

CHAPTER 518

MARRIAGE DISSOLUTION

518.005	Rules governing proceedings.	518.553	Payment agreements.
518.10	Requisites of petition.	518.575	Publication of names of delinquent child support obligors.
518.11	Service; alternate service; publication.		Central collections unit.
518.111	Sufficiency of notice.	518.5852	518.5853
518.14	Costs and disbursements; attorney fees; collection costs.		Mandatory payment of obligations to central collections unit.
518.148	Certification of dissolution.	518.611	Repealed.
518.157	Parent education program in proceedings involving children.	518.6111	Income withholding.
518.158	Relative ex parte temporary custody order.	518.613	Repealed.
518.17	Custody and support of children on judgment.	518.614	Escrow account; child support; maintenance obligation.
518.171	Medical support.	518.615	Employer contempt.
518.175	Visitation of children and noncustodial parent.	518.616	Administrative seek employment orders.
518.1751	Visitation dispute resolution.	518.617	Contempt proceedings for nonpayment of support.
518.179	Participation in a parenting plan when person convicted of certain offenses.	518.618	Case reviewer.
518.195	Repealed.	518.6195	Collection; arrears only.
518.54	Definitions.	518.63	Homestead, occupancy.
518.551	Maintenance and support payments.	518.64	Modification of orders or decrees.
518.5511	Administrative process for child and medical support orders	518.641	Cost-of-living adjustments in maintenance or child support order.
518.5512	Administrative procedures for child and medical support orders and parentage orders.	518.645	Repealed.
		518.68	Required notices.

518.005 RULES GOVERNING PROCEEDINGS.

[For text of subs 1 to 4, see M.S.1996]

Subd. 5. Prohibited disclosure. In all proceedings under this chapter in which public assistance is assigned under section 256.741 or the public authority provides services to a party or parties to the proceedings, notwithstanding statutory or other authorization for the public authority to release private data on the location of a party to the action, information on the location of one party may not be released by the public authority to the other party if:

(1) the public authority has knowledge that a protective order with respect to the other party has been entered; or

(2) the public authority has reason to believe that the release of the information may result in physical or emotional harm to the other party.

History: 1997 c 203 art 6 s 35

518.10 REQUISITES OF PETITION.

The petition for dissolution of marriage or legal separation shall state and allege:

(a) the name, address, and, in circumstances in which child support or spousal maintenance will be addressed, social security number of the petitioner and any prior or other name used by the petitioner;

(b) the name and, if known, the address and, in circumstances in which child support or spousal maintenance will be addressed, social security number of the respondent and any prior or other name used by the respondent and known to the petitioner;

(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 at the time of the petition and any prior or other 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;

(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; and

(j) whether an order for protection under chapter 518B or a similar law of another state that governs the parties or a party and a minor child of the parties is in effect and, if so, the district court or similar jurisdiction in which it was entered.

The petition shall be verified by the petitioner or petitioners, and its allegations established by competent evidence.

History: 1997 c 203 art 6 s 36; 1997 c 239 art 7 s 7

518.11 SERVICE; ALTERNATE SERVICE; PUBLICATION.

(a) Unless a proceeding is brought by both parties, copies of the summons and petition shall be served on the respondent personally.

(b) 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.

(c) If personal service cannot be made, the court may order service of the summons by alternate means. The application for alternate service must include the last known location of the respondent; the petitioner's most recent contacts with the respondent; the last known location of the respondent's employment; the names and locations of the respondent's parents, siblings, children, and other close relatives; the names and locations of other persons who are likely to know the respondent's whereabouts; and a description of efforts to locate those persons.

The court shall consider the length of time the respondent's location has been unknown, the likelihood that the respondent's location will become known, the nature of the relief sought, and the nature of efforts made to locate the respondent. The court shall order service by first class mail, forwarding address requested, to any addresses where there is a reasonable possibility that mail or information will be forwarded or communicated to the respondent or, if no address so qualifies, then to the respondent's last known address.

If the petitioner seeks disposition of real estate located within the state of Minnesota, the court shall order that the summons, which shall contain the legal description of the real estate, be published in the county where the real estate is located. The court may also order publication, within or without the state, but only if it might reasonably succeed in notifying the respondent of the proceeding. Also, the court may require the petitioner to make efforts to locate the respondent by telephone calls to appropriate persons. Service shall be deemed complete 21 days after mailing or 21 days after court-ordered publication.

History: 1997 c 9 s 5

518.111 SUFFICIENCY OF NOTICE.

Automated child support notices sent by the public authority which do not require service are sufficient notice when issued and mailed by first class mail to the person's last known address.

History: 1997 c 245 art 1 s 12

518.14 COSTS AND DISBURSEMENTS; ATTORNEY FEES; COLLECTION COSTS.

[For text of subd 1, see M.S.1996]

Subd. 2. Enforcement of child support. (a) A child support obligee is entitled to recover from the obligor reasonable attorney fees and other collection costs incurred to enforce a child support judgment, as provided in this subdivision. In order to recover collection costs under this subdivision, the arrearages must be at least \$500 and must be at least 90 days past due. In addition, the arrearages must be a docketed judgment under sections 548.09 and 548.091. If the obligor pays in full the judgment rendered under section 548.091 within 20 days of receipt of notice of entry of judgment, the obligee is not entitled to recover attorney fees or collection costs under this subdivision.

(b) Written notice must be provided by any obligee contracting with an attorney or collection entity to enforce a child support judgment to the public authority responsible for child support enforcement, if the public authority is a party or provides services to a party, within five days of signing a contract for services and within five days of receipting any payments received on a child support judgment. Attorney fees and collection costs obtained under this subdivision are considered child support and entitled to the applicable remedies for collection and enforcement of child support.

(c) The obligee shall serve notice of the obligee's intent to recover attorney fees and collections costs by certified or registered mail on the obligor at the obligor's last known address. The notice must include an itemization of the attorney fees and collection costs being sought by the obligee and inform the obligor that the fees and costs will become an additional judgment for child support unless the obligor requests a hearing on the reasonableness of the fees and costs or to contest the child support judgment on grounds limited to mistake of fact within 20 days of mailing of the notice.

(d) If the obligor requests a hearing, the only issues to be determined by the court are whether the attorney fees or collection costs were reasonably incurred by the obligee for the enforcement of a child support judgment against the obligor or the validity of the child support judgment on grounds limited to mistake of fact. The fees and costs may not exceed 30 percent of the arrearages. The court may modify the amount of attorney fees and costs as appropriate and shall enter judgment accordingly.

(e) If the obligor fails to request a hearing within 20 days of mailing of the notice under paragraph (a), the amount of the attorney fees or collection costs requested by the obligee in the notice automatically becomes an additional judgment for child support.

(f) The commissioner of human services shall prepare and make available to the court and the parties forms for use in providing for notice and requesting a hearing under this subdivision.

History: 1997 c 187 art 2 s 10

518.148 CERTIFICATION OF DISSOLUTION.

[For text of subd 1, see M.S.1996]

Subd. 2. Required information. The certificate shall include the following information:

- (1) the full caption and file number of the case and the title "Certificate of Dissolution";
- (2) the names and any prior or other names of the parties to the dissolution;
- (3) the names of any living minor or dependent children as identified in the judgment and decree;

- (4) that the marriage of the parties is dissolved;
- (5) the date of the judgment and decree; and
- (6) the social security number of the parties to the dissolution and the social security number of any living minor or dependent children identified in the judgment and decree.

[For text of subd 3, see M.S.1996]

History: 1997 c 203 art 6 s 37

518.157 PARENT EDUCATION PROGRAM IN PROCEEDINGS INVOLVING CHILDREN.

Subdivision 1. Implementation; administration. By January 1, 1998, the chief judge of each judicial district or a designee shall implement one or more parent education programs within the judicial district for the purpose of educating parents about the impact that divorce, the restructuring of families, and judicial proceedings have upon children and families; methods for preventing visitation conflicts; and dispute resolution options. The chief judge of each judicial district or a designee may require that children attend a separate education program designed to deal with the impact of divorce upon children as part of the parent education program. Each parent education program must enable persons to have timely and reasonable access to education sessions.

Subd. 2. Minimum standards; plan. The Minnesota supreme court should promulgate minimum standards for the implementation and administration of a parent education program. The chief judge of each judicial district or a designee shall submit a plan to the Minnesota conference of chief judges for their approval that is designed to implement and administer a parent education program in the judicial district. The plan must be consistent with the minimum standards promulgated by the Minnesota supreme court.

Subd. 3. Attendance. In a proceeding under this chapter or sections 257.51 to 257.75 where custody or visitation is contested, the parents of a minor child shall attend an orientation and education program that meets the minimum standards promulgated by the Minnesota supreme court. In all other proceedings involving custody, support, or visitation the court may order the parents of a minor child to attend a parent education program. The program shall provide the court with names of persons who fail to attend the parent education program as ordered by the court. Persons who are separated or contemplating involvement in a dissolution, paternity, custody, or visitation proceeding may attend a parent education program without a court order. Participation in a parent education program must occur as early as possible. Parent education programs must offer an opportunity to participate at all phases of a pending or postdecree proceeding. Upon request of a party and a showing of good cause, the court may excuse the party from attending the program. If past or present domestic abuse, as defined in chapter 518B, is alleged, the court shall not require the parties to attend the same parent education sessions and shall enter an order setting forth the manner in which the parties may safely participate in the program.

Subd. 4. Sanctions. The court may impose sanctions upon a parent for failure to attend or complete a parent education program as ordered.

Subd. 5. Confidentiality. Unless all parties agree in writing, statements made by a party during participation in a parent education program are inadmissible as evidence for any purpose, including impeachment. No record may be made regarding a party's participation in a parent education program, except a record of attendance at and completion of the program as required under this section. Instructors shall not disclose information regarding an individual participant obtained as a result of participation in a parent education program. Parent education instructors may not be subpoenaed or called as witnesses in court proceedings.

Subd. 6. Fee. Except as provided in this subdivision, each person who attends a parent education program shall pay a fee to defray the cost of the program. A party who qualifies for waiver of filing fees under section 563.01 is exempt from paying the parent education program fee and the court shall waive the fee or direct its payment under section 563.01. Program providers shall implement a sliding fee scale.

History: 1997 c 245 art 2 s 1

518.158 RELATIVE EX PARTE TEMPORARY CUSTODY ORDER.

Subdivision 1. **Factors.** It is presumed to be in the best interests of the child for the court to grant temporary custody to a relative under subdivision 2 if a minor child has resided with the relative for a period of 12 months or more and the following circumstances exist without good cause:

(1) the parent has had no contact with the child on a regular basis and no demonstrated, consistent participation in the child's well-being for six months; or

(2) the parent, during the time the child resided with the relative, has refused or neglected to comply with the duties imposed upon the parent by the parent and child relationship, including but not limited to providing the child necessary food, clothing, shelter, health care, education, and other care and control necessary for the child's physical, mental, or emotional health and development.

Subd. 2. **Emergency custody hearing.** If the parent seeks to remove the child from the home of the relative and the factors in subdivision 1 exist, the relative may apply for an ex parte temporary order for custody of the child. The court shall grant temporary custody if it finds, based on the application, that the factors in subdivision 1 exist. If it finds that the factors in subdivision 1 do not exist, the court shall order that the child be returned to the parent. An ex parte temporary custody order under this subdivision is effective for a fixed period not to exceed 14 days. A temporary custody hearing under this chapter must be set for not later than seven days after issuance of the ex parte temporary custody order. The parent must be promptly served with a copy of the ex parte order and the petition and notice of the date for the hearing.

Subd. 3. **Further proceedings.** If the court orders temporary physical custody to the relative under subdivision 2 and the relative or parent seeks to pursue further temporary or permanent custody of the child, the custody issues must be determined pursuant to a petition under this chapter and the other standards and procedures of this chapter apply. This section does not affect any rights or remedies available under other law.

