

## CHAPTER 518

## MARRIAGE DISSOLUTION

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**518.001** [Repealed, 1978 c 699 s 17]

**518.002 USE TERM DISSOLUTION.**

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

*History: 1974 c 107 s 28*

**518.003 DEFINITIONS.**

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

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

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

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

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

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

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

(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.

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

**History:** 1979 c 259 s 2; 1981 c 349 s 2; 1990 c 574 s 6,7

### 518.005 RULES GOVERNING PROCEEDINGS.

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

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

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

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

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

### 518.01 VOID MARRIAGES.

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

**History:** (8580) RL s 3569; 1937 c 407 s 2; 1963 c 795 s 4; 1974 c 107 s 2; 1974 c 447 s 3; 1978 c 772 s 17

### 518.02 VOIDABLE MARRIAGES.

A marriage shall be declared a nullity under the following circumstances:

(a) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity and the other party at the time the marriage was solemnized did not know of the incapacity; or because of the influence of alcohol, drugs, or other incapacitating substances; or because consent of either was obtained by force or fraud and there was no subsequent voluntary cohabitation of the parties;

(b) A party lacks the physical capacity to consummate the marriage by sexual intercourse and the other party at the time the marriage was solemnized did not know of the incapacity;

(c) A party was under the age for marriage established by section 517.02.

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

### **518.03 ACTION TO ANNUL; DECREE.**

An annulment shall be commenced and the complaint shall be filed and proceedings had as in proceedings for dissolution. Upon due proof of the nullity of the marriage, it shall be adjudged null and void.

The provisions of sections 518.54 to 518.66 relating to property rights of the spouses, maintenance, support and custody of children on dissolution of marriage are applicable to proceedings for annulment.

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

### **518.04 INSUFFICIENT GROUNDS FOR ANNULMENT.**

No marriage shall be adjudged a nullity on the ground that one of the parties was under the age of legal consent if it appears that the parties had voluntarily cohabited together as husband and wife after having attained such age; nor shall the marriage of any insane person be adjudged void after restoration to reason, if it appears that the parties freely cohabited together as husband and wife after such restoration.

**History:** (8583) *RL s 3572; 1986 c 444*

### **518.05 ANNULMENT; WHEN TO BRING.**

An annulment may be sought by any of the following persons and must be commenced within the times specified, but in no event may an annulment be sought after the death of either party to the marriage:

(a) For a reason set forth in section 518.02, clause (a), by either party or by the legal representative of the party who lacked capacity to consent, no later than 90 days after the petitioner obtained knowledge of the described condition;

(b) For the reason set forth in section 518.02, clause (b), by either party no later than one year after the petitioner obtained knowledge of the described condition;

(c) For the reason set forth in section 518.02, clause (c), by the underaged party, the party's parent or guardian, before the time the underaged party reaches the age at which the party could have married without satisfying the omitted requirement.

**History:** (8584) *RL s 3573; 1978 c 772 s 20; 1986 c 444*

### **518.055 PUTATIVE SPOUSE.**

Any person who has cohabited with another to whom the person is not legally married in the good faith belief that the person was married to the other is a putative spouse until knowledge of the fact that the person is not legally married terminates the status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of the status, whether or not the marriage is prohibited or declared a nullity. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

**History:** *1978 c 772 s 21; 1986 c 444*

## **PROCEEDINGS**

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

Subdivision 1. A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the

marital status of both parties. A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. A decree of legal separation does not terminate the marital status of the parties. A dissolution of a marriage shall be granted by a county or district court when the court finds that there has been an irretrievable breakdown of the marriage relationship.

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

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

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

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

**History:** (8585) *RL s 3574; 1909 c 443 s 1; 1927 c 304 s 1; 1933 c 262 s 1; 1933 c 324; Ex 1934 c 78 s 1; 1935 c 295 s 1; 1941 c 406 s 1; 1951 c 637 s 1; 1969 c 764 s 1; 1971 c 177 s 1; 1974 c 107 s 4; 1978 c 772 s 22,23; 1979 c 259 s 4,5*

### 518.07 RESIDENCE OF PARTIES.

No dissolution shall be granted unless (1) one of the parties has resided in this state, or has been a member of the armed services stationed in this state, for not less than 180 days immediately preceding the commencement of the proceeding; or (2) one of the parties has been a domiciliary of this state for not less than 180 days immediately preceding commencement of the proceeding.

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

518.08 [Repealed, 1974 c 107 s 29]

### 518.09 PROCEEDING; HOW AND WHERE BROUGHT; VENUE.

A proceeding for dissolution or legal separation may be brought by either or both spouses and shall be commenced by personal service of the summons and petition venued in the county where either spouse resides. If neither party resides in the state and jurisdiction is based on the domicile of either spouse, the proceeding may be brought in the county where either party is domiciled. If neither party resides or is domiciled in this state and jurisdiction is premised upon one of the parties being a member of the armed services stationed in this state for not less than 180 days immediately preceding the commencement of the proceeding, the proceeding may be brought in the county where the member is stationed. This venue shall be subject to the power of the court to change the place of hearing by consent of the parties, or when it appears to the court that an impartial hearing cannot be had in the county where the proceedings are pending, or when the convenience of the parties or the ends of justice would be promoted by the change. No summons shall be required if a joint petition is filed.

**History:** (8588) *RL s 3577; 1931 c 226 s 1; 1974 c 107 s 6; 1978 c 772 s 25; 1979 c 259 s 7; 1981 c 349 s 3*

### 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:** (8589) *RL s 3578; 1955 c 688 s 1; 1974 c 107 s 7; 1978 c 772 s 26; 1979 c 259 s 8; 1983 c 308 s 14*

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

Unless a proceeding is brought by both parties, copies of the summons and petition shall be served on the respondent personally. When service is made out of this state and within the United States, it may be proved by the affidavit of the person making the same. When service is made without the United States it may be proved by the affidavit of the person making the same, taken before and certified by any United States minister, charge d'affaires, commissioner, consul or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in such country, including all deputies or other representatives of such officer authorized to perform their duties; or before an officer authorized to administer an oath with the certificate of an officer of a court of record of the country wherein such affidavit is taken as to the identity and authority of the officer taking the same. But, if personal service cannot be made, the court may order service of the summons by publication, which publication shall be made as in other actions.

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

#### **518.12 TIME FOR ANSWERING.**

The respondent shall have 30 days in which to answer the petition. In case of service by publication, the 30 days shall not begin to run until the expiration of the period allowed for publication. In the case of a counterpetition for dissolution or legal separation to a petition for dissolution or legal separation, no answer shall be required to the counterpetition and the original petitioner shall be deemed to have denied each and every statement, allegation and claim in the counterpetition.

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

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

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

Subd. 2. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the

circumstances that gave rise to the commencement of the proceeding and the prospect of reconciliation, and shall make a finding whether the marriage is irretrievably broken.

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

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

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

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

### 518.131 TEMPORARY ORDERS AND RESTRAINING ORDERS.

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

- (a) Temporary custody and visitation rights of the minor children of the parties;
- (b) Temporary maintenance of either spouse;
- (c) Temporary child support for the children of the parties;
- (d) 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;
- (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;
- (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;
- (h) Restrain one or both parties from removing any minor child of the parties from the jurisdiction of the court;
- (i) Exclude a party from the family home of the parties or from the home of the other party; and
- (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.

Subd. 2. No temporary order shall:

- (a) Deny visitation rights to a noncustodial parent unless the court finds that visitation by the noncustodial parent is likely to cause physical or emotional harm to the child;
- (b) Exclude a party from the family home of the parties unless the court finds that physical or emotional harm to one of the parties or to the children of the parties is likely to result, or that the exclusion is reasonable in the circumstances; or
- (c) Vacate or modify an order granted under section 518B.01, subdivision 6, para-

graph (a), clause (1), restraining an abusing party from committing acts of domestic abuse, except that the court may hear a motion for modification of an order for protection concurrently with a proceeding for dissolution of marriage upon notice of motion and motion. The notice required by court rule shall not be waived. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an order for protection shall be issued.

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

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

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

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

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

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

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

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

Subd. 9. A temporary order or restraining order:

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

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

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

**History:** 1979 c 259 s 11; 1986 c 444; 1987 c 237 s 1; 1987 c 403 art 3 s 76; 1990 c 574 s 8,9

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

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

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 contributes 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.

**History:** (8593) *RL s 3582; 1955 c 687 s 1; 1974 c 107 s 11; 1978 c 772 s 30; 1986 c 444; 1990 c 574 s 10*

**518.145 DECREE, FINALITY AND REOPENING.**

**Subdivision 1. Appeal.** A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. When entered, the findings of fact and conclusions of law may constitute the judgment and decree. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision. A party may remarry before the time for appeal has run if it is not contested that the marriage is irretrievably broken or if a stipulation that the marriage is irretrievably broken is incorporated in the decree of dissolution.

