

**CHAPTER 158—S.F.No. 1944**

*An act relating to support; clarifying and modifying the crime of nonsupport of a spouse or child; providing notice of criminal penalties for nonsupport of a spouse or child; specifying spousal liability for medical necessities; imposing criminal penalties; crediting child support payments to public authority; authorizing collection of child support in arrears under revenue recapture act under certain circumstances; amending Minnesota Statutes 2000, sections 518.551, subdivision 1; 518.6111, by adding a subdivision; 518.68, subdivision 2; 519.05; 609.095; 609.375, subdivisions 1, 2, 2a, by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapters 518; 609.*

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

Section 1. Minnesota Statutes 2000, section 518.551, subdivision 1, is amended to read:

Subdivision 1. **SCOPE; PAYMENT TO PUBLIC AGENCY.** (a) This section applies to all proceedings involving a support order, including, but not limited to, a support order establishing an order for past support or reimbursement of public assistance.

(b) The court shall direct that all payments ordered for maintenance and support be made to the public agency responsible for child support enforcement so long as the obligee is receiving or has applied for public assistance, or has applied for child support and maintenance collection services. Public authorities responsible for child support enforcement may act on behalf of other public authorities responsible for child support enforcement. This includes the authority to represent the legal interests of or execute documents on behalf of the other public authority in connection with the establishment, enforcement, and collection of child support, maintenance, or medical support, and collection on judgments.

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

(d) Amounts received by the public agency responsible for child support enforcement greater than the amount granted to the obligee shall be remitted to the obligee.

Sec. 2. Minnesota Statutes 2000, section 518.6111, is amended by adding a subdivision to read:

Subd. 19. **TIMING OF AUTOMATED ENFORCEMENT REMEDIES.** The public authority shall make reasonable efforts to ensure that automated enforcement remedies take into consideration the time periods allowed under this section.

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**Sec. 3. [518.6196] COLLECTION; REVENUE RECAPTURE.**

The public authority may submit debt under chapter 270A only if the obligor is in arrears in court-ordered child support or maintenance payments, or both, in an amount greater than the obligor's total monthly support and maintenance payments or if the debt has been entered and docketed as a judgment under section 548.091, subdivision 2a.

Sec. 4. Minnesota Statutes 2000, section 518.68, subdivision 2, is amended to read:

Subd. 2. **CONTENTS.** The required notices must be substantially as follows:

**IMPORTANT NOTICE**

**1. PAYMENTS TO PUBLIC AGENCY**

According to Minnesota Statutes, section 518.551, subdivision 1, payments ordered for maintenance and support must be paid to the public agency responsible for child support enforcement as long as the person entitled to receive the payments is receiving or has applied for public assistance or has applied for support and maintenance collection services. MAIL PAYMENTS TO:

**2. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS — A FELONY**

A person may be charged with a felony who conceals a minor child or takes, obtains, retains, or fails to return a minor child from or to the child's parent (or person with custodial or visitation rights), according to Minnesota Statutes, section 609.26. A copy of that section is available from any district court clerk.

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

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

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

(a) Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

(b) Payment of support must be made as it becomes due, and failure to secure or denial of parenting time is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.

(c) Nonpayment of support is not grounds to deny parenting time. The

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party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.

(d) The payment of support or spousal maintenance takes priority over payment of debts and other obligations.

(e) A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.

(f) Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.

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

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

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

#### 4. 5. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3

Unless otherwise provided by the Court:

(a) Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.

(b) Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare,

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educational progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.

(c) In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment.

(d) Each party has the right of reasonable access and telephone contact with the minor children.

~~5.~~ 6. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE

Child support and/or spousal maintenance may be withheld from income, with or without notice to the person obligated to pay, when the conditions of Minnesota Statutes, section 518.6111 have been met. A copy of those sections is available from any district court clerk.

~~6.~~ 7. CHANGE OF ADDRESS OR RESIDENCE

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

~~7.~~ 8. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE

Child support and/or spousal maintenance may be adjusted every two years based upon a change in the cost of living (using Department of Labor Consumer Price Index ....., unless otherwise specified in this order) when the conditions of Minnesota Statutes, section 518.641, are met. Cost of living increases are compounded. A copy of Minnesota Statutes, section 518.641, and forms necessary to request or contest a cost of living increase are available from any district court clerk.