Subd. 4. **Return to parent.** If the court orders permanent custody to a relative under this section, the court shall set conditions the parent must meet in order to obtain custody. The court may notify the parent that the parent may request assistance from the local social service agency in order to meet the conditions set by the court.

Subd. 5. **Definition.** For purposes of this section, "relative" means an adult who is a stepparent, grandparent, brother, sister, uncle, aunt, or other extended family member of the minor by blood, marriage, or adoption.

For an Indian child, "relative" includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of law or custom, nieces, nephews, or first or second cousins, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.

History: 1997 c 112 s 7

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; except that a disability, as defined in section 363.01, of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement is not in the best interest of the child;

(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;

(12) the effect on the child of the actions of an abuser, if related to domestic abuse, as defined in section 518B.01, that has occurred between the parents or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family or household member of the parent; and

(13) except in cases in which a finding of domestic abuse as defined in section 518B.01 has been made, the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child.

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.

[For text of subs 1a to 6, see M.S.1996]

History: 1997 c 203 art 9 s 16

518.171 MEDICAL SUPPORT.

Subdivision 1. **Order.** Compliance with this section constitutes compliance with a qualified medical child support order as described in the federal Employee Retirement Income Security Act of 1974 (ERISA) as amended by the federal Omnibus Budget Reconciliation Act of 1993 (OBRA).

(a) Every child support order must:

(1) expressly assign or reserve the responsibility for maintaining medical insurance for the minor children and the division of uninsured medical and dental costs; and

(2) contain the names, last known addresses, and social security number of the custodial parent and noncustodial parent, of the dependents unless the court prohibits the inclusion of an address or social security number and orders the custodial parent to provide the address and social security number to the administrator of the health plan. The court shall order the party with the better group dependent health and dental insurance coverage or health insurance plan to name the minor child as beneficiary on any health and dental insurance plan that is available to the party on:

(i) a group basis;

(ii) through an employer or union; or

(iii) through a group health plan governed under the ERISA and included within the definitions relating to health plans found in section 62A.011, 62A.048, or 62E.06, subdivision 2. "Health insurance" or "health insurance coverage" as used in this section means coverage that is comparable to or better than a number two qualified plan as defined in section 62E.06, subdivision 2. "Health insurance" or "health insurance coverage" as used in this section does not include medical assistance provided under chapter 256, 256B, or 256D.

(b) If the court finds that dependent health or dental insurance is not available to the obligor or obligee on a group basis or through an employer or union, or that group insurance is not accessible to the obligee, the court may require the obligor (1) to obtain other dependent health or dental insurance, (2) to be liable for reasonable and necessary medical or dental expenses of the child, or (3) to pay no less than \$50 per month to be applied to the medical and dental expenses of the children or to the cost of health insurance dependent coverage.

(c) If the court finds that the available dependent health or dental insurance does not pay all the reasonable and necessary medical or dental expenses of the child, including any existing or anticipated extraordinary medical expenses, 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. Medical and dental expenses include, but are not limited to, necessary orthodontia and eye care, including prescription lenses.

(d) Unless otherwise agreed by the parties and approved by the court, if the court finds that the obligee is not receiving public assistance for the child and has the financial ability to contribute to the cost of medical and dental expenses for the child, including the cost of insurance, the court shall order the obligee and obligor to each assume a portion of these expenses based on their proportionate share of their total net income as defined in section 518.54, subdivision 6.

(e) Payments ordered under this section are subject to section 518.6111. An obligee who fails to apply payments received to the medical expenses of the dependents may be found in contempt of this order.

[For text of subd 2, see M.S.1996]

Subd. 2a. Employer and obligor responsibility. An individual shall disclose at the time of hiring if medical support is required to be withheld. If an employee discloses that medical support is required to be withheld, the employer shall begin withholding according to the terms of the order and pursuant to section 518.6111. If an individual discloses an obligation to obtain health and dental dependent insurance coverage and coverage is available through the employer, the employer shall make all application processes known to the individual upon hiring and enroll the employee and dependent in the plan pursuant to subdivision 3.

[For text of subd 3, see M.S.1996]

Subd. 4. Effect of order. (a) The order is binding on the employer or union and the health and dental insurance plan when service under subdivision 3 has been made. In the case of an obligor who changes employment and is required to provide health coverage for the child, a new employer that provides health care coverage shall enroll the child in the obligor's health plan upon receipt of an order or notice for health insurance, unless the obligor contests the enrollment. The obligor may contest the enrollment on the limited grounds that the enrollment is improper due to mistake of fact or that the enrollment meets the requirements of section 518.64, subdivision 2. If the obligor chooses to contest the enrollment, the obligor must do so no later than 15 days after the employer notifies the obligor of the enrollment, by doing all of the following:

- (1) filing a request for contested hearing according to section 518.5511, subdivision 3a;
- (2) serving a copy of the request for contested hearing upon the public authority and the obligee; and
- (3) securing a date for the contested hearing no later than 45 days after the notice of enrollment.

(b) The enrollment must remain in place during the time period in which the obligor contests the withholding.

An employer or union that is included under ERISA may not deny enrollment based on exclusionary clauses described in section 62A.048. Upon application of the obligor according to the order or notice, 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 least costly health insurance plan otherwise available to the obligor that is comparable to a number two qualified plan. If the obligor is not enrolled in a health insurance plan, the employer or union shall also enroll the obligor in the chosen plan if enrollment of the obligor is necessary in order to obtain dependent coverage under the plan. Enrollment of dependents and the obligor shall be immediate and not depend-

ent upon open enrollment periods. Enrollment is not subject to the underwriting policies described in section 62A.048.

(c) An employer or union that willfully fails to comply with the order is liable for any health or dental expenses incurred by the dependents during the period of time the dependents were eligible to be enrolled in the insurance program, and for any other premium costs incurred because the employer or union willfully failed to comply with the order. An employer or union that fails to comply with the order is subject to contempt under section 518.615 and is also subject to a fine of \$500 to be paid to the obligee or public authority. Fines paid to the public authority are designated for child support enforcement services.

(d) 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. 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.

[For text of subs 5 and 6, see M.S.1996]

Subd. 7. Release of information. When an order for dependent insurance coverage is in effect, the obligor's employer, union, or insurance agent shall release to the obligee or the public authority, upon request, information on the dependent coverage, including the name of the health or dental insurance carrier or employer. The employer, union, or health or dental insurance plan shall provide the obligee with insurance identification cards and all necessary written information to enable the obligee to utilize the insurance benefits for the covered dependents. Notwithstanding any other law, information reported pursuant to section 268.044 shall be released to the public agency responsible for support enforcement that is enforcing an order for health or dental insurance coverage under this section. The public agency responsible for support enforcement is authorized to release to the obligor's health or dental insurance carrier or employer information necessary to obtain or enforce medical support.

Subd. 8. Obligor liability. (a) An obligor who fails to maintain medical or dental insurance for the benefit of the children as ordered or fails to provide other medical support as ordered is liable to the obligee for any medical or dental expenses incurred from the effective date of the court order, including health and dental insurance premiums paid by the obligee because of the obligor's failure to obtain coverage as ordered. Proof of failure to maintain insurance or noncompliance with an order to provide other medical support 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.

(b) Payments for services rendered to the dependents that are directed to the obligor, in the form of reimbursement by the health or dental insurance carrier or employer, must be endorsed over to and forwarded to the vendor or custodial parent or public authority when the reimbursement is not owed to the obligor. An obligor retaining insurance reimbursement not owed to the obligor may be found in contempt of this order and held liable for the amount of the reimbursement. Upon written verification by the health or dental insurance carrier or employer of the amounts paid to the obligor, the reimbursement amount is subject to all enforcement remedies available under subdivision 10, including income withholding pursuant to section 518.6111. The monthly amount to be withheld until the obligation is satisfied is 20 percent of the original debt or \$50, whichever is greater.

[For text of subs 9 and 10, see M.S.1996]

History: 1997 c 66 s 79; 1997 c 203 art 6 s 38,39,92

518.175 VISITATION OF CHILDREN AND NONCUSTODIAL PARENT.

[For text of subd 1, see M.S.1996]

Subd. 1a. Domestic abuse; supervised visitation. (a) If a custodial parent requests supervised visitation under subdivision 1 or 5 and an order for protection under chapter 518B or

a similar law of another state is in effect against the noncustodial parent to protect the custodial parent or the child, the judge or judicial officer must consider the order for protection in making a decision regarding visitation.

(b) The state court administrator, in consultation with representatives of custodial and noncustodial parents and other interested persons, shall develop standards to be met by persons who are responsible for supervising visitation. Either parent may challenge the appropriateness of an individual chosen by the court to supervise visitation.

[For text of subds 2 and 3, see M.S.1996]

Subd. 5. Modification of visitation order. 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. Consistent with subdivision 1a, the court may require a third party, including the local social services agency, 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. Remedies. (a) The court may provide for one or more of the following remedies for denial of or interference with court-ordered visitation as provided under this subdivision. All visitation orders must include notice of the provisions of this subdivision.

(b) If the court finds that a person has been deprived of court-ordered visitation, the court shall order the custodial parent to permit additional visits to compensate for the visitation of which the person was deprived or the court shall make specific findings as to why a request for compensatory visitation is denied. If compensatory visitation is awarded, additional visits must be:

(1) at least of the same type and duration as the deprived visit and, at the discretion of the court, may be in excess of or of a different type than the deprived visit;

(2) taken within one year after the deprived visit; and

(3) at a time acceptable to the person deprived of visitation.

(c) If the court finds that a party has wrongfully failed to comply with a visitation order or a binding agreement or decision under section 518.1751, the court may:

(1) impose a civil penalty of up to \$500 on the party;

(2) require the party to post a bond with the court for a specified period of time to secure the party's compliance;

(3) award reasonable attorney's fees and costs;

(4) require the party who violated the visitation order or binding agreement or decision of the visitation expeditor to reimburse the other party for costs incurred as a result of the violation of the order or agreement or decision; or

(5) award any other remedy that the court finds to be in the best interests of the children involved.

A civil penalty imposed under this paragraph must be deposited in the county general fund and must be used to fund the costs of a visitation expeditor program in a county with this program. In other counties, the civil penalty must be deposited in the state general fund.

(d) If the court finds that a party has been denied visitation and has incurred expenses in connection with the denied visitation, the court may require the party who denied visitation to post a bond in favor of the other party in the amount of prepaid expenses associated with an upcoming planned visitation.

(e) 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.

[For text of subds 7 and 8, see M.S.1996]

History: 1997 c 239 art 7 s 8,9; 1997 c 245 art 2 s 2

518.1751 VISITATION DISPUTE RESOLUTION.

Subdivision 1. **Visitation expeditor.** Upon request of either party, the parties' stipulation, or upon the court's own motion, 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.

Subd. 1a. **Exceptions.** A party may not be required to refer a visitation dispute to a visitation expeditor under this section if:

- (1) one of the parties claims to be the victim of domestic abuse by the other party;
- (2) the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party; or
- (3) the party is unable to pay the costs of the expeditor, as provided under subdivision 2a.

If the court is satisfied that the parties have been advised by counsel and have agreed to use the visitation expeditor process and the process does not involve face-to-face meeting of the parties, the court may direct that the visitation expeditor process be used.

Subd. 1b. **Purpose; definitions.** (a) The purpose of a visitation expeditor is to resolve visitation disputes by enforcing, interpreting, clarifying, and addressing circumstances not specifically addressed by an existing visitation order and, if appropriate, to make a determination as to whether the existing visitation order has been violated. A visitation expeditor may be appointed to resolve a one-time visitation dispute or to provide ongoing visitation dispute resolution services.