**Subd. 2. Reopening.** On motion and upon terms as are just, the court may relieve a party from a judgment and decree, order, or proceeding under this chapter, except for provisions dissolving the bonds of marriage, annulling the marriage, or directing that the parties are legally separated, and may order a new trial or grant other relief as may be just for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the rules of civil procedure, rule 59.03;
- (3) fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment and decree or order is void; or
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

The motion must be made within a reasonable time, and for a reason under clause



(1), (2), or (3), not more than one year after the judgment and decree, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment and decree or order or suspend its operation. This subdivision does not limit the power of a court to entertain an independent action to relieve a party from a judgment and decree, order, or proceeding or to grant relief to a party not actually personally notified as provided in the rules of civil procedure, or to set aside a judgment for fraud upon the court.

**History:** 1978 c 772 s 31; 1979 c 259 s 12; 1981 c 349 s 4; 1988 c 668 s 11

#### **518.147 STATISTICAL REPORT FORM.**

On or before the time a final decree of dissolution or annulment of marriage is entered, the petitioner or the moving party, if other than the petitioner, shall complete and file with the court administrator a statistical report form provided by the commissioner of health. After entry of the final decree, the court administrator shall forward the form to the commissioner of health pursuant to section 144.224. The court administrator shall not refuse entry of a decree on the basis that the statistical report form is incomplete. Neither the statistical report form, nor information contained in the form, shall be admissible in evidence in this or any subsequent proceeding.

**History:** 1984 c 534 s 29; 1Sp1986 c 3 art 1 s 82

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

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

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

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

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

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

(a) by a parent

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

(2) where a decree of dissolution or legal separation has been entered or where none is sought, by filing a petition or motion seeking custody 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.

**History:** 1978 c 772 s 33; 1979 c 259 s 14; 1980 c 598 s 4; 1986 c 444; 1990 c 574 s 11

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

**518.165 GUARDIANS FOR MINOR CHILDREN.**

Subdivision 1. **Permissive appointment of guardian ad litem.** In all proceedings for child custody or for dissolution or legal separation where custody or visitation of a minor child is in issue, the court may appoint a guardian ad litem from a panel established by the court to represent the interests of the child. The guardian ad litem shall advise the court with respect to custody, support and visitation.

Subd. 2. **Required appointment of guardian ad litem.** In all proceedings for child custody or for marriage dissolution or legal separation in which custody or visitation of a minor child is an issue, if the court has reason to believe that the minor child is a victim of domestic child abuse or neglect, as those terms are defined in sections 260.015 and 626.556, respectively, the court shall appoint a guardian ad litem. The guardian ad litem shall represent the interests of the child and advise the court with respect to custody, support, and visitation. If the child is represented by a guardian ad litem in any other pending proceeding, the court may appoint that guardian to represent the child in the custody or visitation proceeding. No guardian ad litem need be appointed if the alleged domestic child abuse or neglect is before the court on a juvenile dependency and neglect petition. Nothing in this subdivision requires the court to appoint a guardian ad litem in any proceeding for child custody, marriage dissolution, or legal separation in which an allegation of domestic child abuse or neglect has not been made.

Subd. 3. **Fees.** A guardian ad litem appointed under either subdivision 1 or 2 may be appointed either as a volunteer or on a fee basis. If a guardian ad litem is appointed on a fee basis, the court shall enter an order for costs, fees, and disbursements in favor of the child's guardian ad litem. The order may be made against either or both parties, except that any part of the costs, fees, or disbursements which the court finds the parties are incapable of paying shall be borne by the county in which the proceeding is being held. In no event may the court order that costs, fees, or disbursements be paid by a party receiving public assistance or legal assistance or by a party whose annual income falls below the poverty line as established under United States Code, title 42, section 9902(2).

*History: 1974 c 33 s 1; 1978 c 772 s 35; 1979 c 259 s 15; 1986 c 469 s 1*

**518.166 INTERVIEWS.**

The court may interview the child in chambers to ascertain the child's reasonable preference as to custodian, if the court deems the child to be of sufficient age to express preference. The court shall permit counsel to be present at the interview and shall permit counsel to propound reasonable questions to the child either directly or through the court. The court shall cause a record of the interview to be made and to be made part of the record in the case unless waived by the parties.

In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian requests, the court may seek the recommendations of professional personnel whether or not they are employed on a regular basis by the court. The recommendations given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination of professional personnel consulted by the court.

*History: 1978 c 772 s 36; 1979 c 259 s 16; 1986 c 444*

**518.167 INVESTIGATIONS AND REPORTS.**

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

Subd. 2. **Preparation.** (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 investigators and evaluators information

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

(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.

Subd. 3. **Availability to counsel.** The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days before the hearing. The investigator shall maintain and, upon request, make available to counsel and to a party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subdivision 2, and the names and addresses of all persons whom the investigator has consulted. The investigator and any person the investigator has consulted is subject to other pretrial discovery in accordance with the requirements of the Minnesota Rules of Civil Procedure. Mediation proceedings are not subject to discovery without written consent of both parties. A party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the right of cross-examination before the hearing.

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

*History: 1978 c 772 s 37; 1984 c 635 s 1; 1986 c 444; 1990 c 574 s 12*

#### 518.168 HEARINGS.

(a) Custody proceedings shall receive priority in being set for hearing.

(b) The court may tax as costs the payment of necessary travel and other expenses incurred by a person whose presence at the hearing the court deems necessary to determine the best interests of the child.

(c) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct interest in the particular case.

(d) If the court finds it necessary for the protection of the child's welfare that the record of an interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

*History: 1978 c 772 s 38*

#### 518.17 CUSTODY AND SUPPORT OF CHILDREN ON JUDGMENT.

Subdivision 1. **The best interests of the child.** (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
- (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.

**Subd. 1a. Evidence of false allegations of child abuse.** The court shall consider evidence of a violation of section 609.507 in determining the best interests of the child.

**Subd. 2. Factors when joint custody is sought.** In addition to the factors listed in subdivision 1, where either joint legal or joint physical custody is contemplated or sought, the court shall consider the following relevant factors:

- (a) The ability of parents to cooperate in the rearing of their children;
- (b) Methods for resolving disputes regarding any major decision concerning the life of the child, and the parents' willingness to use those methods;
- (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.

**Subd. 3. Custody order.** (a) Upon adjudging the nullity of a marriage, or in a dissolution or separation proceeding, or in a child custody proceeding, the court shall make such further order as it deems just and proper concerning:

- (1) the legal custody of the minor children of the parties which shall be sole or joint;
- (2) their physical custody and residence; and
- (3) their support. In determining custody, the court shall consider the best interests of each child and shall not prefer one parent over the other solely on the basis of the sex of the parent.

(b) The court shall grant the following rights to each of the parties, unless specific findings are made under paragraph (c), and every custody order must include the following notice to the parties:

**NOTICE IS HEREBY GIVEN TO THE PARTIES:**

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. Presentation of a copy of this order to the custodian of a record or other information about the minor children con-

stitutes sufficient authorization for the release of the record or information to the requesting party.

Each party shall keep the other party 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, 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.

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.

Each party has the right to reasonable access and telephone contact with the minor children.

(c) The court may waive all or part of the notice required under paragraph (b) if it finds that it is necessary to protect the welfare of a party or child.

Subd. 4. [Repealed, 1986 c 406 s 9]

Subd. 5. [Repealed, 1986 c 406 s 9]

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.

**History:** (8596) *RL s 3585; 1969 c 1030 s 1; 1971 c 173 s 1; 1974 c 107 s 14; 1974 c 330 s 2; 1978 c 772 s 39; 1979 c 259 s 17; 1981 c 349 s 5; 1983 c 308 s 15; 1984 c 547 s 16; 1984 c 655 art 1 s 73; 1986 c 406 s 1,2; 1986 c 444; 1987 c 106 s 1; 1988 c 662 s 1; 1988 c 668 s 12; 1989 c 248 s 2,3; 1990 c 574 s 13,14*

#### 518.171 MEDICAL SUPPORT.

Subdivision 1. **Order.** Unless the obligee has comparable or better group dependent health insurance coverage available at a more reasonable cost, the court shall order the obligor to name the minor child as beneficiary on any health and dental insurance plan that is available to the obligor on a group basis or through an employer or union. "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 256, 256B, or 256D.

If the court finds that dependent health or dental insurance is not available to the obligor on a group basis or through an employer or union, or that the group insurer is not accessible to the obligee, the court may require the obligor to obtain dependent health or dental insurance, or to be liable for reasonable and necessary medical or dental expenses of the child.

If the court finds that the dependent health or dental insurance required to be obtained by the obligor does not pay all the reasonable and necessary medical or dental expenses of the child, or that the dependent health or dental insurance available to the obligee does not pay all the reasonable and necessary medical or dental expenses of the child, and the court finds that the obligor has the financial ability to contribute to the payment of these medical or dental expenses, the court shall require the obligor to be liable for all or a portion of the medical or dental expenses of the child not covered by the required health or dental plan.

Subd. 2. **Spousal coverage.** The court shall require the obligor to provide dependent health and dental insurance for the benefit of the obligee if it is available at no additional cost to the obligor and in this case the provisions of this section apply.

