

CHAPTER 574—H.F.No. 1855

An act relating to family law; regulating child support, custody and visitation in dissolution and other proceedings; providing for suspension of visitation rights or change of custody when a parent has been convicted of certain crimes; requiring expedited hearings of visitation motions alleging that a child is in danger of harm and providing for supervised or restricted visitation; modifying dissolution statistical reporting requirements; modifying standards for joint legal custody; requiring specific findings supporting joint custody in certain cases; requiring certain findings about taxes; providing for the award of temporary attorney fees; providing for funding of legal representation in family law matters; increasing marriage dissolution filing fees and civil filing fees surcharge; appropriating money; amending Minnesota Statutes 1988, sections 144.224; 257.025; 257.541, subdivision 2; 518.003, subdivision 3, and by adding a subdivision; 518.131, subdivisions 1 and 7; 518.14; 518.156; 518.167, subdivision 2; 518.18; 518.551, subdivision 5; 518.57, subdivision 1; 518.619; Minnesota Statutes 1989 Supplement, sections 357.021, subdivision 2; 480.241, subdivision 1; 518.17, subdivisions 1 and 2; 518.175, subdivision 5; and 518.64, subdivision 2; proposing coding for new law in Minnesota Statutes, chapters 518; and 631.

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

Section 1. Minnesota Statutes 1988, section 144.224, is amended to read:

144.224 REPORTS OF DISSOLUTION AND ANNULMENT OF MARRIAGE.

Each month the court administrator shall forward to the commissioner of health the statistical report forms collected pursuant to section 518.147 during the preceding month. The report form shall include only the following information:

- (a) name, date of birth, birthplace, residence, race, and educational attainment of the husband and wife;
- (b) county of decree;
- (c) date and type of decree;
- (d) place and date of marriage;
- (e) date of separation;
- (f) number and ages of children of marriage;
- (g) amount and status of maintenance and child support;
- (h) custody of children, including whether joint legal or physical custody was awarded;
- (i) income of the parties;

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(j) length of separation and length of marriage; and

(k) number of previous marriages and reasons for ending the previous marriages (death, dissolution, or annulment).

The commissioner may publish data collected under this section in summary form only. The statistical report form shall contain a statement that neither the report form, nor information contained in the form, shall be admissible in evidence in this or any subsequent proceeding.

Sec. 2. Minnesota Statutes 1988, section 257.025, is amended to read:

257.025 CUSTODY DISPUTES.

(a) In any proceeding where two or more parties seek custody of a child the court shall ~~determine the best interests of the child by considering and evaluating~~ consider and evaluate all relevant factors in determining the best interests of the child, including the following factors:

(a) ~~The love, affection and other emotional ties existing between the competing parties and the child;~~

(b) ~~The capacity and disposition of competing parties to give the child love, affection and guidance and continuation of the educating and raising of the child in its religion, creed, if any, or culture;~~

(c) ~~The capacity and disposition of competing parties to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs;~~

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

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

(f) ~~The mental and physical health of the competing parties;~~

(g) ~~The home, school and community record of the child;~~

(h) ~~The cultural background of the child;~~

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

(j) ~~Any other factor considered by the court to be relevant to a particular child custody dispute.~~

(l) the wishes of the party or parties as to custody;

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

(3) the child's primary caretaker;

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

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

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

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

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

(9) the mental and physical health of all individuals involved;

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

(11) the child's cultural background; and

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

The court may not use one factor to the exclusion of all others. The court must make detailed findings on each of the factors and explain how the factors led to its conclusions and to the determination of the best interests of the child.

(b) The fact that the parents of the child are not or were never married to each other shall not be determinative of the custody of the child.

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

(d) The court shall consider evidence of a violation of section 609.507 in determining the best interests of the child.

(e) A person may seek custody of a child by filing a petition or motion pursuant to section 518.156.

(f) Section 518.619 applies to this section.