(b) For purposes of this section, "visitation dispute" means a disagreement among parties about visitation with a child, including a dispute about an anticipated denial of a future scheduled visit. "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.

(c) A "visitation expeditor" is a neutral person authorized to use a mediation-arbitration process to resolve visitation disputes. A visitation expeditor shall attempt to resolve a visitation dispute by facilitating negotiations between the parties to promote settlement and, if it becomes apparent that the dispute cannot be resolved by an agreement of the parties, the visitation expeditor shall make a decision resolving the dispute.

Subd. 2. **Appointment.** (a) The parties may stipulate to the appointment of a visitation expeditor or a team of two expeditors without appearing in court by submitting to the court a written agreement identifying the names of the individuals to be appointed by the court; the nature of the dispute; the responsibilities of the visitation expeditor, including whether the expeditor is appointed to resolve a specific issue or on an ongoing basis; the term of the appointment; and the apportionment of fees and costs. The court shall review the agreement of the parties.

(b) If the parties cannot agree on a visitation expeditor, the court shall provide to the parties a copy of the court administrator's roster of visitation expeditors and require the parties to exchange the names of three potential visitation expeditors by a specific date. If after exchanging names the parties are unable to agree upon a visitation expeditor, the court shall select the visitation expeditor and, in its discretion, may appoint one expeditor or a team of two visitation expeditors. In the selection process the court must give consideration to the financial circumstances of the parties and the fees of those being considered as visitation expeditors. Preference must be given to persons who agree to volunteer their services or who will charge a variable fee for services based on the ability of the parties to pay for them.

(c) An order appointing a visitation expeditor must identify the name of the individual to be appointed, the nature of the dispute, the responsibilities of the visitation expeditor including whether the expeditor is appointed to resolve a specific issue or on an ongoing basis, the term of the appointment, the apportionment of fees, and notice that if the parties are un-

able to reach an agreement with the assistance of the visitation expeditor, the visitation expeditor is authorized to make a decision resolving the dispute which is binding upon the parties unless modified or vacated by the court.

Subd. 2a. Fees. Prior to appointing the visitation expeditor, the court shall give the parties notice that the fees of the visitation expeditor will be apportioned among the parties. In its order appointing the visitation expeditor, the court shall apportion the fees of the visitation expeditor among the parties, with each party bearing the portion of fees that the court determines is just and equitable under the circumstances. If a party files a pro se motion regarding a visitation dispute and there is not a court order that provides for apportionment of the fees of an expeditor, the court administrator may require the party requesting the appointment of an expeditor to pay the fees of the expeditor in advance. Neither party may be required to submit a dispute to a visitation expeditor if the party cannot afford to pay for the fees of an expeditor and an affordable expeditor is not available, unless the other party agrees to pay the fees. After fees are incurred, a party may by motion request that the fees be reapportioned on equitable grounds. The court may consider the resources of the parties, the nature of the dispute, and whether a party acted in bad faith. The court may consider information from the expeditor in determining bad faith.

Subd. 2b. Roster of visitation expeditors. Each court administrator shall maintain and make available to the public and judicial officers a roster of individuals available to serve as visitation expeditors, including each individual's name, address, telephone number, and fee charged, if any. A court administrator shall not place on the roster the name of an individual who has not completed the training required in subdivision 2c. If the use of a visitation expeditor is initiated by stipulation of the parties, the parties may agree upon a person to serve as a visitation expeditor even if that person has not completed the training described in subdivision 2c. The court may appoint a person to serve as a visitation expeditor even if the person is not on the court administrator's roster, but may not appoint a person who has not completed the training described in subdivision 2c, unless so stipulated by the parties. To maintain one's listing on a court administrator's roster of visitation expeditors, an individual shall annually submit to the court administrator proof of completion of continuing education requirements.

Subd. 2c. Training and continuing education requirements. To qualify for listing on a court administrator's roster of visitation expeditors, an individual shall complete a minimum of 40 hours of family mediation training that has been certified by the Minnesota supreme court, which must include certified training in domestic abuse issues as required under Rule 114 of the Minnesota General Rules of Practice for the District Courts. To maintain one's listing on a court administrator's roster of visitation expeditors, an individual shall annually attend three hours of continuing education about alternative dispute resolution subjects.

Subd. 3. Agreement or decision. (a) Within five days of notice of the appointment, or within five days of notice of a subsequent visitation dispute between the same parties, the visitation expeditor shall meet with the parties together or separately and shall make a diligent effort to facilitate an agreement to resolve the visitation dispute. If a visitation dispute requires immediate resolution, the visitation expeditor may confer with the parties through a telephone conference or similar means. An expeditor may make a decision without conferring with a party if the expeditor made a good faith effort to confer with the party, but the party chose not to participate in resolution of the dispute.

(b) If the parties do not reach an agreement, the expeditor shall make a decision resolving the dispute as soon as possible but not later than five days after receiving all information necessary to make a decision and after the final meeting or conference with the parties. The visitation expeditor is authorized to award compensatory visitation under section 518.175, subdivision 6, and may recommend to the court that the noncomplying party pay attorney's fees, court costs, and other costs under section 518.175, subdivision 6, paragraph (d), if the visitation order has been violated. The visitation expeditor shall not lose authority to make a decision if circumstances beyond the visitation expeditor's control make it impracticable to meet the five-day timelines.

(c) Unless the parties mutually agree, the visitation expeditor shall not make a decision that is inconsistent with an existing visitation order, but may make decisions interpreting or

clarifying a visitation order, including the development of a specific schedule when the existing court order grants "reasonable visitation."

(d) The expeditor shall put an agreement or decision in writing and provide a copy to the parties. The visitation expeditor may include or omit reasons for the agreement or decision. An agreement of the parties or a decision of the visitation expeditor is binding on the parties unless vacated or modified by the court. 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 and shall attach a copy of the parties' written agreement or decision of the expeditor. The court may enforce, modify, or vacate the agreement of the parties or the decision of the expeditor.

Subd. 4. Other agreements. This section does not preclude the parties from voluntarily agreeing to submit their visitation dispute to a neutral third party or from otherwise resolving visitation disputes on a voluntary basis.

Subd. 4a. Confidentiality. (a) Statements made and documents produced as part of the visitation expeditor process which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at trial or in any other proceeding, including impeachment.

(b) Sworn testimony may be used in subsequent proceedings for any purpose for which it is admissible under the rules of evidence. Visitation expeditors, and lawyers for the parties to the extent of their participation in the visitation expeditor process, must not be subpoenaed or called as witnesses in court proceedings.

(c) Notes, records, and recollections of visitation expeditors are confidential and must not be disclosed to the parties, the public, or anyone other than the visitation expeditor unless:

- (1) all parties and the visitation expeditor agree in writing to the disclosure; or
- (2) disclosure is required by law or other applicable professional codes.

Notes and records of visitation expeditors must not be disclosed to the court unless after a hearing the court determines that the notes or records should be reviewed in camera. Those notes or records must not be released by the court unless it determines that they disclose information showing illegal violation of the criminal law of the state.

Subd. 5. Immunity. A visitation expeditor is immune from civil liability for actions taken or not taken when acting under this section.

Subd. 5a. Removal. If a visitation expeditor has been appointed on a long-term basis, a party or the visitation expeditor may file a motion seeking to have the expeditor removed for good cause shown.

Subd. 6. Mandatory visitation dispute resolution. Subject to subdivision 1a, a judicial district may establish a mandatory visitation dispute resolution program as provided in this subdivision. In a district where a program has been established, parties may be required to submit visitation disputes to a visitation expeditor as a prerequisite to a motion on the dispute being heard by the court, or either party may submit the dispute to a visitation expeditor. A party may file a motion with the court for purposes of obtaining a court date, if necessary, but a hearing may not be held until resolution of the dispute with the visitation expeditor. The appointment of a visitation expeditor must be in accordance with subdivision 2. Visitation expeditor fees must be paid in accordance with subdivision 2a.

Subd. 7. [Repealed by amendment, 1997 c 245 art 2 s 3]

History: 1997 c 245 art 2 s 3

518.179 PARTICIPATION IN A PARENTING PLAN 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. A guardian ad litem must be appointed in any case where this section applies.

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;

(14) neglect of a child under section 609.378;

(15) terroristic threats under section 609.713; or

(16) felony harassment or stalking under section 609.749, subdivision 4.

History: 1997 c 239 art 7 s 10; 1997 c 245 art 2 s 4

518.195 [Repealed, 1991 c 271 s 9; 1996 c 408 art 11 s 9]

NOTE: This section was also amended by Laws 1997, chapter 245, article 2, section 5, to read as follows:

"518.195 Summary dissolution process.

Subdivision 1. Criteria. A couple desirous of dissolving their marriage may use the streamlined procedure in this section if:

(1) no living minor children have been born to or adopted by the parties before or during the marriage, unless someone other than the husband has been adjudicated the father;

(2) the wife is not pregnant;

(3) they have been married fewer than eight years as of the date they file their joint declaration;

(4) neither party owns any real estate;

(5) there are no unpaid debts in excess of \$8,000 incurred by either or both of the parties during the marriage, excluding encumbrances on automobiles;

(6) the total fair market value of the marital assets does not exceed \$25,000, including net equity on automobiles;

(7) neither party has nonmarital assets in excess of \$25,000; and

(8) neither party has been a victim of domestic abuse by the other.

Subd. 2. Procedure. A couple qualifying under all of the criteria in subdivision 1, may obtain a judgment and decree by:

(1) filing a sworn joint declaration, on which both of their signatures must be notarized, containing or appending the following information:

(i) the demographic data required in section 518.10;

(ii) verifying the qualifications set forth in subdivision 1;

(iii) listing each party's nonmarital property;

(iv) setting forth how the marital assets and debts will be apportioned;

(v) verifying both parties' income and preserving their rights to spousal maintenance; and

(vi) certifying that there has been no domestic abuse of one party by the other; and

(2) viewing any introductory and summary process educational videotapes, if then available from the court, and certifying that they watched any such tapes within the 30 days preceding the filing of the joint declaration.

The district court administrator shall enter a decree of dissolution 30 days after the filing of the joint declaration if the parties meet the statutory qualifications and have complied with the procedural requirements of this subdivision.

Subd. 3. Forms. The state court administrator shall develop simplified forms and instructions for the summary process. District court administrators shall make the forms for the summary process available upon request and shall accept joint declarations for filing on and after July 1, 1997.

Subd. 4. [Repealed by amendment, 1997 c 245 art 2 s 5]"

518.54 DEFINITIONS.

[For text of subs 1 to 4, see M.S.1996]

Subd. 4a. Support order. "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, child care, medical support including expenses for confinement and pregnancy, arrearages, or reimbursement, and that may include related costs and fees, interest and penalties, income withholding, and other relief. This definition applies to orders issued under this chapter and chapters 256, 257, and 518C.

[For text of subd 5, see M.S.1996]

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, reemployment insurance, annuity, military and naval retirement, pension and disability payments. Benefits received under Title IV-A of the Social Security Act are not income under this section.

[For text of subs 7 to 12, see M.S.1996]

History: 1997 c 203 art 6 s 40,41; 1997 c 245 art 3 s 9

518.551 MAINTENANCE AND SUPPORT PAYMENTS.

[For text of subs 1 to 5a, see M.S.1996]

Subd. 5b. Determination of income. (a) The parties shall timely serve and file documentation of earnings and income. When there is a prehearing conference, the court must receive the documentation of income at least ten days prior to the prehearing conference. Documentation of earnings and income also includes, but is not limited to, pay stubs for the most recent three months, employer statements, or statement of receipts and expenses if self-employed. Documentation of earnings and income also includes copies of each parent's most recent federal tax returns, including W-2 forms, 1099 forms, reemployment insurance statements, workers' compensation statements, and all other documents evidencing income as received that provide verification of income over a longer period.