Subd. 3. **Implementation.** A copy of the court order for insurance coverage shall be forwarded to the obligor's employer or union by the obligee or the public authority responsible for support enforcement only when ordered by the court or when the following conditions are met:

(1) the obligor fails to provide written proof to the obligee or the public authority, within 30 days of receiving effective notice of the court order, that the insurance has been obtained or that application for insurability has been made;

(2) the obligee or the public authority serves written notice of its intent to enforce medical support on the obligor by mail at the obligor's last known post office address; and

(3) the obligor fails within 15 days after the mailing of the notice to provide written proof to the obligee or the public authority that the insurance coverage existed as of the date of mailing.

The employer or union shall forward a copy of the order to the health and dental insurance plan offered by the employer.

**Subd. 4. Effect of order.** The order is binding on the employer or union and the health and dental insurance plan when service under subdivision 3 has been made. Upon receipt of the order, or upon application of the obligor pursuant to the order, the employer or union and its health and dental insurance plan shall enroll the minor child as a beneficiary in the group insurance plan and withhold any required premium from the obligor's income or wages. If more than one plan is offered by the employer or union, the child shall be enrolled in the insurance plan in which the obligor is enrolled or the least costly plan otherwise available to the obligor that is comparable to a number two qualified plan. Failure of the obligor to execute any documents necessary to enroll the dependent in the group health and dental insurance plan will not affect the obligation of the employer or union and group health and dental insurance plan to enroll the dependent in a plan for which other eligibility requirements are met. Information and authorization provided by the public authority responsible for child support enforcement, or by the custodial parent or guardian, is valid for the purposes of meeting enrollment requirements of the health plan. The insurance coverage for a child eligible under subdivision 5 shall not be terminated except as authorized in subdivision 5.

**Subd. 5. Eligible child.** A minor child that an obligor is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the obligor until the child is emancipated or until further order of the court.

**Subd. 6. Insurer notice.** The signature of the custodial parent of the insured dependent is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services. When an order for dependent insurance coverage is in effect and the obligor's employment is terminated, or the insurance coverage is terminated, the insurer shall notify the obligee within ten days of the termination date with notice of conversion privileges.

**Subd. 7. Release of information.** When an order for dependent insurance coverage is in effect, the obligor's employer or union shall release to the obligee or the public authority, upon request, information on the dependent coverage, including the name of the insurer. Notwithstanding any other law, information reported pursuant to section 268.121 shall be released to the public agency responsible for support enforcement that is enforcing an order for medical or dental insurance coverage under this section. The public agency responsible for support enforcement is authorized to release to the obligor's insurer or employer information necessary to obtain or enforce medical support.

**Subd. 8. Obligor liability.** The obligor that fails to maintain the medical or dental insurance for the benefit of the children as ordered shall be liable to the obligee for any medical or dental expenses incurred from the date of the court order. Proof of failure to maintain insurance constitutes a showing of increased need by the obligee pursuant to section 518.64 and provides a basis for a modification of the obligor's child support order.

**Subd. 9. Application for service.** The public agency responsible for support enforcement shall take necessary steps to implement and enforce an order for dependent health or dental insurance whenever the children receive public assistance, or upon application of the obligee to the public agency and payment by the obligee of any fees required by section 518.551.

**Subd. 10. Enforcement.** Remedies available for the collection and enforcement of child support apply to medical support. For the purpose of enforcement, the costs of

individual or group health or hospitalization coverage or liabilities established pursuant to subdivision 8, are additional child support.

**History:** 1986 c 404 s 13; 1986 c 444; 1987 c 403 art 3 s 77; 1988 c 668 s 13; 1990 c 568 art 3 s 91-94

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

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

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

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

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

Subd. 5. The court shall modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. Except as provided in section 631.52, the court may not restrict visitation rights unless it finds that:

- (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.

Subd. 6. **Compensatory visitation.** If the court finds that the noncustodial parent has been wrongfully deprived of the duly established right 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.

Subd. 7. **Grandparent visitation.** In all proceedings for dissolution or legal separa-

tion, the court may make an order granting visitation rights to grandparents under section 257.022, subdivision 2.

**History:** 1971 c 172 s 1; 1974 c 107 s 15; 1978 c 772 s 40-42; 1979 c 259 s 18,19; 1982 c 537 s 1; 1986 c 406 s 3; 1986 c 444; 1988 c 668 s 14; 1989 c 248 s 4,5; 1990 c 574 s 15

#### 518.1751 VISITATION DISPUTE RESOLUTION.

Subdivision 1. **Visitation expeditor.** (a) Upon agreement of all parties, the court may appoint a visitation expeditor to resolve visitation disputes that occur under a visitation order while a matter is pending under this chapter, chapter 257 or 518A, or after a decree is entered. Prior to appointing the visitation expeditor, the court shall give the parties notice that the costs of the visitation expeditor will be apportioned among the parties and that if the parties do not reach an agreement, the visitation expeditor will make a nonbinding decision resolving the dispute.

(b) For purposes of this section, "visitation dispute" means a disagreement among parties about visitation with a child. "Visitation dispute" includes a claim by a custodial parent that a noncustodial parent is not visiting a child as well as a claim by a noncustodial parent that a custodial parent is denying or interfering with visitation.

Subd. 2. **Appointment; costs.** The court shall appoint the visitation expeditor. If the parties cannot agree on a visitation expeditor, the court shall present a list of candidates with one more candidate than there are parties to the dispute. In developing the list of candidates, the court must give preference to persons who agree to volunteer their services. Each party shall strike one name and the court shall appoint the remaining individual as the visitation expeditor. In its order appointing the visitation expeditor, the court shall apportion the costs of the visitation expeditor among the parties, with each party bearing the portion of costs that the court determines is just and equitable under the circumstances.

Subd. 3. **Agreement or decision.** (a) If a visitation dispute arises, the visitation expeditor shall meet with the parties within five days and make a diligent effort to facilitate an agreement to resolve the visitation dispute.

(b) If the parties do not reach an agreement, the expeditor shall make a decision resolving the dispute as soon as possible. If a party does not comply with an agreement of the parties or a decision of the expeditor, any party may bring a motion with the court to resolve the dispute. The court may consider the agreement of the parties or the decision of the expeditor, but neither is binding on the court.

Subd. 4. **Other agreements.** This section does not preclude the parties from voluntarily agreeing to submit their visitation dispute to a neutral third party.

**History:** 1989 c 248 s 6

#### 518.176 JUDICIAL SUPERVISION.

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

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

**History:** 1978 c 772 s 43; 1979 c 259 s 20; 1986 c 444



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

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

**History:** 1984 c 484 s 1

**518.179 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;
- (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.

**History:** 1990 c 574 s 16

**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 paragraph (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 paragraph (c).

(c) The time limitations prescribed in paragraphs (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;

(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 631.52.

**History:** (8597) *RL s 3586; 1978 c 772 s 44; 1979 c 259 s 21; 1986 c 444; 1990 c 574 s 17*

#### **518.185 AFFIDAVIT PRACTICE.**

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

**History:** *1978 c 772 s 45; 1986 c 444*

#### **518.191 SUMMARY REAL ESTATE DISPOSITION JUDGMENT.**

**Subdivision 1. Abbreviated judgment and decree.** If real estate is described in a judgment and decree of dissolution, the court may direct either of the parties or their legal counsel to prepare and submit to the court a proposed summary real estate disposition judgment. Upon approval by the court and filing of the summary real estate disposition judgment with the court administrator, the court administrator shall provide to any party upon request certified copies of the summary real estate disposition judgment.

**Subd. 2. Required information.** A summary real estate disposition judgment must contain the following information: (1) the full caption and file number of the case and the title "Summary Real Estate Disposition Judgment"; (2) the dates of the parties' marriage and of the entry of the judgment and decree of dissolution; (3) the names of the parties' attorneys or if either or both appeared pro se; (4) the name of the judge and referee, if any, who signed the order for judgment and decree; (5) whether the judgment and decree resulted from a stipulation, a default, or a trial and the appearances at the default or trial; (6) whether either party changed the party's name through the judgment and decree; (7) the legal description of each parcel of real estate; (8) the name or names of the persons awarded an interest in each parcel of real estate and a description of the interest awarded; (9) liens, mortgages, encumbrances, or other interests in the real estate described in the judgment and decree; and (10) triggering or contingent events set forth in the judgment and decree affecting the disposition of each parcel of real estate.

**Subd. 3. Court order.** An order or provision in a judgment and decree that provides that the judgment and decree must be recorded in the office of the county recorder or filed in the office of the registrar of titles means, if a summary real estate disposition judgment has been approved by the court, that the summary real estate disposition judgment, rather than the judgment and decree, must be recorded in the office of the county recorder or filed in the office of the registrar of titles.

Subd. 4. **Transfer of property.** The summary real estate disposition judgment operates as a conveyance and transfer of each interest in the real estate in the manner and to the extent described in the summary real estate disposition judgment.

Subd. 5. **Conflict.** If a conflict exists between the judgment and decree and the summary real estate disposition judgment, the summary real estate disposition judgment recorded in the office of the county recorder or filed in the office of the registrar of titles controls as to the interest acquired in real estate by any subsequent purchaser in good faith and for a valuable consideration, who is in possession of the interest or whose interest is recorded with the county recorder or registrar of titles, before the recording of the judgment and decree in the same office.