Sec. 3. Minnesota Statutes 1988, section 257.541, subdivision 2, is amended to read:

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Subd. 2. **FATHER'S RIGHT TO VISITATION.** (a) If paternity has been acknowledged under section 257.34 and paternity has been established under sections 257.51 to 257.74, the father's rights of visitation or custody are determined under sections 518.17 and 518.175.

(b) If paternity has not been acknowledged under section 257.34 and paternity has been established under sections 257.51 to 257.74, the biological father may petition for rights of visitation or custody in the paternity proceeding or in a separate proceeding under section 518.156.

Sec. 4. Minnesota Statutes 1989 Supplement, section 357.021, subdivision 2, is amended to read:

Subd. 2. **FEE AMOUNTS.** The fees to be charged and collected by the court administrator shall be as follows:

(1) In every civil action or proceeding in said court, the plaintiff, petitioner, or other moving party shall pay, when the first paper is filed for that party in said action, a fee of \$55, except that in an action for marriage dissolution, the fee is ~~\$75~~ \$85.

The defendant or other adverse or intervening party, or any one or more of several defendants or other adverse or intervening parties appearing separately from the others, shall pay, when the first paper is filed for that party in said action, a fee of \$55, except that in an action for marriage dissolution, the fee for the respondent is ~~\$75~~ \$85.

The party requesting a trial by jury shall pay \$30.

The fees above stated shall be the full trial fee chargeable to said parties irrespective of whether trial be to the court alone, to the court and jury, or disposed of without trial, and shall include the entry of judgment in the action, but does not include copies or certified copies of any papers so filed or proceedings under sections 106A.005 to 106A.811, except the provisions therein as to appeals.

(2) Certified copy of any instrument from a civil or criminal proceeding \$5, plus 25 cents per page after the first page and \$3.50, plus 25 cents per page after the first page for an uncertified copy.

(3) Issuing a subpoena \$3 for each name.

(4) Issuing an execution and filing the return thereof; issuing a writ of attachment, injunction, habeas corpus, mandamus, quo warranto, certiorari, or other writs not specifically mentioned, \$5.

(5) Issuing a transcript of judgment, or for filing and docketing a transcript of judgment from another court, \$5.

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(6) Filing and entering a satisfaction of judgment, partial satisfaction or assignment of judgment, \$5.

(7) Certificate as to existence or nonexistence of judgments docketed, \$1 for each name certified to and \$3 for each judgment certified to.

(8) Filing and indexing trade name; or recording notary commission; or recording basic science certificate; or recording certificate of physicians, osteopaths, chiropractors, veterinarians or optometrists, \$5.

(9) For the filing of each partial, final, or annual account in all trusteeships, \$10.

(10) All other services required by law for which no fee is provided such fee as compares favorably with those herein provided, or such as may be fixed by rule or order of the court.

Sec. 5. Minnesota Statutes 1989 Supplement, section 480.241, subdivision 1, is amended to read:

Subdivision 1. **AMOUNT OF SURCHARGE; COLLECTION BY COURT ADMINISTRATORS.** A plaintiff, petitioner, defendant, respondent, intervenor or moving party in any trial court civil action or civil proceeding in which an initial filing fee is payable by that party, except a marriage dissolution or conciliation court action, shall pay to the court administrator a surcharge of ~~\$25~~ \$30 in addition to the initial filing fee otherwise prescribed. A plaintiff, defendant, or moving party in any conciliation court action in which an initial filing fee is payable shall pay to the court administrator of conciliation court a surcharge of \$3 in addition to the initial filing fee otherwise prescribed. Notwithstanding any other law or rule to the contrary, no surcharge shall be paid by any governmental unit of the state of Minnesota, any local unit of government, or agency thereof.

Sec. 6. Minnesota Statutes 1988, section 518.003, subdivision 3, is amended to read:

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.

