**

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

- (a) Temporary custody and visitation rights of the minor children of the parties;
- (b) Temporary maintenance of either spouse;
- (c) Temporary child support for the children of the parties;
- (d) Award the temporary use and possession, exclusive or otherwise, of the family home, furniture, household goods, automobiles and other property of the parties;
- (e) 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;
- (f) 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;

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

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

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

Subd. 2. No temporary order shall:

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

(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.

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

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

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

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

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

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

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

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

Subd. 9. A temporary order or restraining order:

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

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

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

**History:** 1979 c 259 s 11

**518.135** [Repealed, 1979 c 259 s 35]

**518.14 COSTS AND DISBURSEMENTS AND ATTORNEY'S FEES.**

In a proceeding brought either for dissolution or legal separation under this chapter, the court, from time to time, after considering the financial resources of both parties, may require one party to pay a reasonable amount necessary to enable the other spouse to carry on or to contest the proceeding, and to pay attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement or after entry of judgment. 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 by the attorney in his 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.

**History:** *RL s 3582; 1955 c 687 s 1; 1974 c 107 s 11; 1978 c 772 s 30 (8593)*

**518.145 DECREE.**

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.

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

**518.147 STATISTICAL REPORT FORM.**

On or before the time a final decree of dissolution or annulment of marriage is entered, the petitioner or the moving party, if other than the petitioner, shall complete and file with the clerk of court a statistical report form provided by the commissioner of health. After entry of the final decree, the clerk shall forward the form to the commissioner of health pursuant to section 144.224. The clerk of court shall not refuse entry of a decree on the basis that the statistical report form is



incomplete. Neither the statistical report form, nor information contained in the form, shall be admissible in evidence in this or any subsequent proceeding.

**History:** 1984 c 534 s 29

**518.15** [Repealed, 1978 c 772 s 63]

#### **518.155 CUSTODY DETERMINATIONS.**

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

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

#### **518.156 COMMENCEMENT OF CUSTODY PROCEEDING.**

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

(a) By a parent

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

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

(b) By a person other than a parent, by filing a petition or motion seeking custody of the child in the county where the child is permanently resident or where he is found or where an earlier order for custody of the child has been entered.

Subd. 2. Written notice of a child custody 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

**518.16** [Repealed, 1979 c 259 s 35]

#### **518.165 GUARDIANS FOR MINOR CHILDREN.**

In all proceedings for child custody or for dissolution or legal separation where custody or visitation of a minor child is in issue, the court may appoint a guardian ad litem from a panel established by the court to represent the interests of the child. The guardian ad litem shall advise the court with respect to custody, support and visitation. The court may 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, and disbursements which the court finds the parties are incapable of paying shall be borne by the county.

**History:** 1974 c 33 s 1; 1978 c 772 s 35; 1979 c 259 s 15

#### **518.166 INTERVIEWS.**

The court may interview the child in chambers to ascertain the child's reasonable preference as to his 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

### 518.167 INVESTIGATIONS AND REPORTS.

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

**Subd. 2. Preparation.** In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his 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.

**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 he has consulted for cross-examination at the hearing. A party may not waive his right of cross-examination before the hearing.

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

**History:** 1978 c 772 s 37; 1984 c 635 s 1

### 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.** "The best interests of the child" means all relevant factors to be considered and evaluated by the court including:

- (a) The wishes of the child's parent or parents as to his custody;
- (b) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
- (d) The child's adjustment to his home, school, and community;
- (e) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (f) The permanence, as a family unit, of the existing or proposed custodial home;
- (g) The mental and physical health of all individuals involved;
- (h) The capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in his culture and religion or creed, if any; and
- (i) The child's cultural background.

The court shall not consider conduct of a proposed custodian that does not affect his relationship to 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; and
- (c) Whether it would be detrimental to the child if one parent were to have sole authority over the child's upbringing.

**Subd. 3. Custody order.** Upon adjudging the nullity of a marriage, or a dissolution or separation, or a child custody proceeding, the court shall make such further order as it deems just and proper concerning: (a) the legal custody of the minor children of the parties which shall be sole or joint; (b) their physical custody and residence; and (c) their support. In determining custody, the court shall consider the best interests of the child and shall not prefer one parent over the other solely on the basis of the sex of the parent.