**History:** 1990 c 575 s 7

**518.19-518.23** [Repealed, 1951 c 551 s 15]

**518.24 SECURITY; SEQUESTRATION; CONTEMPT.**

In all cases when maintenance or support payments are ordered, the court may require sufficient security to be given for the payment of them according to the terms of the order. Upon neglect or refusal to give security, or upon failure to pay the maintenance or support, the court may sequester the obligor's personal estate and the rents and profits of real estate of the obligor, and appoint a receiver of them. The court may cause the personal estate and the rents and profits of the real estate to be applied according to the terms of the order. The obligor is presumed to have an income from a source sufficient to pay the maintenance or support order. If the obligor disobeys the order, it is prima facie evidence of contempt.

**History:** (8604) *RL s 3593; 1969 c 1028 s 1; 1978 c 772 s 46; 1983 c 216 art 1 s 74; 1986 c 444; 1987 c 403 art 3 s 78*

**518.25 REMARRIAGE; REVOCATION.**

When a dissolution has been granted, and the parties afterward intermarry, the court, upon their joint application, and upon satisfactory proof of such marriage, may revoke all decrees and orders of dissolution, maintenance, and subsistence which will not affect the rights of third persons.

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

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

**518.27 NAME OF PARTY.**

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

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

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

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

**518.41** [Repealed, 1982 c 436 s 37]

**518.42** [Repealed, 1982 c 436 s 37]

**518.43** [Repealed, 1982 c 436 s 37]

**518.44** [Repealed, 1982 c 436 s 37]

**518.45** [Repealed, 1982 c 436 s 37]

**518.46** [Repealed, 1982 c 436 s 37]

**518.47** [Repealed, 1982 c 436 s 37]

- 518.48 [Repealed, 1982 c 436 s 37]  
 518.49 [Repealed, 1982 c 436 s 37]  
 518.491 [Repealed, 1982 c 436 s 37]  
 518.50 [Repealed, 1982 c 436 s 37]  
 518.51 [Repealed, 1982 c 436 s 37]  
 518.52 [Repealed, 1982 c 436 s 37]  
 518.53 [Repealed, 1982 c 436 s 37]

### MAINTENANCE, SUPPORT, PROPERTY

#### 518.54 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 518.54 to 518.66, the terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. **Child.** "Child" means an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support.

Subd. 2a. **Deposit account.** "Deposit account" means funds deposited with a financial institution in the form of a savings account, checking account, NOW account, or demand deposit account.

Subd. 2b. **Financial institution.** "Financial institution" means a savings association, bank, trust company, credit union, industrial loan and thrift company, bank and trust company, or building and loan association, and includes a branch or detached facility of a financial institution.

Subd. 3. **Maintenance.** "Maintenance" means an award made in a dissolution or legal separation proceeding of payments from the future income or earnings of one spouse for the support and maintenance of the other.

Subd. 4. **Support money.** "Support money" means an award in a dissolution, legal separation, or annulment proceeding for the care, support and education of any child of the marriage or of the parties to the annulment proceeding.

Subd. 5. **Marital property; exceptions.** "Marital property" means property, real or personal, including vested public or private pension plan benefits or rights, acquired by the parties, or either of them, to a dissolution, legal separation, or annulment proceeding at any time during the existence of the marriage relation between them, or at any time during which the parties were living together as husband and wife under a purported marriage relationship which is annulled in an annulment proceeding, but prior to the date of valuation under section 518.58, subdivision 1. All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property regardless of whether title is held individually or by the spouses in a form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property. Each spouse shall be deemed to have a common ownership in marital property that vests not later than the time of the entry of the decree in a proceeding for dissolution or annulment. The extent of the vested interest shall be determined and made final by the court pursuant to section 518.58. The presumption of marital property is overcome by a showing that the property is nonmarital property.

"Nonmarital property" means property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which

(a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;

(b) is acquired before the marriage;

(c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);

(d) is acquired by a spouse after the valuation date; or

(e) is excluded by a valid antenuptial contract.

Subd. 6. **Income.** "Income" means any form of periodic payment to an individual including, but not limited to, wages, salaries, payments to an independent contractor, workers' compensation, unemployment compensation, annuity, military and naval retirement, pension and disability payments. Benefits received under sections 256.72 to 256.87 and chapter 256D are not income under this section.

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

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

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

Subd. 10. **Pension plan benefits or rights.** "Pension plan benefits or rights" means a benefit or right from a public or private pension plan accrued to the end of the month in which marital assets are valued, as determined under the terms of the laws or other plan document provisions governing the plan, including section 356.30.

Subd. 11. **Public pension plan.** "Public pension plan" means a pension plan or fund specified in section 356.20, subdivision 2, or 356.30, subdivision 3, the deferred compensation plan specified in section 352.96, or any retirement or pension plan or fund, including a supplemental retirement plan or fund, established, maintained, or supported by a governmental subdivision or public body whose revenues are derived from taxation, fees, assessments, or from other public sources.

Subd. 12. **Private pension plan.** "Private pension plan" means a plan, fund, or program maintained by an employer or employee organization that provides retirement income to employees or results in a deferral of income by employees for a period extending to the termination of covered employment or beyond.

**History:** 1951 c 551 s 1; 1969 c 1028 s 2,3; 1973 c 725 s 74; 1974 c 107 s 18; 1978 c 772 s 48; 1979 c 259 s 23,34; 1981 c 360 art 2 s 45; 1982 c 464 s 1; 1983 c 144 s 1; 1986 c 444; 1987 c 157 s 14-16; 1988 c 590 s 1; 1988 c 668 s 15,16; 1989 c 282 art 2 s 189; 1990 c 568 art 2 s 68,69

## 518.55 MAINTENANCE OR SUPPORT MONEY.

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

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

Subd. 2a. **Entry of child support judgment.** Every order for support shall provide for a conspicuous notice that, if the obligor fails to make a support payment, the payment owed becomes a judgment by operation of law on and after the date the payment is due, and the obligee or a public agency responsible for support enforcement may obtain entry and docketing of the judgment for the unpaid amount under the provisions of section 548.091.

Subd. 3. **Notice of address or residence change.** Every obligor shall notify the obli-

gee and the public authority responsible for collection, if applicable, of a change of address or residence within 60 days of the address or residence change. Every order for support or maintenance must contain a conspicuous notice of the requirements of this subdivision. The court may waive or modify the requirements of this subdivision by order if necessary to protect the obligor from contact by the obligee.

**History:** 1951 c 551 s 2; 1969 c 1028 s 4; 1974 c 107 s 19; 1978 c 772 s 49; 1979 c 259 s 24; 1984 c 547 s 17; 1985 c 131 s 6; 1988 c 593 s 6,7

**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, 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. 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.** (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 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%



(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.

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.

**Subd. 5a. Order for community services.** If the court finds that the obligor earns \$400 or less per month and does not have the ability to provide support based on the guidelines and factors under subdivision 5, the court may order the obligor to perform community services to fulfill the obligor's support obligation. In ordering community services under this subdivision, the court shall consider whether the obligor has the physical capability of performing community services, and shall order community services that are appropriate for the obligor's abilities.

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

**Subd. 7. Service fee.** When the public agency responsible for child support enforcement provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the public agency may upon written notice to the obligor charge a monthly collection fee equivalent to the full monthly cost to the county of providing collection services, in addition to the amount of the child support which was ordered by the court. The fee shall be deposited in the county general fund. The service fee assessed is limited to ten percent of the monthly court ordered child support and shall not be assessed to obligors who are current in payment of the monthly court ordered child support. An application fee not to exceed \$5 shall be paid



by the person who applies for child support and maintenance collection services, except persons who transfer from public assistance to nonpublic assistance status. Fees assessed by state and federal tax agencies for collection of overdue support owed to or on behalf of a person not receiving public assistance must be imposed on the person for whom these services are provided.

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

Subd. 8. [Repealed, 1986 c 404 s 20]

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. The court administrator shall enter and docket a judgment obtained by operation of law under section 548.091, subdivision 1, in the name of the public agency to the extent that the obligation has been assigned. When arrearages are reduced to judgment under circumstances in which section 548.091 is not applicable, the court shall grant judgment in favor of, and in the name of, the public agency to the extent that the arrearages are assigned. After filing notice of an assignment with the court administrator, who shall enter the notice in the docket, the public agency may enforce a judgment entered before the assignment of rights as if the judgment were granted to it, and in its name, to the extent that the arrearages in that judgment are assigned.

Subd. 10. **Administrative process for child and medical support orders.** An administrative process is established to obtain, modify, and enforce child and medical support orders and maintenance.

The commissioner of human services may designate counties to participate in the administrative process established by this section. All proceedings for obtaining, modifying, or enforcing child and medical support orders and maintenance and adjudicating uncontested parentage proceedings, required to be conducted in counties designated by the commissioner of human services in which the county human services agency is a party or represents a party to the action must be conducted by an administrative law judge from the office of administrative hearings, except for the following proceedings:

- (1) adjudication of contested parentage;
- (2) motions to set aside a paternity adjudication or declaration of parentage;
- (3) evidentiary hearing on contempt motions; and
- (4) motions to sentence or to revoke the stay of a jail sentence in contempt proceedings.

