

LEGISLATIVE UPDATE

2005 – 2006 Biennium 2005 Regular and Special Session

Among the 172 bills that became law during the 2005 Regular Session of the first year of the Legislative Biennium, were the following bills affecting Family Law.

FAMILY LAW BILLS SIGNED INTO LAW DURING THE FIRST SESSION OF THE BIENNIUM

A. ADOPTION

Chapter 129, HF 2192, Effective 06/02/2005

Post adoption services data collection and best practices guidelines and report required.

The Commissioner of Human Services is required to collect data from all adoption agencies for a period of six months in order to establish benchmarks to evaluate post adoption search services. The report is to be made to the Legislature by February 1, 2006. The data must include (1) the percentage of requests resulting in successful location of the other party; (2) the percentage of requests resulting in successful completion of the commissioner's designated form for family medical and social history; (3) the time from request for search to completion of search and (4) the number and type of efforts used to complete the search. The data is to be used to establish reasonable efforts in developing best practice guidelines for conducting post adoption services.

B. CHILD SUPPORT

Chapter 164, SF 630, Effective 01/01/2007

Child support is to be determined using an "income shares" model. Both parents' gross incomes are used to determine child support.

NOTE: On March 22, 2006, during the Second Session of the Legislative Biennium the following modifications to the new child support law were proposed as SF 3199:

1. An amendment to the parenting time statute, § 518.175, to provide that, in the absence of other evidence, there is a rebuttable presumption that a parent is entitled to at least 25 percent of the parenting time with the child. Percentage of parenting time is determined by calculating the number of overnights a parent has with the child, or by using an alternative method when the parent has significant time periods with the child, but does not stay overnight. In determining whether a child is with a parent a significant amount of the time, the court may consider the age of the child. (This provision exists in the original law passed during the first session, but is moved from the child support calculations to the parenting time statute.)

2. A subdivision is added to § 518.551 to reinstate language to the law that was inadvertently omitted from the statute during the first session, dealing with the scope of the child support guidelines and payments to the public authority when the obligee is receiving or has applied for public assistance or has applied for child support or maintenance collection services.
3. § 518.551, Subd. 6 is amended to correct a cross-reference in the law.
4. § 518.4413, Subd. 3 is amended to update language (replacing “net” income with “gross” income; replacing “defined” with “calculated”; replacing “determination” with “computation;” and correcting cross-references.)
5. A separate, substantive section is added which is devoted to “Potential Income” as used in the statute, defining “potential income” and its scope, and setting out the three methods by which potential income can be determined: (1) the parent’s probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community; (2) if a parent is receiving unemployment compensation or workers’ compensation, that parent’s income may be calculated using the actual amount of the unemployment compensation or workers’ compensation benefit received; or (3) the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher. This section brings together language that existed elsewhere in the law.
6. Chapter 164, Sec. 3, Subd. 6 regarding filing fees is amended to clarify that the additional \$50 filing fee is required on the first paper filed for a party, rather than on the “initial pleading,” in all proceedings for dissolution of marriage, legal separation or annulment, or proceedings to establish child support obligations.
7. Chapter 164, Sec. 4 pertaining to the six-month review hearing is amended to clarify that custody or parenting time or child support orders may not be modified at the six-month review hearing; that if the hearing request raises parenting time issues, the court administrator shall schedule the hearing before a district court judge, rather than a child support magistrate; that the contempt powers of the court may only be used against a party who appears at the hearing; and that the six-month review hearing is intended to be an informal hearing at which testimony may only be taken for purposes of a contempt court finding.
8. Some of the definitions in § 518.54 are modified. For example, a “support order” is defined to include a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or agency of competent jurisdiction, for the maintenance of a spouse or former spouse; a person who “has primary physical custody” of a child is presumed not to be an obligor for purposes of a child support order; and that for purposes of ordering medical support, a parent “who has primary

physical custody” of a child may be an obligor subject to a payment agreement. Other modifications are for purposes of technical or stylistic changes, cross-references, and clarifications.