**Subd. 4. Child support.** 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 his support, without regard to marital misconduct, after considering all relevant factors including:

- (a) The financial resources and needs of the child;
- (b) The financial resources and needs of the custodial parent;
- (c) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) The physical and emotional condition of the child, and his educational needs; and
- (e) The financial resources and needs of the noncustodial parent.

Subd. 5. **Deviation from guidelines.** The court may order the noncustodial parent to pay support in an amount below the appropriate amount determined from the guidelines in section 518.551, subdivision 5 for use in public assistance cases, only after considering the factors in subdivision 4 of this section and making express findings of fact as to the reason for the lower order. An order for support in an amount below the guidelines must include findings of fact regarding the financial resources and needs of the child.

**History:** *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 (8596)*

#### **518.175 VISITATION OF CHILDREN AND NONCUSTODIAL PARENT.**

Subdivision 1. 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 the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a child to parent relationship that will be in the best interests of the child. If the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health or impair his emotional development, the court may restrict visitation by the noncustodial parent as to time, place, duration, or supervision and may deny visitation entirely, as the circumstances warrant. The court shall consider the age of the child and the child's relationship with the noncustodial parent prior to the commencement of the proceeding. A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of visitation.

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

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

Subd. 4. Proof of an unwarranted denial of or interference with duly established visitation may constitute contempt of court and may be sufficient cause for reversal of custody.

Subd. 5. The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child, but the court shall not restrict a parent's visitation rights unless it finds that the visitation is likely to endanger the child's physical or emotional health or impair his emotional develop-

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

**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

#### **518.176 JUDICIAL SUPERVISION.**

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

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

**History:** 1978 c 772 s 43; 1979 c 259 s 20

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

Every court order and judgment and decree concerning custody of or visitation with a minor child shall restate the provisions of section 609.26.

**History:** 1984 c 484 s 1

#### **518.18 MODIFICATION OF ORDER.**

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

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

(d) If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order unless it finds, upon the basis of facts 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 his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custodian established by the prior order unless:

- (i) The custodian agrees to the modification;
- (ii) The child has been integrated into the family of the petitioner with the consent of the custodian; or
- (iii) The child's present environment endangers his physical or emotional health or impairs his 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.

**History:** *RL s 3586; 1978 c 772 s 44; 1979 c 259 s 21 (8597)*

**518.185 AFFIDAVIT PRACTICE.**

A party seeking a temporary custody order or modification of a custody order shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits.

**History:** *1978 c 772 s 45*

**518.19-518.23** [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. If the obligor has an income from a source sufficient to enable him to pay the maintenance or support and he fails to pay the same, the court shall order him to pay it. If a person or party disobeys the order, he may be punished by the court as for contempt.

**History:** *RL s 3593; 1969 c 1028 s 1; 1978 c 772 s 46; 1983 c 216 art 1 s 74 (8604)*

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

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

**518.27 NAME OF PARTY.**

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

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

**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 his physical or mental condition, is unable to support himself.

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.** "Support money" means an award in a dissolution, legal separation, or annulment proceeding for the care, support and education of any child of the marriage or of the parties to the annulment proceeding.

Subd. 5. **Marital property; exceptions.** "Marital property" means property, real or personal, including vested pension 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. All property acquired by either spouse subsequent to the marriage and before a decree of legal separation 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. The presumption of marital property is overcome by a showing that the property is non-marital property.

"Non-marital 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 a decree of legal separation; 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 compensation, annuity, military and naval retirement, pension and disability payments.

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

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

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

**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

## **518.55 MAINTENANCE OR SUPPORT MONEY.**

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

Subd. 2. **Notice of docketing judgment.** Every order for support or maintenance shall provide for a conspicuous notice that, if the obligor fails to make the support or maintenance payments, the obligee or a public agency responsible for maintenance or support enforcement may obtain docketing of a judgment for the unpaid amount under the provisions of section 548.091. The notice shall enumerate the conditions that must be met before the judgment can be docketed.