An administrative law judge may hear a stipulation reached on a contempt motion, but any stipulation that involves a finding of contempt and a jail sentence, whether stayed or imposed, shall require the review and signature of a district judge.

For the purpose of this process, all powers, duties, and responsibilities conferred on judges of the district court to obtain and enforce child and medical support obligations, subject to the limitation set forth herein, are conferred on the administrative law judge conducting the proceedings, including the power to issue orders to show cause and to issue bench warrants for failure to appear.

Before implementing the process in a county, the chief administrative law judge, the commissioner of human services, the director of the county human services agency, the county attorney, and the county court administrator shall jointly establish procedures and the county shall provide hearing facilities for implementing this process in a county.

Nonattorney employees of the public agency responsible for child support in the counties designated by the commissioner, acting at the direction of the county attorney, may prepare, sign, serve, and file complaints and motions for obtaining, modifying, or enforcing child and medical support orders and maintenance and related documents,

appear at prehearing conferences, and participate in proceedings before an administrative law judge. This activity shall not be considered to be the unauthorized practice of law.

The hearings shall be conducted under the rules of the office of administrative hearings, Minnesota Rules, parts 1400.7100 to 1400.7500, 1400.7700, and 1400.7800, as adopted by the chief administrative law judge. All other aspects of the case, including, but not limited to, pleadings, discovery, and motions, shall be conducted under the rules of family court, the rules of civil procedure, and chapter 518. The administrative law judge shall make findings of fact, conclusions, and a final decision and issue an order. Orders issued by an administrative law judge are enforceable by the contempt powers of the county and district courts.

The decision and order of the administrative law judge is appealable to the court of appeals in the same manner as a decision of the district court.

Subd. 11. **Reopening support awards.** Section 518.145, subdivision 2, applies to awards of child support.

**History:** 1971 c 961 s 21; 1974 c 107 s 20; 1977 c 282 s 29; 1978 c 772 s 50; 1979 c 259 s 25; 1981 c 349 s 6; 1981 c 360 art 2 s 46; 3Sp1981 c 3 s 19; 1982 c 488 s 4,5; 1983 c 308 s 16-20; 1984 c 547 s 18,19; 1985 c 131 s 7; 1986 c 406 s 4; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 403 art 3 s 79,80; 1988 c 593 s 8; 1988 c 668 s 17,18; 1989 c 282 art 2 s 190,191; 1990 c 568 art 2 s 70-72; 1990 c 574 s 18

#### 518.552 MAINTENANCE.

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

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

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

(a) the financial resources of the party seeking maintenance, including marital property apportioned to the party, and the party's ability to meet needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, and the probability, given the party's age and skills, of completing education or training and becoming fully or partially self-supporting;

(c) the standard of living established during the marriage;

(d) the duration of the marriage and, in the case of a homemaker, the length of absence from employment and the extent to which any education, skills, or experience have become outmoded and earning capacity has become permanently diminished;

(e) the loss of earnings, seniority, retirement benefits, and other employment opportunities forgone by the spouse seeking spousal maintenance;

(f) the age, and the physical and emotional condition of the spouse seeking maintenance;

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

(h) the contribution of each party in the acquisition, preservation, depreciation, or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker or in furtherance of the other party's employment or business.

Subd. 3. Nothing in this section shall be construed to favor a temporary award of maintenance over a permanent award, where the factors under subdivision 2 justify a permanent award.

Where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification.

Subd. 4. **Reopening maintenance awards.** Section 518.145, subdivision 2, applies to awards of spousal maintenance.

Subd. 5. **Private agreements.** The parties may expressly preclude or limit modification of maintenance through a stipulation, if the court makes specific findings that the stipulation is fair and equitable, is supported by consideration described in the findings, and that full disclosure of each party's financial circumstances has occurred. The stipulation must be made a part of the judgment and decree.

**History:** 1978 c 772 s 51; 1979 c 259 s 26; 1982 c 535 s 1; 1985 c 266 s 2; 1986 c 444; 1988 c 668 s 19; 1989 c 248 s 7

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

### **518.57 MINOR CHILDREN; SUPPORT.**

Subdivision 1. **Order.** Upon a decree of dissolution, legal separation, or annulment, the court 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.

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.

**History:** 1951 c 551 s 4; 1974 c 107 s 21; 1978 c 772 s 52; 1986 c 406 s 5; 1987 c 403 art 3 s 81; 1990 c 574 s 19

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

Subdivision 1. **General.** Upon a dissolution of a marriage, an annulment, or in a proceeding for disposition of property following a dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property and which has since acquired jurisdiction, the court shall make a just and equitable division of the marital property of the parties without regard to marital misconduct, after making findings regarding the division of the property. The court shall base its findings on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, opportunity for future acquisition of capital assets, and income of each party. The court shall also consider the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker. It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife. The court may also award to either spouse the household goods and furniture of the parties, whether or not acquired during the marriage. The court shall value marital assets for purposes of division between the parties as of the

day of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable. If there is a substantial change in value of an asset between the date of valuation and the final distribution, the court may adjust the valuation of that asset as necessary to effect an equitable distribution. During the pendency of a marriage dissolution or annulment proceeding, each party owes a fiduciary duty to the other for any profit or loss derived by the party, without consent of the other, from a transaction or from any use by the party of the marital assets.

**Subd. 2. Award of nonmarital property.** If the court finds that either spouse's resources or property, including the spouse's portion of the marital property as defined in section 518.54, subdivision 5, are so inadequate as to work an unfair hardship, considering all relevant circumstances, the court may, in addition to the marital property, apportion up to one-half of the property otherwise excluded under section 518.54, subdivision 5, clauses (a) to (d), to prevent the unfair hardship. If the court apportions property other than marital property, it shall make findings in support of the apportionment. The findings shall be based on all relevant factors including the length of the marriage, any prior marriage of a party, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, needs, and opportunity for future acquisition of capital assets and income of each party.

**Subd. 3. Sale or distribution while proceeding pending.** (a) If the court finds that it is necessary to preserve the marital assets of the parties, the court may order the sale of the homestead of the parties or the sale of other marital assets, as the individual circumstances may require, during the pendency of a proceeding for a dissolution of marriage or an annulment. If the court orders a sale, it may further provide for the disposition of the funds received from the sale during the pendency of the proceeding. If liquid or readily liquidated marital property other than property representing vested pension benefits or rights is available, the court, so far as possible, shall divide the property representing vested pension benefits or rights by the disposition of an equivalent amount of the liquid or readily liquidated property.

(b) The court may order a partial distribution of marital assets during the pendency of a proceeding for a dissolution of marriage or an annulment for good cause shown or upon the request of both parties, provided that the court shall fully protect the interests of the other party.

**Subd. 4. Pension plans.** The division of marital property that represents pension plan benefits or rights in the form of future pension plan payments:

(1) is payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan;

(2) is not payable for a period that exceeds the time that pension plan benefits are payable to the pension plan benefit recipient;

(3) is not payable in a lump sum amount from pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a pension plan;

(4) if the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and

(5) in the case of public pension plan benefits or rights, may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.

**History:** 1951 c 551 s 5; 1974 c 107 s 22; 1978 c 772 s 53; 1979 c 259 s 27; 1979 c 289 s 8; 1981 c 349 s 7; 1982 c 464 s 2; 1986 c 444; 1987 c 157 s 17; 1988 c 590 s 2; 1988 c 668 s 20; 1989 c 248 s 8

### **518.581 SURVIVING SPOUSE BENEFIT.**

**Subdivision 1. Award of benefit.** If a current or former employee's marriage is dis-

solved, the court may order the employee, the employee's pension plan, or both, to pay amounts as part of the division of pension rights that the court may make under section 518.58, or as an award of maintenance in the form of a percentage of periodic or other payments or in the form of a fixed dollar amount. The court may, as part of the order, award a former spouse all or part of a survivor benefit unless the plan does not allow by law the payment of a surviving spouse benefit to a former spouse.

**Subd. 2. Payment of funds by retirement plan.** (a) If the court has ordered that a spouse has an interest in a pension plan, the court may order the pension plan to withhold payment of a refund upon termination of employment or lump sum distribution to the extent of the spouse's interest in the plan, or to provide survivor benefits ordered by the court.

(b) The court may not order the pension plan to:

(1) pay more than the equivalent of one surviving spouse benefit, regardless of the number of spouses or former spouses who may be sharing in a portion of the total benefit;

(2) pay surviving spouse benefits under circumstances where the plan member does not have a right to elect surviving spouse benefits;

(3) pay surviving spouse benefits if the former spouse would not be eligible for benefits under the terms of the plan; or

(4) order survivor benefits which, when combined with the annuity or benefit payable to the pension plan member, exceed the actuarial equivalent value of the normal retirement annuity form, determined under the plan documents of the pension plan then in effect and the actuarial assumptions then in effect for calculating optional annuity forms by the pension plan or for calculating the funding requirements of the pension plan if no optional annuity forms are provided by the pension plan.

