

CHAPTER 518

MARRIAGE DISSOLUTION

518.10 Requisites of petition.
 518.17 Custody and support of children on judgment.
 518.24 Security; sequestration; contempt.
 518.54. Definitions.
 518.551 Maintenance and support payments made to welfare agencies.

518.611 Income withholding.
 518.64 Modification of orders or decrees.
 518.641 Cost-of-living adjustments in child support order.
 518.645 Form of order.

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: 1983 c 308 s 14

518.17 CUSTODY AND SUPPORT OF CHILDREN ON JUDGMENT.

[For text of subds 1 to 4, see M.S.1982]

Subd. 5. Deviation from guidelines. The court shall not 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

518.17 MARRIAGE DISSOLUTION

64

cases unless the court makes express findings of fact as to the reason for the lower order.

History: 1983 c 308 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: 1983 c 216 art 1 s 74

518.54 DEFINITIONS.

[For text of subd 1, see M.S.1982]

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.

[For text of subds 3 to 9, see M.S.1982]

History: 1983 c 144 s 1

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]

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

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) Dependent Health Insurance Coverage
- (7) Individual Health/Hospitalization Coverage or Medical Expense Deductions not to exceed \$25 a month.

*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) Debts owed to private creditors are not to be considered in establishing a support obligation.

(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.

[For text of subd 7, see M.S.1982]

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. 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: 1983 c 308 s 16-20

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 modifying the amount of maintenance or support, issued after the hearing on the motion to modify, shall provide that payments be made outright by withholding. The provisions 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 withholding 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: 1983 c 308 s 21

518.64 MODIFICATION OF ORDERS OR DECREES.

[For text of subd 1, see M.S.1982]

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.

[For text of subds 3 and 4, see M.S.1982]

Subd. 5. Form. The department of public welfare 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: 1983 c 283 s 1; 1983 c 308 s 22,23

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 public welfare 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 public welfare 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

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.....
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History: 1983 c 308 s 25