**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

## **518.551 MAINTENANCE AND SUPPORT PAYMENTS MADE TO WELFARE AGENCIES.**

Subdivision 1. **Payment to public agency.**

The court shall direct that all payments ordered for maintenance and support be made to the public agency responsible for child support enforcement so long as the obligee is receiving or has applied for public assistance. 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]



# MINNESOTA STATUTES 1984

9315

MARRIAGE DISSOLUTION 518.551

**Subd. 5. Notice to public authority; guidelines.** The petitioner shall notify the public authority of all proceedings for dissolution, legal separation, determination of parentage or for the custody of a child, if either party is receiving aid to families with dependent children or applies for it subsequent to the commencement of the proceeding. After receipt of the notice, the court shall set child support by multiplying the obligor's net income by the percentage indicated by the following guidelines:

| Net Income Per<br>Month of Obligor | Number of Children  |     |     |     |     |     |              |
|------------------------------------|---|-----|-----|-----|-----|-----|--------------|
|                                    | 1   | 2   | 3   | 4   | 5   | 6   | 7 or<br>more |
| \$400 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. |     |     |     |     |     |              |
| \$401 - 500                        | 14%   | 17% | 20% | 22% | 24% | 26% | 28%          |
| \$501 - 550                        | 15%   | 18% | 21% | 24% | 26% | 28% | 30%          |
| \$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- 6000                       | 25%   | 30% | 35% | 39% | 43% | 47% | 50%          |

Guidelines for support for an obligor with a monthly income of \$6001 or more shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income of \$6000.

**Net Income defined as:**

Total monthly  
income less

- \*(1) Federal Income Tax
- \*(2) State Income Tax
- (3) Social Security Deductions
- (4) Mandatory Pension Deductions
- (5) Union Dues
- (6) Cost of Dependent Health Insurance Coverage
- (7) Cost of Individual Health/Hospitalization Coverage or an Equivalent Amount for Actual Medical Expenses.

\*Standard  
Deductions apply-  
use of tax tables  
recommended

(a) The child support payment guidelines take into consideration the following criteria:

- (1) all earnings, income, and resources of the obligor including real and personal property;
- (2) the basic living needs of the obligor;

- (3) the financial needs of the child or children to be supported; and
- (4) the amount of the aid to families with dependent children grant for the child or children.

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

- (1) the right to support has not been assigned under section 256.74;
- (2) the debt was reasonably incurred for necessary support of the child or obligee 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;
- (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; and
- (4) the court determines that the debt was legitimately incurred for the necessary support of the child or obligee or for the necessary generation of income.

Any schedule prepared under paragraph (b), 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.

The court shall order child support in accordance with the guidelines and any departure therefrom. 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.

Where payment of debt is ordered pursuant to this section, the payment shall be ordered to be in the nature of child support.

(c) Previous support orders and maintenance orders may be considered if the obligor is paying them.

(d) 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.

(e) The above guidelines are binding in each case unless the court makes express findings of fact as to the reason for departure below the guidelines in that case in which the court orders support that so deviates from the guidelines. It may also increase the amount of child support by more than the guidelines without making express findings by agreement of the parties or by making further findings.

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

**Subd. 7. Service fee.** When the public agency responsible for child support enforcement provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the public agency may upon written notice to the obligor charge a monthly collection fee equivalent to the full monthly cost to the county of providing collection services, in addition to the

amount of the child support which was ordered by the court. The fee shall be deposited in the county general fund. The service fee assessed is limited to ten percent of the monthly court ordered child support and shall not be assessed to obligors who are current in payment of the monthly court ordered child support. No fee shall be imposed on the party who requests child support collection services.

However, the limitations of this subdivision on the assessment of fees shall not apply to the extent inconsistent with the requirements of federal law for receiving funds for the programs under Title IV-A and Title IV-D of the Social Security Act, 42 U.S.C. 601 to 613 and 42 U.S.C. 651 to 662.

Subd. 8. **Health insurance or plan.** The court shall also include in the requirements for each child support order a provision naming the child as a beneficiary on whatever medical, hospitalization or dental insurance or plan is available to the obligor on a group basis through his or her employer or union.