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

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

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

Sec. 7. Minnesota Statutes 1988, section 518.003, is amended by adding a subdivision to read:

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

Sec. 8. Minnesota Statutes 1988, section 518.131, subdivision 1, is amended to read:

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

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

(b) Temporary maintenance of either spouse;

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

(d) Temporary costs and reasonable attorney fees;

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

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

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

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

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

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

Sec. 9. Minnesota Statutes 1988, section 518.131, subdivision 7, is amended to read:

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

Sec. 10. Minnesota Statutes 1988, section 518.14, is amended to read:

518.14 COSTS AND DISBURSEMENTS AND ATTORNEY 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. In a proceeding under this chapter, the court shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided it finds:~~

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

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

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

Nothing in this section precludes the court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably con-

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tributes to the length or expense of the proceeding. Fees, costs, and disbursements provided for in this section may be awarded at any point in the proceeding. The court may adjudge costs and disbursements against either party. The court may authorize the collection of money awarded by execution, or out of property sequestered, or in any other manner within the power of the court. An award of attorney's fees made by the court during the pendency of the proceeding or in the final judgment survives the proceeding and if not paid by the party directed to pay the same may be enforced as above provided or by a separate civil action brought in the attorney's own name. If the proceeding is dismissed or abandoned prior to determination and award of attorney's fees, the court may nevertheless award attorney's fees upon the attorney's motion. The award shall also survive the proceeding and may be enforced in the same manner as last above provided.

Sec. 11. Minnesota Statutes 1988, section 518.156, is amended to read:

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 or visitation of the child in the county where the child is permanently resident or where the child is found or where an earlier order for custody of the child has been entered; or

(b) By a person other than a parent, where a decree of dissolution or legal separation has been entered or where none is sought by filing a petition or motion seeking custody or visitation of the child in the county where the child is permanently resident or where the child is found or where an earlier order for custody of the child has been entered.

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

Sec. 12. Minnesota Statutes 1988, section 518.167, subdivision 2, is amended to read:

Subd. 2. **PREPARATION.** (a) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the potential custodial arrangements except for persons involved in mediation efforts between the parties. Mediation personnel may disclose to investiga-

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tors and evaluators information collected during mediation only if agreed to in writing by all parties. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, school personnel, or other expert persons who have served the child in the past after obtaining the consent of the parents or the child's custodian or guardian.

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

Sec. 13. Minnesota Statutes 1989 Supplement, section 518.17, subdivision 1, is amended to read:

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

- (1) the wishes of the child's parent or parents as to custody;
- (2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- (3) the child's primary caretaker;
- (4) the intimacy of the relationship between each parent and the child;
- (5) the interaction and interrelationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;
- (6) the child's adjustment to home, school, and community;
- (7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (8) the permanence, as a family unit, of the existing or proposed custodial home;
- (9) the mental and physical health of all individuals involved;
- (10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any;
- (11) the child's cultural background; and

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

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

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

Sec. 14. Minnesota Statutes 1989 Supplement, 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;

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

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

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

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

Sec. 15. Minnesota Statutes 1989 Supplement, section 518.175, subdivision 5, is amended to read:

Subd. 5. The court shall modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; ~~but the court shall.~~ Except as provided in section 23, the court may not restrict visitation rights unless it finds that:

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

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

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

Sec. 16. [518.179] CUSTODY OR VISITATION WHEN PERSON CONVICTED OF CERTAIN OFFENSES.

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

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

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

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

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

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

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

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

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

(4) kidnapping under section 609.25;

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

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

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

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

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

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

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

(12) incest under section 609.365;

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

(14) neglect of a child under section 609.378.

Sec. 17. Minnesota Statutes 1988, section 518.18, is amended to read:

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 willful denial or interference with visitation, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development.

(d) If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order unless it finds, upon the basis of facts that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the circumstances of the child or the 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;

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

In addition, a court may modify a custody order under section 23.

Sec. 18. Minnesota Statutes 1988, 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 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 determine and order child support in a specific dollar amount in accordance with the guidelines and the other factors set forth in paragraph (b) and any departure therefrom.