(b) In addition to the requirements of paragraph (a), at any time after an action seeking child support has been commenced or when a child support order is in effect, a party or the public authority may require the other party to give them a copy of the party's most recent federal tax returns that were filed with the Internal Revenue Service. The party shall provide a copy of the tax returns within 30 days of receipt of the request unless the request is not made in good faith. A request under this paragraph may not be made more than once every two years, in the absence of good cause.

(c) If a parent under the jurisdiction of the court does not appear at a court hearing after proper notice of the time and place of the hearing, the court shall set income for that parent based on credible evidence before the court or in accordance with paragraph (d). Credible evidence may include documentation of current or recent income, testimony of the other par-

ent concerning recent earnings and income levels, and the parent's wage reports filed with the Minnesota department of economic security under section 268.044.

(d) If the court finds that a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of imputed income. A parent is not considered voluntarily unemployed or underemployed upon a showing by the parent that the unemployment or underemployment: (1) is temporary and will ultimately lead to an increase in income; or (2) represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child. Imputed income means the estimated earning ability of a parent based on the parent's prior earnings history, education, and job skills, and on availability of jobs within the community for an individual with the parent's qualifications. If the court is unable to determine or estimate the earning ability of a parent, the court may calculate child support based on full-time employment of 40 hours per week at 150 percent of the federal minimum wage or the Minnesota minimum wage, whichever is higher. If the court is unable to determine or estimate the earning ability of a parent, any medical support or child care contribution must be calculated based upon the obligor's proportionate share of the child care expenses using 40 hours per week at 150 percent of the federal minimum wage or the Minnesota minimum wage, whichever is higher. If a parent is a recipient of public assistance under section 256.741, or is physically or mentally incapacitated, it shall be presumed that the parent is not voluntarily unemployed or underemployed.

(e) Income from self employment is equal to gross receipts minus ordinary and necessary expenses. Ordinary and necessary expenses do not include amounts allowed by the Internal Revenue Service for accelerated depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining income for purposes of child support. The person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary. Net income under this section may be different from taxable income.

[For text of subds 5c and 5d, see M.S.1996]

Subd. 5e. Adjustment to support order. A support order issued under this section may provide that during any period of time of 30 consecutive days or longer that the child is residing with the noncustodial parent, the amount of support otherwise due under the order may be reduced.

[For text of subd 6, see M.S.1996]

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 of \$25 shall be paid by the person who applies for child support and maintenance collection services, except persons who are receiving public assistance as defined in section 256.741, persons who transfer from public assistance to nonpublic assistance status, and minor parents and parents enrolled in a public secondary school, area learning center, or alternative learning program approved by the commissioner of children, families, and learning. 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. The public authority upon written notice to the obligee shall assess a fee of \$25 to the person not receiving public assistance for each successful federal tax interception. The fee must be withheld prior to the release of the funds received from each interception and deposited in the general fund.

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.

[For text of subs 9 and 11, see M.S.1996]

Subd. 12. Occupational license suspension. (a) Upon motion of an obligee, if the court finds that the obligor is or may be licensed by a licensing board listed in section 214.01 or other state, county, or municipal agency or board that issues an occupational license and the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the administrative law judge, or the court shall direct the licensing board or other licensing agency to suspend the license under section 214.101. The court's order must be stayed for 90 days in order to allow the obligor to execute a written payment agreement regarding both current support and arrearages. The payment agreement must be approved by either the court or the public authority responsible for child support enforcement. If the obligor has not executed or is not in compliance with a written payment agreement regarding both current support and arrearages after the 90 days expires, the court's order becomes effective. If the obligor is a licensed attorney, the court shall report the matter to the lawyers professional responsibility board for appropriate action in accordance with the rules of professional conduct. The remedy under this subdivision is in addition to any other enforcement remedy available to the court.

(b) If a public authority responsible for child support enforcement finds that the obligor is or may be licensed by a licensing board listed in section 214.01 or other state, county, or municipal agency or board that issues an occupational license and the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the court, an administrative law judge, or the public authority shall direct the licensing board or other licensing agency to suspend the license under section 214.101. If the obligor is a licensed attorney, the public authority may report the matter to the lawyers professional responsibility board for appropriate action in accordance with the rules of professional conduct. The remedy under this subdivision is in addition to any other enforcement remedy available to the public authority.

(c) At least 90 days before notifying a licensing authority or the lawyers professional responsibility board under paragraph (b), the public authority shall mail a written notice to the license holder addressed to the license holder's last known address that the public authority intends to seek license suspension under this subdivision and that the license holder must request a hearing within 30 days in order to contest the suspension. If the license holder makes a written request for a hearing within 30 days of the date of the notice, either a court hearing or a contested administrative proceeding must be held under section 518.5511, subdivision 4. Notwithstanding any law to the contrary, the license holder must be served with 14 days' notice in writing specifying the time and place of the hearing and the allegations against the license holder. The notice may be served personally or by mail. If the public authority does not receive a request for a hearing within 30 days of the date of the notice, and the obligor does not execute a written payment agreement regarding both current support and arrearages approved by the public authority within 90 days of the date of the notice, the public authority shall direct the licensing board or other licensing agency to suspend the obligor's license under paragraph (b), or shall report the matter to the lawyers professional responsibility board.

(d) The administrative law judge, on behalf of the public authority, or the court shall notify the lawyers professional responsibility board for appropriate action in accordance with the rules of professional responsibility conduct or order the licensing board or licensing agency to suspend the license if the judge finds that:

(1) the person is licensed by a licensing board or other state agency that issues an occupational license;

(2) the person has not made full payment of arrearages found to be due by the public authority; and

(3) the person has not executed or is not in compliance with a payment plan approved by the court, an administrative law judge, or the public authority.

(e) Within 15 days of the date on which the obligor either makes full payment of arrearages found to be due by the court or public authority or executes and initiates good faith compliance with a written payment plan approved by the court, an administrative law judge, or the public authority, the court, an administrative law judge, or the public authority responsible for child support enforcement shall notify the licensing board or licensing agency or the lawyers professional responsibility board that the obligor is no longer ineligible for license issuance, reinstatement, or renewal under this subdivision.

(f) In addition to the criteria established under this section for the suspension of an obligor's occupational license, a court, an administrative law judge, or the public authority may direct the licensing board or other licensing agency to suspend the license of a party who has failed, after receiving notice, to comply with a subpoena relating to a paternity or child support proceeding. Notice to an obligor of intent to suspend must be served by first class mail at the obligor's last known address. The notice must inform the obligor of the right to request a hearing. If the obligor makes a written request within ten days of the date of the hearing, a contested administrative proceeding must be held under section 518.5511, subdivision 4. At the hearing, the only issues to be considered are mistake of fact and whether the obligor received the subpoena.

(g) The license of an obligor who fails to remain in compliance with an approved payment agreement may be suspended. Notice to the obligor of an intent to suspend under this paragraph must be served by first class mail at the obligor's last known address and must include a notice of hearing. The notice must be served upon the obligor not less than ten days before the date of the hearing. If the obligor appears at the hearing and the judge determines that the obligor has failed to comply with an approved payment agreement, the judge shall notify the occupational licensing board or agency to suspend the obligor's license under paragraph (c). If the obligor fails to appear at the hearing, the public authority may notify the occupational or licensing board to suspend the obligor's license under paragraph (c).

Subd. 13. Driver's license suspension. (a) Upon motion of an obligee, which has been properly served on the obligor and upon which there has been an opportunity for hearing, if a court finds that the obligor has been or may be issued a driver's license by the commissioner of public safety and the obligor is in arrears in court-ordered child support or maintenance payments, or both, in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the court shall order the commissioner of public safety to suspend the obligor's driver's license. The court's order must be stayed for 90 days in order to allow the obligor to execute a written payment agreement regarding both current support and arrearages, which payment agreement must be approved by either the court or the public authority responsible for child support enforcement. If the obligor has not executed or is not in compliance with a written payment agreement regarding both current support and arrearages after the 90 days expires, the court's order becomes effective and the commissioner of public safety shall suspend the obligor's driver's license. The remedy under this subdivision is in addition to any other enforcement remedy available to the court. An obligee may not bring a motion under this paragraph within 12 months of a denial of a previous motion under this paragraph.

(b) If a public authority responsible for child support enforcement determines that the obligor has been or may be issued a driver's license by the commissioner of public safety and the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments and not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, the public authority shall direct the commissioner of public safety to suspend the obligor's driver's license. The remedy under this subdivision is in addition to any other enforcement remedy available to the public authority.

(c) At least 90 days prior to notifying the commissioner of public safety according to paragraph (b), the public authority must mail a written notice to the obligor at the obligor's last known address, that it intends to seek suspension of the obligor's driver's license and that the obligor must request a hearing within 30 days in order to contest the suspension. If the obligor makes a written request for a hearing within 30 days of the date of the notice, either a court hearing or a contested administrative proceeding must be held under section 518.5511, subdivision 4. Notwithstanding any law to the contrary, the obligor must be served with 14 days' notice in writing specifying the time and place of the hearing and the allegations against the obligor. The notice may be served personally or by mail. If the public authority does not receive a request for a hearing within 30 days of the date of the notice, and the obligor does not execute a written payment agreement regarding both current support and arrearages approved by the public authority within 90 days of the date of the notice, the public authority shall direct the commissioner of public safety to suspend the obligor's driver's license under paragraph (b).

(d) At a hearing requested by the obligor under paragraph (c), and on finding that the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments, the district court or the administrative law judge shall order the commissioner of public safety to suspend the obligor's driver's license or operating privileges unless the court or administrative law judge determines that the obligor has executed and is in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority.

(e) An obligor whose driver's license or operating privileges are suspended may provide proof to the public authority responsible for child support enforcement that the obligor is in compliance with all written payment agreements regarding both current support and arrearages. Within 15 days of the receipt of that proof, the public authority shall inform the commissioner of public safety that the obligor's driver's license or operating privileges should no longer be suspended.

(f) On January 15, 1997, and every two years after that, the commissioner of human services shall submit a report to the legislature that identifies the following information relevant to the implementation of this section:

- (1) the number of child support obligors notified of an intent to suspend a driver's license;
- (2) the amount collected in payments from the child support obligors notified of an intent to suspend a driver's license;
- (3) the number of cases paid in full and payment agreements executed in response to notification of an intent to suspend a driver's license;
- (4) the number of cases in which there has been notification and no payments or payment agreements;
- (5) the number of driver's licenses suspended; and
- (6) the cost of implementation and operation of the requirements of this section.

(g) In addition to the criteria established under this section for the suspension of an obligor's driver's license, a court, an administrative law judge, or the public authority may direct the commissioner of public safety to suspend the license of a party who has failed, after receiving notice, to comply with a subpoena relating to a paternity or child support proceeding. Notice to an obligor of intent to suspend must be served by first class mail at the obligor's last known address. The notice must inform the obligor of the right to request a hearing. If the obligor makes a written request within ten days of the date of the hearing, a contested administrative proceeding must be held under section 518.5511, subdivision 4. At the hearing, the only issues to be considered are mistake of fact and whether the obligor received the subpoena.

(h) The license of an obligor who fails to remain in compliance with an approved payment agreement may be suspended. Notice to the obligor of an intent to suspend under this paragraph must be served by first class mail at the obligor's last known address and must include a notice of hearing. The notice must be served upon the obligor not less than ten days before the date of the hearing. If the obligor appears at the hearing and the judge determines

that the obligor has failed to comply with an approved payment agreement, the judge shall notify the department of public safety to suspend the obligor's license under paragraph (c). If the obligor fails to appear at the hearing, the public authority may notify the department of public safety to suspend the obligor's license under paragraph (c).