Subd. 9. **Assignment of rights; judgment.** The public agency responsible for child support enforcement is joined as a party in each case in which rights are assigned under section 256.74, subdivision 5. When arrearages are reduced to judgment, 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 clerk of court, 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.

**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

## 518.552 MAINTENANCE.

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

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs, especially during a period of training or education, and

(b) Is unable to adequately support himself after considering all relevant circumstances through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

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

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his 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 spouse's age and skills, of completing education or training and becoming fully 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 age, and the physical and emotional condition of the spouse seeking maintenance;

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

(g) 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.

**History:** 1978 c 772 s 51; 1979 c 259 s 26; 1982 c 535 s 1

**518.56** [Repealed, 1969 c 1028 s 9]

### **518.57 MINOR CHILDREN, SUPPORT.**

Upon a decree of dissolution, legal separation or annulment, the court may make a further order which is just and proper concerning the maintenance of the minor children as is provided by section 518.17, and for the maintenance of any child of the parties as defined in section 518.54, as support money, and may make the same a lien or charge upon the property of the parties to the proceeding, or either of them, either at the time of the entry of the judgment or by subsequent order upon proper application therefor.

**History:** 1951 c 551 s 4; 1974 c 107 s 21; 1978 c 772 s 52

### **518.58 DIVISION OF MARITAL PROPERTY.**

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.

If the court finds that either spouse's resources or property, including his 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.

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.

**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

**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 his 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

**518.611 INCOME WITHHOLDING.**

Subdivision 1. **Order.** Whenever an obligation for support of a dependent child or maintenance of a spouse, or both, is determined and ordered by a court of this state, that court shall order the withholding of the amount of child support or maintenance as determined by court order, from the income, regardless of source, of the person obligated to pay the support or maintenance. When an order for withholding has not previously been secured, the obligee may or the public agency responsible for child support enforcement shall move the court, and the court shall grant the order.

Subd. 2. **Notice to obligor of conditions.** Each order for withholding shall provide for a conspicuous notice to the obligor that withholding may result if the obligor fails to make the maintenance or support payments, and that no withholding shall be made until the following conditions are met:

(a) The obligee or the public authority determines that the obligor is at least 30 days in arrears;

(b) The obligee or the public authority serves written notice of its determination of arrearage on the obligor at least 15 days before service of the determination and a copy of the court's order for withholding on the payor of funds;

(c) Within the 15 day period, the obligor has either failed to pay all arrearages or to move the court, under section 518.64, to modify the order respecting the amount of maintenance or support and, ex parte, to stay service on the payor of funds until the motion to modify is heard; and

(d) The obligee or the public authority serves a copy of the determination of arrearage and a copy of the court's withholding order on the payor of funds.

(e) The obligee shall also serve on the public authority a copy of the determination of arrearage, a copy of the court's withholding order and an application to use the public authority's collection services.

Subd. 3. **Modification orders.** An order issued after the hearing on the motion to modify under subdivision 2, paragraph (c), of this section, shall provide that payments be made outright by withholding. The conditions precedent to withholding of subdivision 2 do not apply.

Subd. 4. **Effect of order.** Notwithstanding any law to the contrary, the order is binding on the employer, trustee, or other payor of the funds upon service upon him of notice that it has been made. The payor shall withhold from the income payable to the obligor the amount specified in the order and shall monthly or more frequently remit the amounts withheld to the public authority. Amounts received by the public authority which are in excess of public assistance expended for the party or for a child shall be remitted to the party. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary withholding authorized by this section.

Subd. 5. **Arrearage order.** Nothing in this section shall prevent the court from ordering the payor of funds to withhold amounts to satisfy the obligor's previous arrearage in child support or maintenance payments, the obligor's liability for pregnancy and confinement expenses and for blood test costs, and any service fees that may be imposed under section 518.551.

Subd. 6. **Priority.** An order for withholding under this section or execution or garnishment upon a judgment for child support arrearages or preadjudicated expenses shall have priority over an attachment, execution, garnishment, or wage assignment unless otherwise ordered by the court and shall not be subject to the statutory limitations on amounts levied against the income of the obligor.