The court shall ~~multiply~~ derive a specific dollar amount by multiplying the obligor's net income by the percentage indicated by the following guidelines:

Net Income Per Month of Obligor	Number of Children						
	1	2	3	4	5	6	7 or more
\$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%

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\$901 - 950	23%	28%	32%	36%	40%	43%	46%
\$951 - 1000	24%	29%	34%	38%	41%	45%	48%
\$1001- 4000	25%	30%	35%	39%	43%	47%	50%

Guidelines for support for an obligor with a monthly income of \$4,001 or more shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income of \$4,000.

Net Income defined as:

Total monthly
income less

*(i) Federal Income Tax

*(ii) State Income Tax

(iii) Social Security
Deductions

(iv) Reasonable
Pension Deductions

*Standard
Deductions apply-
use of tax tables
recommended

(v) Union Dues

(vi) Cost of Dependent
Insurance Coverage

(vii) Cost of Individual or Group
Health/Hospitalization
Coverage or an
Amount for Actual
Medical Expenses

(viii) A Child Support or
Maintenance Order that is
Currently Being Paid.

"Net income" does not include:

(1) the income of the obligor's spouse; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Any schedule prepared under paragraph (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.

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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.

(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.

Sec. 19. Minnesota Statutes 1988, section 518.57, subdivision 1, is amended to read:

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

Sec. 20. **[518.583] NOTICE OF TAX EFFECT ON PRINCIPAL RESIDENCE.**

If the parties to an action for dissolution own a principal residence, the court must make express findings of fact that the parties who are represented by an attorney have been advised as to the income tax laws respecting the capital gain tax, or that parties who are not represented by an attorney have been notified that income tax laws regarding the capital gain tax may apply to the sale of the residence. This includes, but is not limited to, the exclusion available on the sale of a principal residence for those over a certain age under section 121 of the Internal Revenue Code of 1986, or other applicable law. The order must expressly provide for the use of that exclusion unless the court otherwise orders. All judgment and decrees involving a principal residence must include a notice to the parties that income tax laws regarding the capital gain tax may apply to the sale of the residence and that the parties may wish to consult with an attorney concerning the applicable laws.

Sec. 21. Minnesota Statutes 1988, section 518.619, is amended to read:

518.619 ~~CONTESTED CUSTODY OR VISITATION;~~ 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 or visitation is contested, or that any issue pertinent to a custody or visitation determination, including visitation rights, is unresolved, the matter may be set for mediation of the contested issue prior to ~~or,~~ concurrent with, or subsequent to the setting of the matter for hearing. The purpose of the mediation proceeding is to reduce acrimony which may exist between the parties and to develop an agreement ~~assuring the child's close and continuing contact with both parents after the marriage is dissolved that is supportive of the child's best interests.~~ The mediator shall use best efforts to effect a settlement of the custody or visitation dispute, but shall have no coercive authority.

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

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

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

- (a) knowledge of the court system and the procedures used in contested child custody matters;
- (b) knowledge of other resources in the community to which the parties to contested child custody matters can be referred for assistance;
- (c) knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and child custody research; and
- (d) a minimum of 40 hours of certified mediation training.

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

Subd. 6. **MEDIATOR RECOMMENDATIONS.** When the parties have not reached agreement as a result of the mediation proceeding, the mediator

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may recommend to the court that an investigation be conducted under section 518.167, or that other action be taken to assist the parties to resolve the controversy before hearing on the issues. The mediator may not conduct the investigation. The mediator may recommend that mutual restraining orders be issued in appropriate cases, pending determination of the controversy, to protect the well-being of the children involved in the controversy.

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

Sec. 22. Minnesota Statutes 1989 Supplement, section 518.64, subdivision 2, is amended to read:

Subd. 2. **MODIFICATION.** (a) 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.

(b) 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:

(1) shall take into consideration the needs of the children and shall not consider the financial circumstances of each party's spouse, if any; and

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

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

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

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

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

(v) in the case of an obligor, current child support payments are at least

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equal to the guidelines amount based on income not excluded under this clause; and

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

(c) A modification of support or maintenance may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party. However, modification may be applied to an earlier period if the court makes express findings that the party seeking modification was precluded from serving a motion by reason of a significant physical or mental disability or a material misrepresentation of another party and that the party seeking modification, when no longer precluded, promptly served a motion.