~~8.~~ 9. JUDGMENTS FOR UNPAID SUPPORT

If a person fails to make a child support payment, the payment owed becomes a judgment against the person responsible to make the payment by operation of law on or after the date the payment is due, and the person entitled to receive the payment or the public agency may obtain entry and docketing of the judgment WITHOUT NOTICE to the person responsible to make the payment under Minnesota Statutes, section 548.091. Interest begins to accrue on a payment or installment of child support whenever the unpaid amount due is greater than the current support due, according to Minnesota Statutes, section 548.091, subdivision 1a.

~~9.~~ 10. JUDGMENTS FOR UNPAID MAINTENANCE

A judgment for unpaid spousal maintenance may be entered when the

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conditions of Minnesota Statutes, section 548.091, are met. A copy of that section is available from any district court clerk.

~~10.~~ **11. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT**

A judgment for attorney fees and other collection costs incurred in enforcing a child support order will be entered against the person responsible to pay support when the conditions of section 518.14, subdivision 2, are met. A copy of section 518.14 and forms necessary to request or contest these attorney fees and collection costs are available from any district court clerk.

~~11.~~ **12. PARENTING TIME EXPEDITOR PROCESS**

On request of either party or on its own motion, the court may appoint a parenting time expeditor to resolve parenting time disputes under Minnesota Statutes, section 518.1751. A copy of that section and a description of the expeditor process is available from any district court clerk.

~~12.~~ **13. PARENTING TIME REMEDIES AND PENALTIES**

Remedies and penalties for the wrongful denial of parenting time are available under Minnesota Statutes, section 518.175, subdivision 6. These include compensatory parenting time; civil penalties; bond requirements; contempt; and reversal of custody. A copy of that subdivision and forms for requesting relief are available from any district court clerk.

Sec. 5. Minnesota Statutes 2000, section 519.05, is amended to read:

**519.05 LIABILITY OF HUSBAND AND WIFE.**

(a) A spouse is not liable to a creditor for any debts of the other spouse. Where husband and wife are living together, they shall be jointly and severally liable for all necessary medical services that have been furnished to either spouse, and necessary household articles and supplies furnished to and used by the family. Notwithstanding this paragraph, in a proceeding under chapter 518 the court may apportion such debt between the spouses.

(b) Either spouse may close a credit card account or other unsecured consumer line of credit on which both spouses are contractually liable, by giving written notice to the creditor.

Sec. 6. Minnesota Statutes 2000, section 609.095, is amended to read:

**609.095 LIMITS OF SENTENCES.**

(a) The legislature has the exclusive authority to define crimes and offenses and the range of the sentences or punishments for their violation. No other or different sentence or punishment shall be imposed for the commission of a crime than is authorized by this chapter or other applicable law.

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(b) Except as provided in section 152.18 or 609.375, or upon agreement of the parties, a court may not refuse to adjudicate the guilt of a defendant who tenders a guilty plea in accordance with Minnesota Rules of Criminal Procedure, rule 15, or who has been found guilty by a court or jury following a trial.

(c) Paragraph (b) does not supersede Minnesota Rules of Criminal Procedure, rule 26.04.

Sec. 7. Minnesota Statutes 2000, section 609.375, subdivision 1, is amended to read:

Subdivision 1. **CRIME DEFINED.** Whoever is legally obligated to provide care and support to a spouse or child, whether or not its the child's custody has been granted to another, and knowingly omits and fails without lawful excuse to do so is guilty of a misdemeanor, and upon conviction may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$700, or both.

Sec. 8. Minnesota Statutes 2000, section 609.375, subdivision 2, is amended to read:

Subd. 2. **GROSS MISDEMEANOR VIOLATION.** ~~If the violation of subdivision 1 continues for a period in excess of 90 days but not more than 180 days, the A~~ person who violates subdivision 1 is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if:

(1) the violation continues for a period in excess of 90 days but not more than 180 days; or

(2) the person is in arrears in court-ordered child support or maintenance payments, or both, in an amount equal to or greater than six times but less than nine times the person's total monthly support and maintenance payments.