Subd. 7. **Employer expenses.** An employer may deduct one dollar from the obligor-employee's remaining salary for each payment made pursuant to a withhold-

ing order under this section to cover the employer's expenses involved in the withholding.

**Subd. 8. Employer or payor notice.** When a withholding order is in effect and the obligor's employment is terminated or the periodic payment terminates, the obligor's employer or the payor of funds shall notify the public agency responsible for child support enforcement of the termination within 30 days of the termination date. The notice shall include the obligor's home address and the name and address of the obligor's new employer or payor of funds, if known.

**History:** 1978 c 772 s 55; 1979 c 259 s 28; 1981 c 360 art 2 s 47; 1982 c 488 s 6; 1983 c 308 s 21; 1984 c 547 s 20

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

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

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

#### **518.62 TEMPORARY MAINTENANCE.**

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

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

#### **518.63 HOMESTEAD, OCCUPANCY.**

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

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

#### **518.64 MODIFICATION OF ORDERS OR DECREES.**

**Subdivision 1.** After an order for maintenance or support money, temporary or permanent, or for the appointment of trustees to receive property awarded as maintenance or support money, the court may from time to time, on petition of either of the parties or on petition 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.

**Subd. 2. Modification.** The terms of a decree 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; (3) receipt of assistance under sections 256.72 to 256.87; or (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. On a motion for modification of support, the court shall take into consideration the needs of the children and the financial circumstances of each party's spouse, if any. A modification which decreases support or maintenance may be made retroactive only upon a showing that any failure to pay in accord with the terms of the original order was not willful. A modification which increases support or maintenance shall not be made retroactive if the obligor has substantially complied with the previous order. 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. 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.

**Subd. 3.** Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

**Subd. 4.** Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not 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. 5. Form.** The department of human services shall prepare and make available to courts, obligors and persons to whom child support is owed a form to be submitted by the obligor or the person to whom child support is owed in support of a motion for a modification of an order pursuant to this section or section 256.87. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form.

**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

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

**Subdivision 1. Requirement.** An order for child support shall provide for a biennial adjustment in the amount to be paid based on a change in the cost-of-living. The order shall specify the cost-of-living index to be applied. 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. The court may specify that the housing



component be excluded from the cost-of-living adjustment. Cost-of-living increases under this section shall be compounded. It may also increase the amount by more than the cost-of-living adjustment by agreement of the parties or by making further findings. The adjustment becomes effective on the first of May of the year in which it is made. 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 child support has a provision such as a step increase that has the effect of a cost-of-living clause. The commissioner of human services may promulgate rules under this section in accordance with the rulemaking provisions of chapter 14.

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

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

(b) the notice to the obligor shall inform the obligor that an adjustment in payments shall become effective on the first of May; and

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

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

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

Subd. 5. **Request for cost-of-living clause.** A motion for enforcement or modification of an existing child support order shall include a request for a cost-of-living clause. The court may deny the request only upon an express finding that the obligor's occupation, income, or both, does not provide for a cost-of-living adjustment or that the existing child support order either has a cost-of-living clause or sets forth a step increase which has the effect of a cost-of-living adjustment.

**History:** 1983 c 308 s 24; 1984 c 654 art 5 s 58

## **518.645 FORM OF ORDER.**

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

### **IT IS ORDERED THAT:**

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

The file number above and the Obligor's name shall be included with each remittance.

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

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

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

(c) Within fifteen days after service of the notice, the Obligor either fails to pay all past due payments or to move the Court, Minnesota Statutes, Section 518.64, to modify the order respecting the amount of child support and/or spousal maintenance and, ex parte, to stay service of withholding on the employer or other payor of funds until the motion to modify is heard; and

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

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

4. If the Obligee serves the employer or other payor of funds under paragraph 2 (d), the Obligee shall also serve the determination and order on ....., together with an application to use collection services.

5. Service of this Order shall be.....

**History:** 1982 c 488 s 7; 1983 c 308 s 25

#### 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]