Subd. 13a. Data on suspensions for support arrears. Notwithstanding section 13.03, subdivision 4, paragraph (c), data on an occupational license suspension under subdivision 12 or a driver's license suspension under subdivision 13 that are transferred by the department of human services to respectively the department of public safety or any state, county, or municipal occupational licensing agency must have the same classification at the department of public safety or other receiving agency under section 13.02 as other license suspension data held by the receiving agency. The transfer of the data does not affect the classification of the data in the hands of the department of human services.

Subd. 14. Motor vehicle lien. (a) Upon motion of an obligee, if a court finds that the obligor is a debtor for a judgment debt resulting from nonpayment of court-ordered child support or maintenance payments, or both, in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments, the court shall order the commissioner of public safety to enter a lien in the name of the obligee or in the name of the state of Minnesota, as appropriate, in accordance with section 168A.05, subdivision 8, unless the court finds that the obligor is in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority. The court's order must be stayed for 90 days in order to allow the obligor to execute a written payment agreement regarding both current support and arrearages, which agreement shall be approved by either the court or the public authority responsible for child support enforcement. If the obligor has not executed or is not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority within the 90-day period, the court's order becomes effective and the commissioner of public safety shall record the lien on any motor vehicle certificate of title subsequently issued in the name of the obligor. The remedy under this subdivision is in addition to any other enforcement remedy available to the court.

(b) If a public authority responsible for child support enforcement determines that the obligor is a debtor for judgment debt resulting from nonpayment of court-ordered child support or maintenance payments, or both, in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments, the public authority shall direct the commissioner of public safety to enter a lien in the name of the obligee or in the name of the state of Minnesota, as appropriate, under section 168A.05, subdivision 8, on any motor vehicle certificate of title subsequently issued in the name of the obligor unless the public authority determines that the obligor is in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority. The remedy under this subdivision is in addition to any other enforcement remedy available to the public agency.

(c) At least 90 days prior to notifying the commissioner of public safety pursuant to paragraph (b), the public authority must mail a written notice to the obligor at the obligor's last known address, that it intends to record a lien on any motor vehicle certificate of title subsequently issued in the name of the obligor and that the obligor must request a hearing within 30 days in order to contest the action. If the obligor makes a written request for a hearing within 30 days of the date of the notice, either a court hearing or a contested administrative proceeding must be held under section 518.5511, subdivision 4. Notwithstanding any law to the contrary, the obligor must be served with 14 days' notice in writing specifying the time and place of the hearing and the allegations against the obligor. The notice may be served personally or by mail. If the public authority does not receive a request for a hearing within 30 days of the date of the notice and the obligor does not execute or is not in compliance with a written payment agreement regarding both current support and arrearages approved by the public authority within 90 days of the date of the notice, the public authority shall direct the commissioner of public safety to record the lien under paragraph (b).

(d) At a hearing requested by the obligor under paragraph (c), and on finding that the obligor is in arrears in court-ordered child support or maintenance payments or both in an

amount equal to or greater than three times the obligor's total monthly support and maintenance payments, the district court or the administrative law judge shall order the commissioner of public safety to record the lien unless the court or administrative law judge determines that the obligor has executed and is in compliance with a written payment agreement regarding both current support and arrearages determined to be acceptable by the court, an administrative law judge, or the public authority.

(e) An obligor may provide proof to the court or the public authority responsible for child support enforcement that the obligor is in compliance with all written payment agreements regarding both current support and arrearages or that the value of the motor vehicle is less than the exemption provided under section 550.37. Within 15 days of the receipt of that proof, the court or public authority shall either execute a release of security interest under section 168A.20, subdivision 4, and mail or deliver the release to the owner or other authorized person or shall direct the commissioner of public safety not to enter a lien on any motor vehicle certificate of title subsequently issued in the name of the obligor in instances where a lien has not yet been entered.

(f) Any lien recorded against a motor vehicle certificate of title under this section and section 168A.05, subdivision 8, attaches only to the nonexempt value of the motor vehicle as determined in accordance with section 550.37. The value of a motor vehicle must be determined in accordance with the retail value described in the N.A.D.A. Official Used Car Guide, Midwest Edition, for the current year, or in accordance with the purchase price as defined in section 297B.01, subdivision 8.

History: 1997 c 66 s 79; 1997 c 203 art 6 s 42,43; 1997 c 245 art 1 s 13-17; art 3 s 10

518.5511 ADMINISTRATIVE PROCESS FOR CHILD AND MEDICAL SUPPORT ORDERS.

Subdivision 1. General. (a) An administrative process is established to obtain, modify, and enforce child and medical support orders and parentage orders and enforce maintenance if combined with a child support proceeding. All laws governing these actions apply insofar as they are not inconsistent with the provisions of this section and section 518.5512. Wherever other laws or rules are inconsistent with this section and section 518.5512, the provisions in this section and section 518.5512 shall apply.

(b) All proceedings for obtaining, modifying, or enforcing child and medical support orders and enforcing maintenance orders if combined with a child support proceeding, are required to be conducted in the administrative process when the public authority is a party or provides services to a party or parties to the proceedings. Cases in which there is no assignment of support or in which the public authority is not providing services may not be conducted in the administrative process. At county option, the administrative process may include contempt motions or actions to establish parentage. Nothing contained herein shall prevent a party, upon timely notice to the public authority, from commencing an action or bringing a motion for the establishment, modification, or enforcement of child support or enforcement of maintenance orders if combined with a child support proceeding in district court, if additional issues involving domestic abuse, establishment or modification of custody or visitation, property issues, or other issues outside the jurisdiction of the administrative process, are part of the motion or action, or from proceeding with a motion or action brought by another party containing one or more of these issues if it is pending in district court.

(c) A party may make a written request to the public authority to initiate an uncontested administrative proceeding. If the public authority denies the request, the public authority shall issue a notice of denial which denies the request for relief within 30 days of receiving the written request, states the reasons for the denial, and notifies the party of the right to proceed directly to a contested administrative proceeding according to subdivision 3a, paragraph (a). If the party proceeds directly to a contested hearing and files the requisite documents, as provided by the commissioner, with the court administrator within 30 days after the public authority's denial and the party's action results in a modification of a child support order, the modification may be retroactive to the date the written request was received by the public authority. If the public authority accepts the request and proceeds with the uncontest-

ed administrative process, any order or modification may be retroactive to the date the written request was received by the public authority.

(d) The public authority may initiate actions in the administrative process.

(e) For the purpose of the administrative process, all powers, duties, and responsibilities conferred on judges of district court to obtain and enforce child and medical support and parentage and maintenance obligations, subject to the limitations of this section are conferred on administrative law judges, including the power to determine controlling interstate orders, and to issue subpoenas, orders to show cause, and bench warrants for failure to appear.

The administrative law judge has the authority to enter parentage orders in which the custody and visitation provisions are uncontested.

(f) Nonattorney employees of the public authority responsible for child support may prepare, sign, serve, and file complaints, motions, notices, summary notices, proposed orders, default orders, consent orders, orders for blood or genetic tests, and other documents related to the administrative process for obtaining, modifying, or enforcing child and medical support orders, orders establishing paternity, and related documents, and orders to enforce maintenance if combined with a child support order. The nonattorney employee may issue administrative subpoenas, conduct prehearing conferences, and participate in proceedings before an administrative law judge. This activity shall not be considered to be the unauthorized practice of law. Nonattorney employees may not represent the interests of any party other than the public authority, and may not give legal advice. The nonattorney employees may act subject to the limitations of section 518.5512.

(g) Any party may make a written request to the office of administrative hearings for a subpoena compelling the attendance of a witness or the production of books, papers, records, or other documents relevant to the administrative process. Subpoenas are enforceable through the district court. The public authority may also request a subpoena from the office of administrative hearings for the production of a witness or documents. The nonattorney employee of the public authority may issue subpoenas subject to the limitations in section 518.5512, subdivision 6, paragraph (a), clause (2).

(h) At all stages of the administrative process, the county attorney, or other attorney under contract, shall act as the legal adviser for the public authority.

(i) The commissioner of human services shall:

(1) provide training to child support officers and other persons involved in the administrative process;

(2) timely prepare simple and easy to understand forms, in consultation with the office of administrative hearings, for all notices and orders prescribed in this section, including a support order worksheet form, with the exception of orders issued by the district court or the office of administrative hearings under subdivision 4; and

(3) distribute money to cover the costs of the administrative process, including the salaries of administrative law judges. If available appropriations are insufficient to cover the costs, the commissioner shall prorate the amount among the counties.

(j) The commissioner of human services, in consultation with the office of administrative hearings, is responsible for the supervision of the administrative process.

(k) The public authority, the office of administrative hearings, court administrators, and other entities involved in the administrative process shall use the forms prepared by the commissioner.

(l) The office of administrative hearings may reject orders that have not been prepared using the commissioner's forms or on forms that have not been approved by the commissioner.

(m) The office of administrative hearings is responsible for training and monitoring the performance of administrative law judges, maintaining records of proceedings, providing transcripts upon request, and maintaining the integrity of the district court file.

Subd. 2. Uncontested administrative proceeding. (a) Following the initiation of the administrative process under subdivision 1, paragraph (c) or (d), the public authority shall, on the basis of all information available, complete and sign a proposed order and notice. The public authority shall attach a support order worksheet. In preparing the proposed order, the

public authority will establish child support in the highest amount permitted under section 518.551, subdivision 5. The proposed order shall include written findings in accordance with section 518.551, subdivision 5, clauses (i) and (j). If the public authority has incomplete or insufficient information upon which to prepare a proposed order, the public authority shall use the default standard established in section 518.551, subdivision 5b, paragraph (d), to prepare the proposed order. The notice shall state that the proposed order will be entered as a final and binding default order unless one of the parties contacts the public authority regarding the proposed order within 30 days following the date of service of the proposed order. The notice and proposed order shall be served under the rules of civil procedure on the noninitiating party and by first class mail on the initiating party. After receipt of the notice and proposed order, the court administrator shall file the documents.

For the purposes of the administrative process, and notwithstanding any law or rule to the contrary, the service of the proposed order under this paragraph shall be deemed to have commenced a proceeding and the judge shall have jurisdiction over a contested administrative proceeding.

(b) If the public authority is not contacted by a party within 30 days after the date of service of the proposed order, the public authority may submit the proposed order as the default order. The default order becomes enforceable upon signature by an administrative law judge. The default order shall be a final order, and shall be served under the rules of civil procedure.

(c) If the public authority obtains new information after service of the proposed order, the public authority may prepare one notice and revised proposed order. The revised order must be served by first class mail on the parties. If the public authority is not contacted within seven days after the date of service of the revised order, the public authority may submit the revised order as a default order but in no event sooner than 30 days after the service of the original proposed order.

(d) The public authority shall file in the district court copies of all notices served on the parties, proof of service, the support order worksheet, and all orders.

Subd. 3. Administrative conference. (a) If a party contacts the public authority within 30 days of the date of service of the proposed order, and the public authority does not choose to proceed directly to a contested administrative proceeding, the public authority shall schedule a conference, and shall send written notice of the date, time, and place of the conference and the date, time, and place of a contested administrative proceeding in the event the administrative conference fails to resolve all of the issues on the parties. The public authority may request any additional information necessary to establish child support. The public authority may choose to go directly to a contested administrative proceeding and is not required to conduct an administrative conference. The date of the contested administrative proceeding must be set within 31 days of the administrative conference or not more than 60 days from the date of the notice of the administrative conference. A request for a continuance must be made to the chief administrative law judge according to Minnesota Rules, part 1400.7500.

