

~~detention~~ any action authorized under subdivision 1 or 2 if the arresting person's action is based upon reasonable cause.

Approved March 24, 1986

CHAPTER 406—S.F.No. 1732

An act relating to marriage dissolution; providing a presumption for joint legal custody; providing for custody mediation; regulating support determinations; amending Minnesota Statutes 1984, sections 518.17, subdivision 2, and by adding a subdivision; 518.175, by adding a subdivision; 518.551, subdivision 5; 518.57; 518.611, by adding a subdivision; Minnesota Statutes 1985 Supplement, section 518.64, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 518; repealing Minnesota Statutes 1984, section 518.17, subdivisions 4 and 5.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 518.17, subdivision 2, is amended to read:

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.

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.

Sec. 2. Minnesota Statutes 1984, section 518.17, is amended by adding a subdivision to read:

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.

Sec. 3. Minnesota Statutes 1984, section 518.175, is amended by adding a subdivision to read:

Subd. 6. COMPENSATORY VISITATION. If the court finds that the noncustodial parent has been wrongfully deprived of the duly established right

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to visitation, the court shall order the custodial parent to permit additional visits to compensate for the visitation of which the noncustodial parent was deprived. Additional visits must be:

- (1) of the same type and duration as the wrongfully denied visit;
- (2) taken within one year after the wrongfully denied visit; and
- (3) at a time acceptable to the noncustodial parent.

Sec. 4. Minnesota Statutes 1984, section 518.551, subdivision 5, is amended to read:

Subd. 5. **NOTICE TO PUBLIC AUTHORITY; GUIDELINES.** (a) The petitioner shall notify the public authority of all proceedings for dissolution, legal separation, determination of parentage or for the custody of a child, if either party is receiving aid to families with dependent children or applies for it subsequent to the commencement of the proceeding. After receipt of the notice, the court shall set child support by multiplying 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 agreement of the parties if each party is represented by independent counsel, unless the agreement is not in the interest of justice. In other cases the court shall order child support in accordance with the guidelines and the other factors set forth in paragraph (b) and any departure therefrom.

The court shall multiply 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	or 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 <u>4000</u>	25%	30%	35%	39%	43%	47%	50%

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Guidelines for support for an obligor with a monthly income of ~~\$600+~~ \$4001 or more shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income of ~~\$6000~~ \$4000.

Net Income defined as:

Total monthly
income less *~~(1)~~ (i) Federal Income Tax
 *~~(2)~~ (ii) State Income Tax
 ~~(3)~~ (iii) Social Security
 Deductions
 ~~(4)~~ (iv) Mandatory Reasonable
 Pension Deductions

*Standard
Deductions apply- ~~(5)~~ (v) Union Dues
use of tax tables ~~(6)~~ (vi) Cost of Dependent
recommended Insurance Coverage
 ~~(7)~~ (vii) Cost of Individual
 Health/Hospitalization
 Coverage or an Equivalent
 Amount for Actual
 Medical Expenses
 (viii) A Child Support or
 Maintenance Order that is
 Currently Being Paid.

"Net income" does not include the income of the obligor's spouse.

(a) (b) In addition to the child support payment guidelines, the court shall take into consideration the following criteria factors in setting or modifying child support:

(1) all earnings, income, and resources of the obligor parents, including real and personal property;

(2) the basic living needs of the obligor;

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

(3) the standards of living the child would have enjoyed had the marriage not been dissolved.

(4) the amount of the aid to families with dependent children grant for the child or children; and

(5) the parents' debts as provided in paragraph (c).

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

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

(2) the court determines that the debt was reasonably incurred for necessary support of the child or obligee 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; 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)~~ (c), 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.

~~(e) 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 or above 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.~~

Sec. 5. Minnesota Statutes 1984, section 518.57, is amended to read:

518.57 MINOR CHILDREN, SUPPORT.

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Subdivision 1. ORDER. 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~~.

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.

Sec. 6. Minnesota Statutes 1984, section 518.611, is amended by adding a subdivision to read:

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

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

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

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

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

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

Sec. 7. [518.619] CONTESTED CUSTODY; MEDIATION SERVICES.

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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 is contested, the matter may be set for mediation of the contested issue prior to or concurrent with setting 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 assuring the child's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use best efforts to effect a settlement of the custody dispute.

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 mediation.

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 conduct the investigation. 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.

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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.

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

Sec. 8. Minnesota Statutes 1985 Supplement, section 518.64, subdivision 2, is amended to read:

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 maintenance, 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 shall take into consideration the needs of the children and shall not consider 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.

Sec. 9. **REPEALER.**

Minnesota Statutes 1984, section 518.17, subdivisions 4 and 5, are repealed.

Sec. 10. **EFFECTIVE DATE.**

Section 7 is effective January 1, 1987.

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