(c) If more than one spouse or former spouse is entitled to a surviving spouse benefit, the pension plan shall pay each spouse a portion of the benefit based on the ratio of the number of years the spouse was married to the plan member to the total number of years the plan member was married to spouses who are entitled to the benefit.

**Subd. 3. Notice to former spouse.** A pension plan shall notify a former spouse of an application by the employee for a refund of pension benefits if the former spouse has filed with the pension plan:

(1) a copy of the court order, including a withholding order, determining the former spouse's rights;

(2) the name and last known address of the employee; and

(3) the name and address of the former spouse.

A pension plan shall comply with an order, including a withholding order, issued by a court having jurisdiction over dissolution of marriage that is served on the pension plan, if the order states the name, last known address of the payees, and name and address of the former spouse, or if the names and addresses are provided to the pension plan with service of the order.

**Subd. 4. Definitions.** For purposes of this section, the following terms have the meanings given in this subdivision.

(a) "Current or former employee" or "employee" means an individual who has an interest in a pension plan.

(b) "Surviving spouse benefit" means (1) a benefit a surviving spouse may be eligible for under the laws and bylaws of the pension plan if the employee dies before retirement, or (2) a benefit selected for or available to a surviving spouse under the laws and bylaws of the pension plan upon the death of the employee after retirement.

**History:** 1987 c 157 s 18; 1988 c 668 s 21

## **518.582 PROCEDURE FOR VALUING PENSION BENEFITS OR RIGHTS.**

**Subdivision 1. Appointment of actuary.** Each court of this state that has jurisdiction to decide marriage dissolution matters may appoint a qualified person experienced in

the valuation of pension benefits and rights to function as an expert witness in valuing pension benefits or rights.

**Subd. 2. Standards.** A court appointed actuary shall determine the present value of pension benefits or rights that are marital property of the parties to the action based on the applicable plan documents of the pension plan and the applicable actuarial assumptions specified for use in calculating optional annuity forms by the pension plan or for funding the pension plan, if reasonable, or as specified by the court. The court appointed actuary shall report to the court and to the parties the present value of the pension benefits or rights that are marital property.

**Subd. 3. Compensation.** The court appointed actuary may be compensated at a rate established by the court. The compensation of the court appointed actuary shall be allocated between the parties as the court directs.

**Subd. 4. Stipulation.** In lieu of valuing pension benefits or rights through use of the court appointed actuary, the parties may stipulate the present value of pension benefits or rights that are marital property.

**History:** 1987 c 157 s 19; 1988 c 619 s 1

### 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.

**History:** 1990 c 574 s 20

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

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

### 518.61 TRUSTEE.

(a) Upon its own motion or upon motion of either party, the court may appoint a trustee, when it is deemed expedient, to receive any money ordered to be paid as maintenance or support money for remittance to the person entitled to receive the payments. The trustee may also receive property which is part of an award under section 518.58, upon trust to invest the same, and pay over the income in the manner the court directs, or to pay over the principal sum in the proportions and at the times the court orders. The court shall have regard in all cases to the situation and circumstances of the recipient, and the children, if there are any. The trustee shall give a bond, as the court requires, for the faithful performance of the trust. If it appears that the recipient of money ordered to be paid as support will receive public assistance, the court shall appoint as trustee the public authority responsible for support enforcement.

(b) The trustee shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order.

(c) The parties affected by the order shall inform the trustee of a change of address or of other conditions that may affect the administration of the order.

(d) If a required payment of support or of maintenance and support combined is not made within ten days after the due date, the trustee shall send by first class mail notice of the arrearage to the obligor. If payment of the sum due is not received by the

trustee within ten days after sending notice, the trustee shall certify the amount due to the public authority responsible for support enforcement, whenever that authority is not the trustee. If the public authority responsible for support enforcement refers the arrearage to the county attorney, the county attorney may initiate enforcement proceedings against the obligor for support or for maintenance and support combined.

(e) The public authority responsible for support enforcement may represent a person entitled to receive support or maintenance or both in court proceedings initiated under this section to enforce compliance with a support order or combined maintenance and support orders.

(f) If the person obligated to pay support or maintenance is beyond the jurisdiction of the court, the county attorney may institute any proceeding available under state or federal law for the enforcement of duties of support or maintenance.

*History: 1951 c 551 s 8; 1969 c 1028 s 6; 1978 c 772 s 54; 1986 c 444*

### 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, the amount of child support or maintenance as determined by court order must be withheld from the income, regardless of source, of the person obligated to pay the support or maintenance. Every order for maintenance or support must include the obligor's social security number and date of birth and the name and address of the obligor's employer or other payor of funds.

Subd. 2. **Conditions of income withholding.** (a) Withholding shall result whenever the obligor fails to make the maintenance or support payments, and the following conditions are met:

(1) the obligor is at least 30 days in arrears;

(2) the obligee or the public authority serves written notice of income withholding, showing arrearage, on the obligor at least 15 days before service of the notice of income withholding and a copy of the court's order on the payor of funds;

(3) within the 15-day period, the obligor fails to move the court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding, or on other grounds limited to mistakes of fact, and, ex parte, to stay service on the payor of funds until the motion to deny withholding is heard;

(4) the obligee or the public authority serves a copy of the notice of income withholding, a copy of the court's order, and the provisions of this section on the payor of funds; and

(5) the obligee serves on the public authority a copy of the notice of income withholding, a copy of the court's order, an application, and the fee to use the public authority's collection services.

(b) To pay the arrearage specified in the notice of income withholding, the employer or payor of funds shall withhold from the obligor's income an additional amount equal to 20 percent of the monthly child support or maintenance obligation until the arrearage is paid.

(c) The obligor may, at any time, waive the written notice required by this subdivision.

(d) The obligor may move the court, under section 518.64, to modify the order respecting the amount of maintenance or support.

(e) Every order for support or maintenance shall provide for a conspicuous notice of the provisions of this subdivision. An order without this notice remains subject to this subdivision.

(f) Absent a court order to the contrary, if an arrearage exists at the time an order for ongoing support or maintenance would otherwise terminate, income withholding shall continue in effect in an amount equal to the former support or maintenance obli-

gation plus an additional amount equal to 20 percent of the monthly child support obligation, until all arrears have been paid in full.

**Subd. 2a. Preauthorized transfers from obligor accounts.** In any case where income withholding is ineffective due to the obligor's method of obtaining income, the court shall order the obligor to identify a child support deposit account owned solely by the obligor, or to establish an account, in a financial institution located in this state for the purpose of depositing court-ordered child support payments. The court shall order the obligor to execute an agreement with the appropriate public authority authorizing preauthorized transfers from the obligor's child support deposit account payable to an account of the public authority responsible for child support enforcement. The court shall order the obligor to disclose to the court all deposit accounts owned by the obligor in whole or in part in any financial institution. The court may order the obligor to disclose to the court the opening or closing of any deposit account owned in whole or in part by the obligor within 30 days of the opening or closing. The court may order the obligor to execute an agreement with the appropriate public authority authorizing preauthorized transfers from any deposit account owned in whole or in part by the obligor to the obligor's child support deposit account if necessary to satisfy court-ordered child support payments. The court may order a financial institution to disclose to the court the account number and any other account identification information regarding accounts owned in whole or in part by the obligor. An obligor who fails to comply with this section, fails to deposit funds in at least one deposit account sufficient to pay court-ordered child support, or stops payment or revokes authorization of any preauthorized transfer is subject to contempt of court procedures under chapter 588.

**Subd. 3. Withholding hearing.** Within 45 days from the date of the notice given under subdivision 2, the court shall hold the hearing on the motion under subdivision 2 and notify the parties of its decision. At the hearing to deny withholding, if the court finds that there was no mistake of fact, the court shall order income withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing. If the court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but finds a mistake in the amount of arrearage, the court shall order income withholding, but it shall correct the amount of arrearage to be withheld under subdivision 2, paragraph (b).

**Subd. 4. Effect of order.** Notwithstanding any law to the contrary, the order is binding on the employer, trustee, payor of the funds, or financial institution when service under subdivision 2 has been made. Withholding must begin no later than the first pay period that occurs after 14 days following the date of the notice. In the case of a financial institution, preauthorized transfers must occur in accordance with a court-ordered payment schedule. An employer, payor of funds, or financial institution in this state is required to withhold income according to court orders for withholding issued by other states or territories. The payor shall withhold from the income payable to the obligor the amount specified in the order and amounts required under subdivision 2 and section 518.613 and shall remit, within ten days of the date the obligor is paid the remainder of the income, the amounts withheld to the public authority. The payor shall identify on the remittance information the date the obligor is paid the remainder of the income. The financial institution shall execute preauthorized transfers from the deposit accounts of the obligor in the amount specified in the order and amounts required under subdivision 2 as directed by the public authority responsible for child support enforcement. Employers may combine all amounts withheld from one pay period into one payment to each public authority, but shall separately identify each obligor making payment. 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 refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this section. The employer or other payor of funds shall be liable to the obligee for any amounts required to be withheld. A financial institution is liable to the obligee if funds in any of the obligor's deposit accounts identified in the court order equal the amount stated in the preauthorization agreement but are not transferred by the financial institution in accordance with the agreement.