(b) The purpose of the conference is to review all available information and seek an agreement to a consent order. The notice shall state the purpose of the conference, and that the proposed order will be entered as a final and binding default order if both parties fail to appear at the conference. The notice must also state that if only one party appears at the conference and there is no new information provided, the matter shall proceed by default. The notice shall be served on the parties by first class mail at their last known addresses, and the method of service shall be documented in the public authority file. All available and relevant information must be shared with the parties at the conference subject to the limitations of sections 256.87, subdivision 8, 257.70, and 518.005, subdivision 5. If a conference is not held, information which would have been shared at the conference by the public authority must be provided to a party or the party's attorney within 15 days of receipt of a written request.

(c) A party alleging domestic abuse by the other party shall not be required to participate in a conference. In such a case, the public authority shall meet separately with the parties in order to determine whether an agreement can be reached.

(d) If all parties appear at the conference and agree to all issues, and the public authority approves the agreement, the public authority shall prepare a consent order for the parties and the public authority to sign. The public authority shall submit the consent order to the administrative law judge. Upon signature, the order is a final order and must be served on the parties by first class mail.

(e) If only one party appears at the conference and there is no new information available, or if both of the parties fail to appear at the conference, the public authority may submit a default order through the uncontested administrative process. If only one party appears at the conference and there is new information available, the matter shall proceed directly to the scheduled contested administrative proceeding.

(f) If the parties appear at the conference and do not reach agreement to the entry of a consent order, the public authority shall advise the parties that the matter remains scheduled for a contested administrative proceeding, and that the public authority will seek the establishment of child support at the proceeding in accordance with the child support guidelines.

(g) If one or both of the parties appear at the administrative conference and there is new information that makes the proposed order unreasonable or inappropriate, the public authority may issue a revised proposed order pursuant to subdivision 2, paragraph (c), or proceed directly to a contested administrative proceeding.

Subd. 3a. Alternative administrative resolutions. (a)(1) Any party may proceed directly to a contested administrative proceeding under subdivision 4 by making a written request to the public authority. After the public authority receives a written request, the public authority shall request or schedule a contested administrative proceeding and inform the requester of the date, time, and place of the hearing. The public authority shall also provide the requester with the contested administrative documents necessary for the proceeding. These documents must be completed by the requester, served on the other party and the public authority, and filed with the court administrator at least 21 days before the hearing. If the documents are not filed with the court administrator, the contested administrative proceeding must be canceled unless the public authority or a party objects.

(2) The public authority may also proceed directly to a contested administrative proceeding.

(b) At any time in the administrative process, including prior to the issuance of the proposed order, if the parties and the public authority are in agreement, the public authority shall prepare a consent order to be signed by the public authority and the parties. The parties must waive any of their rights to the notices and time frames required by this section. The public authority shall submit the order to the administrative law judge. Upon signature by the court, the order is a final order and must be filed with the court administrator and served by first class mail on the parties.

Subd. 4. Contested administrative proceeding. (a) All counties shall participate in the contested administrative process established in this section as designated in a statewide implementation plan to be set forth by the commissioner of human services. No county shall be required to participate in the contested administrative process until after the county has been trained. The contested administrative process shall be in operation in all counties no later than July 1, 1998.

In counties designated by the commissioner, contested administrative proceedings required under this section shall be scheduled before administrative law judges, and shall be conducted in accordance with the provisions under this section. In counties not designated by the commissioner, contested administrative proceedings shall be conducted in district court in accordance with the rules of civil procedure and the rules of family court.

(b) An administrative law judge may conduct administrative proceedings and approve a stipulation reached on a contempt motion brought by the public authority. 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 court judge.

(c) A party, witness, or attorney may appear or testify by telephone, audiovisual means, or other electronic means, at the discretion of the administrative law judge.

(d) 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, the county court administrator, and the county sheriff shall jointly establish procedures, and the county shall provide hearing facilities for implementing this process in the county. A contested administrative proceeding shall be conducted in a courtroom, if one is available, or a conference or meeting room with at least two exits and of sufficient size to permit adequate physical separation of the parties. The court administrator shall, to the extent practical, provide administrative support for the contested administrative proceeding. Security personnel shall either be present during the administrative proceedings, or be available to respond to a request for emergency assistance.

(e) The contested administrative hearings shall be conducted under the rules of the office of administrative hearings, Minnesota Rules, parts 1400.5275, 1400.5500, 1400.6000 to 1400.6400, 1400.6600 to 1400.7000, 1400.7100 to 1400.7500, 1400.7700, 1400.7800, and 1400.8100, as adopted by the chief administrative law judge. For matters not initiated under subdivision 2, documents from the moving party shall be served and filed at least 14 days prior to the hearing and the opposing party shall serve and file documents raising new issues at least ten days prior to the hearing. In all contested administrative proceedings, the administrative law judge may limit the extent and timing of discovery. Except as provided under this section, other aspects of the case, including, but not limited to, discovery, shall be conducted under the rules of family court, the rules of civil procedure, and chapter 518.

(f) Following a contested administrative hearing, 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 may be enforceable by the contempt powers of the district courts.

(g) At the time the matter is scheduled for a contested administrative proceeding, the public authority shall file in the district court copies of all relevant documents sent to or received from the parties that have been provided to all parties, in addition to any documents filed under subdivision 2, paragraph (d). These documents may be used as evidence by the judge in deciding the case without need for further foundation testimony. For matters scheduled for a contested administrative proceeding which were not initiated under subdivision 2, the public authority shall obtain any income information available to the public authority through the department of economic security and serve this information on all parties and file the information with the court at least five days prior to the hearing.

(h) If only one party appears at the contested administrative proceeding, a hearing must be conducted. The administrative law judge shall prepare an order and file it with the district court. The court shall serve the order on the parties by first class mail at the last known address and shall provide a copy of the order to the public authority.

(i) If neither party appears at the contested administrative proceeding and no new information has been submitted or made available to the court or public authority, the public authority shall submit the default order to the administrative law judge for signature. If neither party appears and new information is available to the court or public authority, the administrative law judge shall prepare an order based on the new information. The court shall serve the order on the parties by first class mail at the last known address and shall provide a copy of the order to the public authority.

(j) 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. 5. [Repealed, 1997 c 203 art 6 s 93]

Subd. 6. [Repealed, 1997 c 203 art 6 s 93]

Subd. 7. [Repealed, 1997 c 203 art 6 s 93]

Subd. 8. [Repealed, 1997 c 203 art 6 s 93]

Subd. 9. [Repealed, 1997 c 203 art 6 s 93]

History: 1997 c 245 art 1 s 18–22

518.5512 ADMINISTRATIVE PROCEDURES FOR CHILD AND MEDICAL SUPPORT ORDERS AND PARENTAGE ORDERS.

[For text of subd 1, see M.S.1996]

Subd. 2. **Paternity.** (a) After service of the notice and proposed order, a nonattorney employee of the public authority may order the child, mother, or alleged father to submit to blood or genetic tests. In a case with multiple alleged fathers, a nonattorney employee of the public authority may order the child, mother, and alleged fathers to submit to blood or genetic tests after service of the notice of the parentage proceeding. The order for genetic tests must be served by personal service. The order of the public authority shall be effective unless, within 20 days of the date of the order, the child, mother, or an alleged father requests a contested administrative proceeding under section 518.5511, subdivision 3a. If a contested administrative proceeding is requested and held, any order issued by an administrative law judge supersedes the order issued by the public authority. In all other cases, the order of the public authority is controlling. Failure to comply with the order for blood or genetic tests may result in a default determination of parentage.

(b) If parentage is contested at the administrative hearing, the administrative law judge may order temporary child support under section 257.62, subdivision 5, and shall refer the case to the district court.

(c) The district court may appoint counsel for an indigent alleged father only after the return of the blood or genetic test results from the testing laboratory.

Subd. 3. **Cost-of-living adjustment.** The public authority shall send notice of its application for a cost-of-living adjustment on the obligor in accord with section 518.641. The public authority shall stay the adjustment of support upon receipt by the public authority of a request by the obligor to proceed directly to a contested administrative proceeding under section 518.5511, subdivision 4.

Subd. 3a. **Form.** The public authority shall prepare and make available to the court and obligors a form, to be submitted to the public authority by the obligor, to request to proceed directly to a contested administrative proceeding regarding a cost-of-living adjustment.

[For text of subd 4, see M.S.1996]

Subd. 5. **Administrative authority.** (a) In each case in which support rights are assigned under section 256.741, subdivision 2, or where the public authority is providing services under an application for child support services, a nonattorney employee of the public authority may, without requirement of a court order:

(1) recognize and enforce orders of child support agencies of other states;

(2) compel by subpoena the production of all papers, books, records, documents, or other evidentiary material needed to establish a parentage or child support order or to modify or enforce a child support order;

(3) change the payee to the appropriate person, organization, or agency authorized to receive or collect child support or any other person or agency designated as the caretaker of the child by agreement of the legal custodian or by court order;

(4) order income withholding of child support under section 518.6111;

(5) secure assets to satisfy the debt or arrearage in cases in which there is a support debt or arrearage by: (i) intercepting or seizing periodic or lump sum payments from state or local agencies, including reemployment insurance, workers' compensation payments, judgments, settlements, and lotteries; (ii) attaching and seizing assets of the obligor held in financial institutions or public or private retirement funds; and (iii) imposing liens and, in appropriate cases, forcing the sale of property and the distribution of proceeds; and

(6) increase the amount of the monthly support payments to include amounts for debts or arrearages for the purpose of securing overdue support.

(b) Subpoenas may be served anywhere within the state and served outside the state in the same manner as prescribed by law for service of process of subpoenas issued by the district court of this state. When a subpoena under this subdivision is served on a third-party recordkeeper, written notice of the subpoena shall be mailed to the person who is the subject of the subpoenaed material at the person's last known address within three days of the day the subpoena is served. This notice provision does not apply if there is reasonable cause to believe the giving of the notice may lead to interference with the production of the subpoenaed documents.

(c) A person served with a subpoena may make a written objection to the public authority or court before the time specified in the subpoena for compliance. The public authority or the court shall cancel or modify the subpoena, if appropriate. The public authority shall pay the reasonable costs of producing the documents, if requested.

(d) Subpoenas shall be enforceable in the same manner as subpoenas of the district court, in proceedings initiated by complaint of the public authority in the district court.

Subd. 6. **Controlling order determination.** The public authority or a party may request the office of administrative hearings to determine a controlling order according to section 518C.207, paragraph (c).

History: 1997 c 203 art 6 s 44-46; 1997 c 245 art 1 s 23,24; art 3 s 11

518.553 PAYMENT AGREEMENTS.

In proposing or approving proposed written payment agreements for purposes of section 518.551, the court, an administrative law judge, or the public authority shall take into consideration the amount of the arrearages, the amount of the current support order, any pending request for modification, and the earnings of the obligor. The court, administrative law judge, or public authority shall consider the individual financial circumstances of each obligor in evaluating the obligor's ability to pay any proposed payment agreement and shall propose a reasonable payment agreement tailored to the individual financial circumstances of each obligor.

History: 1997 c 245 art 1 s 25

518.575 PUBLICATION OF NAMES OF DELINQUENT CHILD SUPPORT OBLIGORS.

Subdivision 1. **Making names public.** At least once each year, the commissioner of human services, in consultation with the attorney general, shall publish a list of the names and other identifying information of no more than 25 persons who (1) are child support obligors, (2) are at least \$10,000 in arrears, (3) are not in compliance with a written payment agreement regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority, (4) cannot currently be located by the public authority for the purposes of enforcing a support order, and (5) have not made a support payment except tax intercept payments, in the preceding 12 months.