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

Sec. 23. [631.52] EFFECT OF CERTAIN CONVICTIONS ON CUSTODY AND VISITATION RIGHTS.

Subdivision 1. SUSPENSION OF VISITATION RIGHTS; TRANSFER OF CUSTODY. (a) If a person who has court-ordered custody of a child or visitation rights is convicted of a crime listed in subdivision 2 and if no action is pending regarding custody or visitation, the sentencing court shall refer the matter to the appropriate family court for action under this section. The family court shall:

(1) grant temporary custody to the noncustodial parent, unless it finds that another custody arrangement is in the best interests of the child; or

(2) suspend visitation rights, unless it finds that visitation with the convicted person is in the best interests of the child.

The family court shall expedite proceedings under this section. The defendant has the burden of proving that continued custody or visitation with the defendant is in the best interests of the child. If the victim of the crime was a family or household member as defined in section 518B.01, subdivision 2, the standard of proof is clear and convincing evidence.

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(b) If a person who has child custody or visitation rights was convicted of a crime listed in subdivision 2 before July 1, 1990, then any interested party may petition the sentencing court for relief under paragraph (a) if:

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

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

Subd. 2. APPLICATION. Subdivision 1 applies to the following crimes or similar crimes under the laws of the United States or any other state:

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

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

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

(4) kidnapping under section 609.25;

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

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

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

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

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

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

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

(12) incest under section 609.365;

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

(14) neglect of a child under section 609.378.

Sec. 24. FEDERAL WAIVER.

The department of human services shall seek from the Congress of the United States or the United States Department of Health and Human Services a change in or waiver of existing requirements of the aid to families with dependent children program (AFDC) to the extent necessary to allow the retroactive modification of support or maintenance payments permitted by section 22, paragraph (c). The attorney general shall prepare the necessary documentation and request letter for the waiver request.

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Sec. 25. APPROPRIATION.

\$890,000 is appropriated from the general fund to the supreme court to be distributed under Minnesota Statutes, section 480.242, to the qualified legal services programs described in section 480.242, subdivision 2, paragraph (a), to improve the access of low-income clients to legal representation in family law matters.

Sec. 26. EFFECTIVE DATE.

Section 20 is effective August 1, 1990, and applies to actions commenced on or after that date. The provisions of section 22, paragraph (c), allowing retroactive modification of support or maintenance payments in certain cases, are effective July 1, 1991, provided that these provisions do not take effect if a change in or waiver of the existing AFDC requirements is not obtained under section 24.

Presented to the governor April 26, 1990

Signed by the governor May 3, 1990, 6:03 p.m.

CHAPTER 575—H.F.No. 1854

An act relating to public administration; validating certain cancellation of contracts; validating certain conveyances by religious corporations; allowing county boards to set certain fees charged by the examiner of titles; providing for the effect of dissolution on joint tenancy; permitting the filing of summaries of dissolution judgments in real estate filings; clarifying provisions on certain liens by reordering clauses; regulating conciliation court jurisdiction limits; amending Minnesota Statutes 1988, sections 287.01, by adding a subdivision; 500.19, subdivision 5; and 514.12, subdivision 3; Minnesota Statutes 1989 Supplement, section 487.30, subdivision 1; Minnesota Statutes Second 1989 Supplement, section 508A.82; Laws 1989, chapter 344, section 13, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 315, 518, and 559; repealing Minnesota Statutes 1988, section 580.031.

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

Section 1. Minnesota Statutes 1988, section 287.01, is amended by adding a subdivision to read:

Subd. 4. DECREE OF MARRIAGE DISSOLUTION. “Decree of marriage dissolution” includes a summary real estate disposition judgment or an instrument made pursuant to it.

Sec. 2. [315.121] RELIGIOUS CORPORATIONS, CERTAIN CONVEYANCES VALIDATED.

New language is indicated by underline, deletions by ~~strikeout~~.