**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 and shall not be subject to the statutory limitations on amounts levied against the income of the obligor. Amounts withheld from an employee's income must not exceed the maximum permitted under the Consumer Credit Protection Act, United States Code, title 15, section 1673(b)(2). If there is more than one withholding order on a single employee, the employer shall put them into effect, giving priority first to amounts currently due and not in arrears and then to other amounts, in the sequence in which the withholding orders were received up to the maximum allowed in the Consumer Credit Protection Act. Notwithstanding any law to the contrary, funds from income sources included in section 518.54, subdivision 6, whether periodic or lump sum, are not exempt from attachment or execution upon a judgment for child support arrearages.

**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 and obligor notice.** When an individual is hired for employment, the employer shall request that the individual disclose whether or not the individual has court-ordered child support obligations that are required by law to be withheld from income and the terms of the court order, if any. The individual shall disclose this information at the time of hiring. When an individual discloses that the individual owes child support that is required to be withheld, the employer shall begin withholding according to the terms of the order and under this section. When a withholding order is in effect and the obligor's employment is terminated or the periodic payment terminates, the obligor and the obligor's employer or the payor of funds shall notify the public agency responsible for child support enforcement of the termination within ten 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. Information disclosed under this section shall not be divulged except to the extent necessary for the administration of the child support enforcement program or when otherwise authorized by law.

**Subd. 8a. Lump sum payments.** (a) Upon the transmittal of the last reimbursement payment to the employee, where a lump sum payment including, but not limited to, severance pay, accumulated sick pay or vacation pay is paid upon termination of employment, and where the employee is in arrears in making court ordered child support payments, the employer shall withhold an amount which is the lesser of (1) the amount in arrears or (2) that portion of the arrearages which is the product of the obligor's monthly court ordered support amount multiplied by the number of months of net income that the lump sum payment represents.

(b) An employer, trustee, or other payor of funds who has been served with a notice of income withholding under subdivision 2 or section 518.613 must:

(1) notify the public authority of any lump sum payment of \$500 or more that is to be paid to the obligor;

(2) hold the lump sum payment for 30 days after the date on which the lump sum payment would otherwise have been paid to the obligor, notwithstanding sections 181.08, 181.101, 181.11, 181.13, and 181.145; and

(3) upon order of the court, pay any specified amount of the lump sum payment to the public authority for support.

**Subd. 9. Forms.** The commissioner of human services shall prepare and make

available to courts and obligors a form to be submitted by the obligor in support of a motion to deny withholding under this section. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form.

**Subd. 10. Order terminating income withholding.** (a) 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.

(b) If the public authority determines that the support obligation has terminated under the terms of the order or decree establishing the obligation, the public authority shall notify the obligee and obligor of intent to terminate income withholding. Five days following this notice, the public authority shall issue a notice to the payor of funds terminating income withholding, without a requirement for a court order terminating income withholding, unless a hearing has been requested under paragraph (a).

**Subd. 11. Contract for service.** To carry out the provisions of this section, the public authority responsible for child support enforcement may contract for services, including the use of electronic funds transfer.

**History:** 1978 c 772 s 55; 1979 c 259 s 28; 1981 c 360 art 2 s 47; 1982 c 488 s 6; 1983 c 308 s 21; 1984 c 547 s 20; 1985 c 131 s 8-12; 1986 c 404 s 14-16; 1986 c 406 s 6; 1987 c 403 art 3 s 82-88; 1988 c 668 s 22,23; 1989 c 282 art 2 s 192; 1990 c 568 art 2 s 73-78

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

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

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

### **518.613 AUTOMATIC WITHHOLDING.**

**Subdivision 1. General.** Notwithstanding any provision of section 518.611, subdi-

vision 2 or 3, to the contrary, whenever an obligation for child support or maintenance, enforced by the public authority, is initially determined and ordered or modified by the court in a county in which this section applies, the amount of child support or maintenance ordered by the court must be withheld from the income, regardless of source, of the person obligated to pay the support.

**Subd. 2. Order; collection services.** Every order for child support must include the obligor's social security number and date of birth and the name and address of the obligor's employer or other payor of funds. Upon entry of the order for support or maintenance, the court shall mail a copy of the court's automatic income withholding order and the provisions of section 518.611 and this section to the obligor's employer or other payor of funds and to the public authority responsible for child support enforcement. An obligee who is not a recipient of public assistance shall apply for the collection services of the public authority when an order for support is entered unless the requirements of this section have been waived under subdivision 7. No later than January 1, 1990, the supreme court shall develop a standard automatic income withholding form to be used by all Minnesota courts. This form shall be made a part of any order for support or decree by reference.

**Subd. 3. Withholding.** The employer or other payor shall withhold and forward the child support or maintenance ordered in the manner and within the time limits provided in section 518.611. Amounts received from employers or other payors under this section by the public agency responsible for child support enforcement that are in excess of public assistance received by the obligee must be remitted to the obligee. The public agency must remit payments to the obligee at least once monthly on a standard payment date set by the agency. A county in which this section applies may contract for services to carry out the provisions of this section.

**Subd. 4. Application.** On and after August 1, 1989, this section applies in a county selected under Laws 1987, chapter 403, article 3, section 93, and in a county that chooses to have this section apply by resolution of a majority vote of its county board. On and after November 1, 1990, this section applies to all child support and maintenance obligations that are initially ordered or modified on and after November 1, 1990, and that are being enforced by the public authority.

**Subd. 5. [Repealed, 1989 c 282 art 2 s 219]**

**Subd. 6. Notice of services.** The department of human services shall prepare and make available to the courts a form notice of child support and maintenance collection services available through the public authority responsible for child support enforcement, including automatic income withholding under this section. Promptly upon the filing of a petition for dissolution of marriage or legal separation by parties who have a minor child, the court administrator shall send the form notice to the petitioner and respondent at the addresses given in the petition. The rulemaking provisions of chapter 14 shall not apply to the preparation of the form notice.

**Subd. 7. Waiver.** (a) The court may waive the requirements of this section if the court finds that there is no arrearage in child support or maintenance as of the date of the hearing, that it would not be contrary to the best interests of the child, and: (1) one party demonstrates and the court finds that there is good cause to waive the requirements of this section or to terminate automatic income withholding on an order previously entered under this section; or (2) all parties reach a written agreement that provides for an alternative payment arrangement and the agreement is approved by the court after a finding that the agreement is likely to result in regular and timely payments. If the court waives the requirements of this section:

(1) in all cases where the obligor is at least 30 days in arrears, withholding must be carried out pursuant to section 518.611;

(2) the obligee may at any time and without cause request the court to issue an order for automatic income withholding under this section; and

(3) the obligor may at any time request the public authority to begin withholding pursuant to this section, by serving upon the public authority the request and a copy

of the order for child support or maintenance. Upon receipt of the request, the public authority shall serve a copy of the court's order and the provisions of section 518.611 and this section on the obligor's employer or other payor of funds. The public authority shall notify the court that withholding has begun at the request of the obligor pursuant to this clause.

(b) For purposes of this subdivision, "parties" includes the public authority in cases when it is a party pursuant to section 518.551, subdivision 9.

**History:** 1987 c 403 art 3 s 89; 1988 c 693 s 1,2; 1989 c 282 art 2 s 193-197; 1990 c 568 art 2 s 79

#### **518.614 ESCROW ACCOUNT; CHILD SUPPORT; MAINTENANCE OBLIGATION.**

**Subdivision 1. Stay of service.** If the court finds there is no arrearage in child support or maintenance as of the date of the court hearing, the court shall stay service of the order under section 518.613, subdivision 2, in a county in which that section applies if the obligor establishes a savings account for a sum equal to two months of the monthly child support or maintenance obligation and provides proof of the establishment to the court and the public authority on or before the day of the court hearing determining the obligation. This sum must be held in a financial institution in an interest-bearing account with only the public authority authorized as drawer of funds. Proof of the establishment must include the financial institution name and address, account number, and the amount of deposit.

**Subd. 2. Release of stay.** Within three working days of receipt of notice of default, the public authority shall direct the financial institution to release to the public authority the sum held under this subdivision when the following conditions are met:

(1) the obligor fails to pay the support amount to the obligee or the public authority within ten days of the date it is ordered to be paid;

(2) the obligee transmits a notice of default to the public authority and makes application to the public authority for child support and maintenance collection services. The notice must be verified by the obligee and must contain the title of the action, the court file number, the full name and address of the obligee, the name and last known address of the obligor, the obligor's last known employer or other payor of funds, the date of the first unpaid amount, the date of the last unpaid amount, and the total amount unpaid; and

(3) within three working days of receipt of notice from the obligee, the public authority sends a copy of the notice of default and a notice of intent to implement income withholding by mail to the obligor at the address given. The notice of intent shall state that the order establishing the support or maintenance obligation will be served on the obligor's employer or payor of funds unless within 15 days after the mailing of the notice the obligor requests a hearing on the issue of whether payment was in default as of the date of the notice of default and serves notice of the request for hearing on the public authority and the obligee.