Identifying information may include the obligor's name, last known address, amount owed, date of birth, photograph, the number of children for whom support is owed, and any additional information about the obligor that would assist in identifying or locating the obligor. The commissioner and attorney general may use posters, media presentations, electronic technology, and other means that the commissioner and attorney general determine are appropriate for dissemination of the information, including publication on the Internet. The commissioner and attorney general may make any or all of the identifying information regarding these persons public. Information regarding an obligor who meets the criteria in this subdivision will only be made public subsequent to that person's selection by the commissioner and attorney general.

Before making public the name of the obligor, the department of human services shall send a notice to the obligor's last known address which states the department's intention to make public information on the obligor. The notice must also provide an opportunity to have the obligor's name removed from the list by paying the arrearage or by entering into an agreement to pay the arrearage, or by providing information to the public authority that there is good cause not to make the information public. The notice must include the final date when the payment or agreement can be accepted.

The department of human services shall obtain the written consent of the obligee to make the name of the obligor public.

Subd. 2. **Names published in error.** If the commissioner makes public a name under subdivision 1 which is in error, the commissioner must also offer to publish a printed retraction and a public apology acknowledging that the name was made public in error. If the person whose name was made public in error elects the public retraction and apology, the retrac-

tion and apology must appear in the same medium and the same format as the original notice with the name listed in error. In addition to the right of a public retraction and apology, a person whose name was made public in error has a civil action for damages caused by the error.

History: 1997 c 203 art 6 s 47

518.5852 CENTRAL COLLECTIONS UNIT.

The commissioner of human services shall create and maintain a central collections unit for the purpose of receiving, processing, and disbursing payments, and for maintaining a record of payments, in all cases in which:

- (1) the state or county is a party;
- (2) the state or county provides child support enforcement services to a party; or
- (3) payment is collected through income withholding.

The commissioner may contract for services to carry out these provisions, provided that the commissioner first meets and negotiates with the affected exclusive representatives.

History: 1997 c 245 art 1 s 26

518.5853 MANDATORY PAYMENT OF OBLIGATIONS TO CENTRAL COLLECTIONS UNIT.

[For text of subs 1 to 4, see M.S.1996]

Subd. 5. Required content of order. A tribunal issuing an order that establishes or modifies a payment shall issue an income withholding order in conformity with section 518.6111. The automatic income withholding order must include the name of the obligor, the obligor's social security number, the obligor's date of birth, and the name and address of the obligor's employer. The street mailing address and the electronic mail address for the central collections unit must be included in each automatic income withholding order issued by a tribunal.

[For text of subd 6, see M.S.1996]

Subd. 7. Transmittal of funds from the obligor or payor of funds to the central collections unit. The obligor or other payor of funds shall identify the obligor on the check or remittance by name, payor number, and social security number, and shall comply with section 518.6111.

[For text of subs 8 to 10, see M.S.1996]

History: 1995 c 203 art 6 s 92

518.611 [Repealed, 1997 c 203 art 6 s 93]

NOTE: Subdivision 9 was also amended by Laws 1997, chapter 187, article 2, section 11, to read as follows:

"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."

518.6111 INCOME WITHHOLDING.

Subdivision 1. Definitions. (a) For the purpose of this section, the following terms have the meanings provided in this subdivision unless otherwise stated.

(b) "Payor of funds" means any person or entity that provides funds to an obligor, including an employer as defined under chapter 24 of the Internal Revenue Code, section 3401(d), an independent contractor, payor of worker's compensation benefits or reemployment insurance, or a financial institution as defined in section 13B.06.

(c) "Business day" means a day on which state offices are open for regular business.

(d) "Arrears" means amounts owed under a support order that are past due.

Subd. 2. Application. This section applies to all support orders issued by a court or an administrative tribunal and orders for or notices of withholding issued by the public authority according to section 518.5512, subdivision 5, paragraph (a), clause (4).

Subd. 3. **Order.** Every support order must address income withholding. Whenever a support order is initially entered or modified, the full amount of the support order must be withheld from the income of the obligor and forwarded to the public authority. Every order for support or maintenance shall provide for a conspicuous notice of the provisions of this section that complies with section 518.68, subdivision 2. An order without this notice remains subject to this section. This section applies regardless of the source of income of the person obligated to pay the support or maintenance.

A payor of funds shall implement income withholding according to this section upon receipt of an order for or notice of withholding. The notice of withholding shall be on a form provided by the commissioner of human services.

Subd. 4. **Collection services.** The commissioner of human services shall prepare and make available to the courts a notice of services that explains child support and maintenance collection services available through the public authority, including income withholding. Upon receiving a petition for dissolution of marriage or legal separation, the court administrator shall promptly send the notice of services to the petitioner and respondent at the addresses stated in the petition.

Upon receipt of a support order requiring income withholding, a petitioner or respondent, who is not a recipient of public assistance and does not receive child support services from the public authority, shall apply to the public authority for either full child support collection services or for income withholding only services.

For those persons applying for income withholding only services, a monthly service fee of \$15 must be charged to the obligor. This fee is in addition to the amount of the support order and shall be withheld through income withholding. The public authority shall explain the service options in this section to the affected parties and encourage the application for full child support collection services.

Subd. 5. **Payor of funds responsibilities.** (a) An order for or notice of withholding is binding on a payor of funds upon receipt. Withholding must begin no later than the first pay period that occurs after 14 days following the date of receipt of the order for or notice of withholding. In the case of a financial institution, preauthorized transfers must occur in accordance with a court-ordered payment schedule.

(b) A payor of funds shall withhold from the income payable to the obligor the amount specified in the order or notice of withholding and amounts specified under subdivisions 6 and 9 and shall remit the amounts withheld to the public authority within seven business days of the date the obligor is paid the remainder of the income. The payor of funds shall include with the remittance the social security number of the obligor, the case type indicator as provided by the public authority and the date the obligor is paid the remainder of the income. The obligor is considered to have paid the amount withheld as of the date the obligor received the remainder of the income. A payor of funds may combine all amounts withheld from one pay period into one payment to each public authority, but shall separately identify each obligor making payment.

(c) A payor of funds shall not discharge, or refuse to hire, or otherwise discipline an employee as a result of wage or salary withholding authorized by this section. A payor of funds shall be liable to the obligee for any amounts required to be withheld. A payor of funds that fails to withhold or transfer funds in accordance with this section is also liable to the obligee for interest on the funds at the rate applicable to judgments under section 549.09, computed from the date the funds were required to be withheld or transferred. A payor of funds is liable for reasonable attorney fees of the obligee or public authority incurred in enforcing the liability under this paragraph. A payor of funds that has failed to comply with the requirements of this section is subject to contempt sanctions under section 518.615. If the payor of funds is an employer or independent contractor and violates this subdivision, a court may award the obligor twice the wages lost as a result of this violation. If a court finds a payor of funds violated this subdivision, the court shall impose a civil fine of not less than \$500.

(d) If a single employee is subject to multiple withholding orders or multiple notices of withholding for the support of more than one child, the payor of funds shall comply with all of the orders or notices to the extent that the total amount withheld from the obligor's income does not exceed the limits imposed under the Consumer Credit Protection Act, Chapter 15 of

the United States Code section 1637(b), giving priority to amounts designated in each order or notice as current support as follows:

(1) if the total of the amounts designated in the orders for or notices of withholding as current support exceeds the amount available for income withholding, the payor of funds shall allocate to each order or notice an amount for current support equal to the amount designated in that order or notice as current support, divided by the total of the amounts designated in the orders or notices as current support, multiplied by the amount of the income available for income withholding; and

(2) if the total of the amounts designated in the orders for or notices of withholding as current support does not exceed the amount available for income withholding, the payor of funds shall pay the amounts designated as current support, and shall allocate to each order or notice an amount for past due support, equal to the amount designated in that order or notice as past due support, divided by the total of the amounts designated in the orders or notices as past due support, multiplied by the amount of income remaining available for income withholding after the payment of current support.

(e) When an order for or notice of withholding is in effect and the obligor's employment is terminated, the obligor and the payor of funds shall notify the public authority of the termination within ten days of the termination date. The termination notice shall include the obligor's home address and the name and address of the obligor's new payor of funds, if known.

(f) A payor of funds may deduct one dollar from the obligor's remaining salary for each payment made pursuant to an order for or notice of withholding under this section to cover the expenses of withholding.

Subd. 6. Financial institutions. (a) If 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 for preauthorized transfers from the obligor's child support account payable to an account of the public authority. 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 for 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 information regarding accounts owned in whole or in part by the obligor. An obligor who fails to comply with this subdivision, 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.

(b) A financial institution shall execute preauthorized transfers for the deposit accounts of the obligor in the amount specified in the order and amounts required under this section as directed by the public authority. 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. 7. Subsequent income withholding. (a) This subdivision applies to support orders that do not contain provisions for income withholding.

(b) For cases in which the public authority is providing child support enforcement services to the parties, the income withholding under this subdivision shall take effect without prior judicial notice to the obligor and without the need for judicial or administrative hearing. Withholding shall result when:

(1) the obligor requests it in writing to the public authority;

(2) the obligee or obligor 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; or

(3) the public authority commences withholding according to section 518.5512, subdivision 5, paragraph (a), clause (4).

(c) For cases in which the public authority is not providing child support services to the parties, income withholding under this subdivision shall take effect when an obligee requests it by making a written motion to the court and the court finds that previous support has not been paid on a timely consistent basis or that the obligor has threatened expressly or otherwise to stop or reduce payments.

(d) Within two days after the public authority commences withholding under this subdivision, the public authority shall send to the obligor at the obligor's last known address, notice that withholding has commenced. The notice shall include the information provided to the payor of funds in the notice of withholding.

Subd. 8. Contest. (a) The obligor may contest withholding under subdivision 7 on the limited grounds that the withholding or the amount withheld is improper due to mistake of fact. If the obligor chooses to contest the withholding, the obligor must do so no later than 15 days after the employer commences withholding, by doing all of the following:

(1) file a request for contested hearing according to section 518.5511, subdivision 4, and include in the request the alleged mistake of fact;

(2) serve a copy of the request for contested hearing upon the public authority and the obligee; and

(3) secure a date for the contested hearing no later than 45 days after receiving notice that withholding has commenced.

(b) The income withholding must remain in place while the obligor contests the withholding.

(c) If the court finds a mistake in the amount of the arrearage to be withheld, the court shall continue the income withholding, but it shall correct the amount of the arrearage to be withheld.

Subd. 9. Priority. (a) An order for or notice of withholding under this section or execution or garnishment upon a judgment for child support arrearage 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, title 15 of the United States Code, section 1673(b).

(b) If more than one order for or notice of withholding exists involving the same obligor and child, the public authority shall enforce the most current order or notice. An order for or notice of withholding that was previously implemented according to this section shall end as of the date of the most current order. The public authority shall notify the payor of funds to withhold under the most current withholding order or notice.

Subd. 10. Arrearage order. (a) This section does not prevent the court from ordering the payor of funds to withhold amounts to satisfy the obligor's previous arrearage in support order payments. This remedy shall not operate to exclude availability of other remedies to enforce judgments. 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.

(b) 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 arrearage.

(c) Absent an order to the contrary, if an arrearage exists at the time a support order would otherwise terminate, income withholding shall continue in effect or may be implemented in an amount equal to the support order plus an additional 20 percent of the monthly child support obligation, until all arrears have been paid in full.

Subd. 11. **Lump-sum payments.** Before transmittal to the obligor of a lump-sum payment of \$500 or more including, but not limited to, severance pay, accumulated sick pay, vacation pay, bonuses, commissions, or other pay or benefits, a payor of funds:

(1) who has been served with an order for or notice of income withholding under this section shall:

(i) notify the public authority of the lump-sum payment that is to be paid to the obligor;

(ii) 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 176.221, 176.225, 176.521, 181.08, 181.101, 181.11, 181.13, and 181.145, and Minnesota Rules, part 1415.2000, subpart 10; and

(iii) upon order of the court, and after a showing of past willful nonpayment of support, pay any specified amount of the lump-sum payment to the public authority for future support; or

(2) shall pay the lesser of the amount of the lump-sum payment or the total amount of the judgment and arrearages upon service by United States mail of a sworn affidavit from the public authority or a court order that includes the following information:

(i) that a judgment entered pursuant to section 548.091, subdivision 1a, exists against the obligor, or that other support arrearages exist;

(ii) the current balance of the judgment or arrearage; and

(iii) that a portion of the judgment or arrearage remains unpaid.