Sec. 9. Minnesota Statutes 2000, section 609.375, subdivision 2a, is amended to read:

Subd. 2a. **FELONY VIOLATION.** ~~If the violation of subdivision 1 continues for a period in excess of 180 days, the A~~ person who violates subdivision 1 is guilty of a felony and upon conviction may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both, if:

(1) the violation continues for a period in excess of 180 days; or

(2) the person is in arrears in court-ordered child support or maintenance payments, or both, in an amount equal to or greater than nine times the person's total monthly support and maintenance payments.

Sec. 10. Minnesota Statutes 2000, section 609.375, is amended by adding a subdivision to read:

Subd. 2b. **ATTEMPT TO OBTAIN CONTEMPT ORDER AS PREREQUISITE TO PROSECUTION.** A person may not be charged with violating this section

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unless there has been an attempt to obtain a court order holding the person in contempt for failing to pay support or maintenance under chapter 518. This requirement is satisfied by a showing that reasonable attempts have been made at service of the order.

Sec. 11. Minnesota Statutes 2000, section 609.375, is amended by adding a subdivision to read:

Subd. 8. DEFENSE. It is an affirmative defense to criminal liability under this section if the defendant proves by a preponderance of the evidence that the omission and failure to provide care and support were with lawful excuse.

Sec. 12. **[609.3751] DISCHARGE AND DISMISSAL.**

Subdivision 1. APPLICABILITY. A person is eligible for a discharge and dismissal under this section, if the person:

(1) has not been previously convicted of a felony under the laws of this state or elsewhere;

(2) has not been previously convicted of a violation of section 609.375 or of a similar offense in this state or elsewhere;

(3) has not previously participated in or completed a diversion program relating to a charge of violating section 609.375; and

(4) has not previously been placed on probation without a judgment of guilty for violation of section 609.375.

Subd. 2. PROCEDURE. For a person eligible under subdivision 1 who is charged with violating section 609.375, the court may after trial or upon a plea of guilty, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period not to exceed the maximum sentence provided for the violation. At a minimum, the conditions must require the defendant to:

(1) provide the public authority responsible for child support enforcement with an affidavit attesting to the defendant's present address, occupation, employer, current income, assets, and account information, as defined in section 13B.06; and

(2) execute a written payment agreement regarding both current support and arrearages that is approved by the court.

In determining whether to approve a payment agreement under clause (2), the court shall apply the provisions of chapter 518 consistent with the obligor's ability to pay.

Subd. 3. VIOLATION. Upon violation of a condition of the probation, including a failure to comply with the written payment agreement approved by the court under subdivision 2, clause (2), the court may enter an adjudication of guilt and proceed as otherwise provided in law.

Subd. 4. EARLY DISMISSAL. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the

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expiration of the maximum period prescribed for the person's probation but may do so only if the full amount of any arrearages has been brought current.

Subd. 5. DISMISSAL; RECORD. (a) For purposes of this subdivision, "not public" has the meaning given in section 13.02, subdivision 8a.

(b) If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the bureau of criminal apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this section to the bureau which shall make and maintain the not public record of it as provided under this section. The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

#### Sec. 13. **EFFECTIVE DATE.**

Sections 6 to 12 are effective August 1, 2001, and apply to all crimes committed on or after that date.

Presented to the governor May 18, 2001

Signed by the governor May 22, 2001, 10:22 a.m.

### CHAPTER 159—S.F.No. 1614

*An act relating to civil law; providing for civil actions against the state under the federal Age Discrimination in Employment Act, the federal Fair Labor Standards Act, the federal Family and Medical Leave Act, and the federal Americans With Disabilities Act; proposing coding for new law in Minnesota Statutes, chapter 1.*

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

#### Section 1. **[1.05] WAIVER OF IMMUNITY FOR VIOLATIONS OF CERTAIN FEDERAL STATUTES.**

Subdivision 1. AGE DISCRIMINATION IN EMPLOYMENT ACT. An employee, former employee, or prospective employee of the state who is aggrieved by the state's violation of the Age Discrimination in Employment Act of 1967, United States Code, title 29, section 621, et seq., as amended, may bring a civil action against

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