**Subd. 3. Duties of public authority.** Within three working days of receipt of sums released under subdivision 2, the public authority shall remit to the obligee all amounts not assigned under section 256.74 as current support or maintenance. The public authority shall also serve a copy of the court's order and the provisions of section 518.611 and this section on the obligor's employer or other payor of funds unless within 15 days after mailing of the notice of intent to implement income withholding the obligor requests a hearing on the issue of whether payment was in default as of the date of the notice of default and serves notice of the request for hearing on the public authority and the obligee. The public authority shall instruct the employer or payor of funds pursuant to section 518.611 as to the effective date on which the next support or maintenance payment is due. The withholding process must begin on said date and shall reflect the total credits of principle and interest amounts received from the escrow account.

**Subd. 4. Hearing.** Within 30 days of the date of the notice of default under subdivision 2, clause (2), the court must hold a hearing requested by the obligor. If the court finds that there was a default, the court shall order the immediate withholding of support or maintenance from the obligor's income. If the court finds that there was no default, the court shall order the reestablishment of the escrow account by either the obligee or obligor and continue the stay of income withholding.

**Subd. 5. Termination of stay.** When the obligation for support of a child or for spousal maintenance ends under the terms of the order or decree establishing the obligation and the sum held under this section has not otherwise been released, the public authority shall release the sum and interest to the obligor when the following conditions are met:

(1) the obligor transmits a notice of termination to the public authority. The notice shall be verified by the obligor and contain the title of the action, the court file number, the full name and address of the obligee, specify the event that ends the support or maintenance obligation, the effective date of the termination of support or maintenance obligation, and the applicable provisions of the order or decree that established the support or maintenance obligation;

(2) the public authority sends a copy of the notice of termination to the obligee; and

(3) the obligee fails within 20 days after mailing of the notice under clause (2) to request a hearing on the issue of whether the support or maintenance obligation continues and serve notice of the request for hearing on the obligor and the public authority.

**History:** 1988 c 693 s 3

#### **518.619 CUSTODY OR VISITATION; MEDIATION SERVICES.**

**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, 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 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 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.

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

**History:** 1986 c 406 s 7; 1990 c 574 s 21

#### 518.62 TEMPORARY MAINTENANCE.

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

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

#### 518.63 HOMESTEAD, OCCUPANCY.

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

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

#### 518.64 MODIFICATION OF ORDERS OR DECREES.

Subdivision 1. After an order for maintenance or support money, temporary or permanent, or for the appointment of trustees to receive property awarded as maintenance or support money, the court may from time to time, on petition of either of the parties or on petition of the public authority responsible for support enforcement, modify the order respecting the amount of maintenance or support money, and the payment of it, and also respecting the appropriation and payment of the principal and income of property held in trust, and may make an order respecting these matters which it might have made in the original proceeding, except as herein otherwise provided.

Subd. 2. **Modification.** (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 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.

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

Subd. 4. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

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

**History:** 1951 c 551 s 11; 1974 c 107 s 26; 1978 c 772 s 59; 1979 c 259 s 31; 1981 c 360 art 2 s 48,49; 1982 c 424 s 130; 1983 c 283 s 1; 1983 c 308 s 22,23; 1984 c 654 art

*5 s 58; 1985 c 266 s 3; 1986 c 406 s 8; 1987 c 403 art 3 s 90; 1988 c 532 s 14; 1988 c 668 s 24; 1951 c 551 s 11; 1974 c 107 s 26; 1978 c 772 s 59; 1979 c 259 s 31; 1981 c 360 art 2 s 48,49; 1982 c 424 s 130; 1983 c 283 s 1; 1983 c 308 s 22,23; 1984 c 654 art 5 s 58; 1985 c 266 s 3; 1986 c 406 s 8; 1987 c 403 art 3 s 90; 1988 c 532 s 14; 1988 c 668 s 24; 1990 c 574 s 22*

Note: Subdivision 2, paragraph (c), as amended by Laws 1990, chapter 574, section 22, is effective July 1, 1991, provided that it does not take effect if a change in or waiver of the existing AFDC requirements is not obtained under Laws 1990, chapter 574, section 24. See Laws 1990, chapter 574, section 26.

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

**Subdivision 1. Requirement.** An order for maintenance or child support shall provide for a biennial adjustment in the amount to be paid based on a change in the cost of living. An order that provides for a cost-of-living adjustment 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. The court 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 maintenance or child support has a provision such as a step increase that has the effect of a cost-of-living clause. The court may waive a cost-of-living adjustment in a maintenance order if the parties so agree in writing. The commissioner of human services may promulgate rules for child support adjustments 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 maintenance or child support obligation, the court may direct that all or part of the adjustment not take effect. If, at the hearing, the obligor does not establish this insufficient increase in income, the adjustment shall take effect as of the date it would have become effective had no hearing been requested.

**Subd. 4. Form.** The department of human services shall prepare and make available to the court and obligors a form to be submitted to the department by the obligor in support of a request for hearing under this section regarding a child support order. 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 maintenance or 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 maintenance or child support order either has a cost-of-living clause or sets forth a step increase which has the effect of a cost-of-living adjustment.

**History:** *1983 c 308 s 24; 1984 c 654 art 5 s 58; 1988 c 668 s 25*



**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. An additional amount equal to 20 percent of the amount required to be withheld by paragraph 1 shall be withheld from the income of the Obligor by the employer or payor until the entire arrearage in paragraph 3(b) is paid.

3. 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 30 days in arrears in the payment of child support and/or spousal maintenance;

(b) ..... or the Obligee serves written notice of income withholding on the Obligor showing the determination that child support and/or maintenance payments are 30 days in arrears;

(c) Within 15 days after service of the notice of income withholding, the Obligor fails to move the Court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding or on other grounds limited to mistakes of fact and, ex parte, to stay service of withholding on the employer or other payor of funds until the motion to deny withholding is heard. Within 45 days from the date of the notice of income withholding, the court shall hold the hearing on the motion to deny withholding and notify the parties of its decision; and

(d) Not sooner than 15 days after service of written notice of income withholding on the Obligor, ..... or the Obligee serves a copy of the notice of income withholding 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 .....

4. 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.

5. The payments shall begin to be withheld no later than the first pay period that occurs after 14 days following the date of mailing of the notice to the employer or other payor of funds in paragraph 3(d) and from that date the employer or other payor of funds is liable for amounts required to be withheld.

6. This order for withholding takes priority over any attachment, execution, garnishment, or wage assignment levied against the income of the Obligor. Amounts withheld are not subject to other statutory limitations on amounts levied against the income of the Obligor but must not exceed the maximum permitted under the federal Consumer Credit Protection Act, United States Code, title 15, section 1673(b)(2). If there is more than one withholding order on a single Obligor, the employer or other payor of funds shall put them into effect in the order received, up to the maximum allowed under the Consumer Credit Protection Act.

7. When the Obligor's employment is terminated or the periodic payment ends, the employer or other payor of funds is required to notify ..... within 30 days of the termination date. The notice must include the Obligor's home address of

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record and, if known, the name and address of the Obligor's new employer or other payor of funds.

8. Upon transmittal of the last reimbursement payment to the obligor, where lump sum severance pay, accumulated sick pay or vacation pay is paid upon termination of employment, and where the employee is in arrears in making court ordered child support payments, the employer must withhold an amount which is the lesser of (1) the amount in arrears or (2) that portion of the arrearages which is the product of the obligor's monthly court ordered support amount multiplied by the number of months of net income that the lump sum payment represents.

9. If the Obligee serves the employer or other payor of funds under paragraph 3(d), the Obligee shall also serve the determination and order on ....., together with an application and fee to use collection services.

10. Service of this Order shall be .....

**History:** 1982 c 488 s 7; 1983 c 308 s 25; 1985 c 131 s 13; 1986 c 404 s 17

## 518.646 NOTICE OF ORDER.

Whenever these laws require service of a court's order on an employer, union or payor of funds, service of a verified notice of order may be made in lieu thereof. The verified notice shall contain the title of the action, the name of the court, the court file number, the date of the court order, and shall recite the operative provisions of the order.

**History:** 1986 c 404 s 18

## 518.65 PROPERTY; SALE, PARTITION.

In order to effect a division or award of property as is provided by section 518.58, the court may order property sold or partitioned. Personal property may be ordered sold in the manner directed by the court, and real estate may be partitioned in the manner provided by Minnesota Statutes 1949, chapter 558.

**History:** 1951 c 551 s 12; 1978 c 772 s 60

## 518.66 POWER OF COURT NOT LIMITED.

Nothing contained in sections 518.54 to 518.66 shall be construed as limiting the power of the court in appropriate cases to make adequate provision for the support and education of any children of the parties to any dissolution, legal separation or annulment action where such dissolution, legal separation or annulment is denied.

**History:** 1951 c 551 s 13; 1974 c 107 s 27; 1979 c 259 s 32; 1Sp1981 c 4 art 1 s 180

518.67 [Repealed, 1978 c 772 s 63]