The Consumer Credit Protection Act, title 15 of the United States Code, section 1673(b), does not apply to lump-sum payments.

Subd. 12. **Interstate income withholding.** (a) Upon receipt of an order for support entered in another state and the specified documentation from an authorized agency, the public authority shall implement income withholding. A payor of funds in this state shall withhold income under court orders for withholding issued by other states or territories.

(b) An employer receiving an income withholding notice from another state shall withhold and distribute the funds as directed in the withholding notice and shall apply the law of the obligor's principal place of employment when determining:

(1) the employer's fee for processing an income withholding notice;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) deadlines for implementing and forwarding the child support payment.

(c) An obligor may contest withholding under this subdivision pursuant to section 518C.506.

Subd. 13. **Order terminating income withholding.** An order terminating income withholding must specify the effective date of the order and reference the initial order or decree that establishes the support obligation and shall 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 on the public authority;

(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 payor 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 contested 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 payor of funds, pending the outcome of the contested hearing.

Subd. 14. **Termination by the public authority.** If the public authority determines that income withholding is no longer applicable, the public authority shall notify the obligee and the obligor of intent to terminate income withholding.

Five days following notification to the obligee and obligor, the public authority shall issue a notice to the payor of funds terminating income withholding, without a requirement for a court order unless the obligee has requested a contested hearing under section 518.5511, subdivision 4.

Subd. 15. 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.

Subd. 16. Waiver. (a) If child support or maintenance is not assigned under section 256.741, the court may waive the requirements of this section if the court finds there is no arrearage in child support and maintenance as of the date of the hearing and:

(1) one party demonstrates and the court finds there is good cause to waive the requirements of this section or to terminate an order for or notice of income withholding previously entered under this section; or

(2) all parties reach an agreement and the agreement is approved by the court after a finding that the agreement is likely to result in regular and timely payments. The court's findings waiving the requirements of this paragraph shall include a written explanation of the reasons why income withholding would not be in the best interests of the child.

In addition to the other requirements in this subdivision, if the case involves a modification of support, the court shall make a finding that support has been timely made.

(b) If the court waives income withholding, the obligee or obligor may at any time request income withholding under subdivision 7.

Subd. 17. Nonliability; payor of funds. A payor of funds who complies with an income withholding order or notice of withholding according to this chapter or chapter 518C, that appears regular on its face shall not be subject to civil liability to any individual or agency for taking action in compliance with the order or notice.

Subd. 18. Electronic transmission. Orders or notices for withholding under this section may be transmitted for enforcement purposes by electronic means.

History: 1997 c 203 art 6 s 48; 1Sp1997 c 5 s 18

518.613 [Repealed, 1997 c 203 art 6 s 93]

NOTE: Subdivision 6 was also amended by Laws 1997, chapter 187, article 2, section 12, to read as follows:

"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."

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 518.6111 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.

[For text of subd 2, see M.S.1996]

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 518.6111 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 518.6111 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.

[For text of subds 4 and 5, see M.S.1996]

History: 1997 c 203 art 6 s 92

518.615 EMPLOYER CONTEMPT.

Subdivision 1. **Orders binding.** Income withholding or medical support orders issued pursuant to sections 518.171 and 518.6111 are binding on the employer, trustee, or other payor of funds after the order and notice of income withholding or enforcement of medical support has been served on the employer, trustee, or payor of funds.

[For text of subds 2 and 3, see M.S.1996]

History: 1995 c 203 art 6 s 92

518.616 ADMINISTRATIVE SEEK EMPLOYMENT ORDERS.

Subdivision 1. **Court order.** For any support order being enforced by the public authority, the public authority may seek a court order requiring the obligor to seek employment if:

- (1) employment of the obligor cannot be verified;
- (2) the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments; and
- (3) the obligor is not in compliance with a written payment plan.

Upon proper notice being given to the obligor, the court may enter a seek employment order if it finds that the obligor has not provided proof of gainful employment and has not consented to an order for income withholding under section 518.6111 or entered into a written payment plan approved by the court, an administrative law judge, or the public authority.

[For text of subd 2, see M.S.1996]

History: 1997 c 203 art 6 s 92

518.617 CONTEMPT PROCEEDINGS FOR NONPAYMENT OF SUPPORT.

[For text of subd 1, see M.S.1996]

Subd. 2. **Court options.** (a) If a court cites a person for contempt under this section, and the obligor lives in a county that contracts with the commissioner of human services under section 256.997, the court may order the performance of community service work up to 32 hours per week for six weeks for each finding of contempt if the obligor:

- (1) is able to work full time;
- (2) works an average of less than 32 hours per week; and
- (3) has actual weekly gross income averaging less than 40 times the federal minimum hourly wage under United States Code, title 29, section 206(a)(1), or is voluntarily earning less than the obligor has the ability to earn, as determined by the court.

An obligor is presumed to be able to work full time. The obligor has the burden of proving inability to work full time.

(b) A person ordered to do community service work under paragraph (a) may, during the six-week period, apply to the court, an administrative law judge, or the public authority to be released from the community service work requirement if the person:

- (1) provides proof to the court, an administrative law judge, or the public authority that the person is gainfully employed and submits to an order for income withholding under section 518.6111;

(2) enters into a written payment plan regarding both current support and arrearages approved by the court, an administrative law judge, or the public authority; or

(3) provides proof to the court, an administrative law judge, or the public authority that, subsequent to entry of the order, the person's circumstances have so changed that the person is no longer able to fulfill the terms of the community service order.

[For text of subd 3, see M.S.1996]

History: 1997 c 203 art 6 s 92

518.618 CASE REVIEWER.

The commissioner shall make a case reviewer available to obligors and obligees. The reviewer must be available to answer questions concerning the collection process and to review the collection activity taken. A reviewer who reasonably believes that a particular action being taken is unreasonable or unfair may make recommendations to the commissioner and the applicable county in regard to the collection action.

History: 1997 c 245 art 1 s 27

518.6195 COLLECTION; ARREARS ONLY.

(a) Remedies available for the collection and enforcement of support in this chapter and chapters 256, 257, and 518C also apply to cases in which the child or children for whom support is owed are emancipated and the obligor owes past support or has an accumulated arrearage as of the date of the youngest child's emancipation. Child support arrearages under this section include arrearages for child support, medical support, child care, pregnancy and birth expenses, and unreimbursed medical expenses as defined in section 518.171.

(b) This section applies retroactively to any support arrearage that accrued on or before the date of enactment and to all arrearages accruing after the date of enactment.

History: 1997 c 245 art 1 s 28

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 518.6111.

History: 1997 c 203 art 6 s 92

518.64 MODIFICATION OF ORDERS OR DECREES.

[For text of subd 1, see M.S.1996]

Subd. 2. Modification. (a) The terms of an order 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 or the child or children that are the subject of these proceedings; (3) receipt of assistance under sections 256.72 to 256.87 or 256B.01 to 256B.40; (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; (5) extraordinary medical expenses of the child not provided for under section 518.171; or (6) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses.

(b) It is presumed that there has been a substantial change in circumstances under paragraph (a) and the terms of a current support order shall be rebuttably presumed to be unreasonable and unfair if:

(1) the application of the child support guidelines in section 518.551, subdivision 5, to the current circumstances of the parties results in a calculated court order that is at least 20 percent and at least \$50 per month higher or lower than the current support order;

(2) the medical support provisions of the order established under section 518.171 are not enforceable by the public authority or the custodial parent;

(3) health coverage ordered under section 518.171 is not available to the child for whom the order is established by the parent ordered to provide; or

(4) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount.

(c) On a motion for modification of maintenance, including a motion for the extension of the duration of a maintenance award, 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 apply section 518.551, subdivision 5, 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.

(d) 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 and on the public authority if public assistance is being furnished or the county attorney is the attorney of record. However, modification may be applied to an earlier period if the court makes express findings that:

(1) the party seeking modification was precluded from serving a motion by reason of a significant physical or mental disability, a material misrepresentation of another party, or fraud upon the court and that the party seeking modification, when no longer precluded, promptly served a motion;

(2) the party seeking modification was a recipient of federal Supplemental Security Income (SSI), Title II Older Americans, Survivor's Disability Insurance (OASDI), other disability benefits, or public assistance based upon need during the period for which retroactive modification is sought; or

(3) the order for which the party seeks amendment was entered by default, the party shows good cause for not appearing, and the record contains no factual evidence, or clearly erroneous evidence regarding the individual obligor's ability to pay.

The court may provide that a reduction in the amount allocated for child care expenses based on a substantial decrease in the expenses is effective as of the date the expenses decreased.

(e) 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.

(f) The court need not hold an evidentiary hearing on a motion for modification of maintenance or support.

(g) Section 518.14 shall govern the award of attorney fees for motions brought under this subdivision.

[For text of subs 3 to 4a, see M.S.1996]

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 for support or maintenance or for contempt of court.

History: 1997 c 187 art 2 s 13; 1997 c 245 art 1 s 29

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

[For text of subd 1, see M.S.1996]

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 serves notice of the 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 informs the obligor of the date on which the adjustment in payments will become effective;

(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; or

(d) the public authority sends notice of its application for adjustment to the obligor at the obligor's last known address at least 20 days before the effective date of the adjustment, and the notice informs the obligor of the date on which the adjustment will become effective and the procedures for contesting the adjustment according to section 518.5512.

[For text of subd 3, see M.S.1996]

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.

[For text of subd 5, see M.S.1996]

History: 1997 c 187 art 2 s 14; 1997 c 245 art 1 s 30

518.645 [Repealed, 1997 c 203 art 6 s 93]

518.68 REQUIRED NOTICES.

[For text of subd 1, see M.S.1996]

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

IMPORTANT NOTICE

1. PAYMENTS TO PUBLIC AGENCY

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

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

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

3. RULES OF SUPPORT, MAINTENANCE, VISITATION

- (a) Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.
- (b) Payment of support must be made as it becomes due, and failure to secure or denial of rights of visitation is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.
- (c) Nonpayment of support is not grounds to deny visitation. The party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.
- (d) The payment of support or spousal maintenance takes priority over payment of debts and other obligations.
- (e) A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.
- (f) Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.
- (g) If there is a layoff or a pay reduction, support may be reduced as of the time of the layoff or pay reduction if a motion to reduce the support is served and filed with the court at that time, but any such reduction must be ordered by the court. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (c).
- (h) Reasonable visitation guidelines are contained in Appendix B, which is available from the court administrator.

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

Unless otherwise provided by the Court:

- (a) Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.
- (b) Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.
- (c) In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment.
- (d) Each party has the right of reasonable access and telephone contact with the minor children.

5. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE

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

6. CHANGE OF ADDRESS OR RESIDENCE

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

7. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE

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

8. JUDGMENTS FOR UNPAID SUPPORT

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

9. JUDGMENTS FOR UNPAID MAINTENANCE

A judgment for unpaid spousal maintenance may be entered when the conditions of Minnesota Statutes, section 548.091, are met. A copy of that section is available from any district court clerk.

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

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

11. VISITATION EXPEDITOR PROCESS

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

12. VISITATION REMEDIES AND PENALTIES

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

[For text of subd 3, see M.S.1996]

History: 1997 c 203 art 6 s 49,92; 1997 c 245 art 2 s 6