9. § 518.551, Subd. 5b is amended to direct the Commissioner of Human Services to prepare a financial affidavit form that must be used by parties for disclosing financial information.
10. Chapter 165, Sec. 10, Subd. 2 is amended to clarify the standards governing modifications of support or maintenance orders by requiring a showing that a change has made the terms of the current order unreasonable and unfair. Added to the situations in which existing orders may be modified during the first year after the effective date (January 1, 2007) include when a parent or caregiver receives public assistance; additional work-related or education-related child care expenses, or a substantial increase or decrease in existing work-related or education-related child care expenses; and a change in the availability of health care coverage or a substantial increase or decrease in the cost of existing health care coverage. Additionally, the court may phase in the amount of a modification if the modification would create an undue hardship for an obligor or obligee.
11. Chapter 164, Sec. 11, Subd. 7 is amended to specify that child care support must be based on the actual child care expenses. A decrease is effective as of the date the expense is decreased.
12. Chapter 164, Sec. 14 sets out the calculation of gross income, and is amended to clarify the calculations. Child support or spousal maintenance payments ordered by a court for a nonjoint child or former spouse or ordered payable to the other party as part of the current proceeding are deducted for purposes of determining gross income.
13. Chapter 164, Sec. 15 dealing with the determination of income from self-employment or operation of a business is amended to reinstate current law, that a person seeking to deduct an expense, including depreciation, has the burden of proving, if challenged, that the expense is ordinary and necessary.
14. Chapter 164, Sec. 16 [§ 518.7123] setting out the computation of child support obligations is amended to clarify when calculations apply to the obligor rather than to both parents. Corrections are made to cross-references and redundancies are removed.
15. Chapter 164, Sec. 17 regarding deviation from the presumed child support obligation computed per the statute is amended to replace references to the “guideline amount” with “presumptive child support obligation.”
16. Chapter 164, Sec. 18, [§ 518.715] regarding written findings, is amended to specify that if a court does not deviate from the presumptive child support obligation as computed under § 518.713, the court must make

written findings that state (1) each parent's gross income; (2) each parent's PICS; and (3) any other significant evidentiary factors affecting the child support determination. If the court deviates from the presumptive child support obligation computed under § 518.713, the court must make written findings that state: (1) each parent's gross income; (2) each parent's PICS; (3) the amount of the child support obligation computed (4) the reasons for the deviation; and (5) how the deviation serves the best interests of the child.

17. Chapter 164, Sec. 20, [§ 518.717] is amended and replaces the "credit" for nonjoint children with a "deduction" for nonjoint children that is available if (1) the nonjoint child primarily resides in the parent's household; and (2) the parent is not obligated to pay basic child support for the nonjoint child to the other parent or legal custodian of the child under an existing child support order.
18. Chapter 164, Sec. 21, [§518.718] regarding social security or veterans' benefit payments received on behalf of the child is amended to replace "paid on behalf" with "provided for a joint child based on the eligibility" of the parent and clarifies that the amount of the benefits shall be included in the gross income of the parent on whose eligibility the benefits are based. If the benefits are provided for a joint child based on the eligibility of the obligor, then the amount is subtracted from the obligor's net child support obligation as calculated under § 518.713.
19. Chapter 164, Sec. 22, Subd. 2, regarding health care obligations is amended to strike from orders addressing child support language about whether the amount ordered for medical support is subject to a cost of living adjustment.
20. Chapter 164, Sec. 22, Subd. 3, regarding the determination of appropriate health care coverage replaces "party" with "parent" and states that dependent health care coverage is presumed appropriate if it includes medical and hospital coverage and provides for preventive, emergency, acute, and chronic care.
21. Chapter 164, Sec. 22, Subd. 4, regarding the ordering of health care coverage replaces "party" with "parent" and removes the presumption that no less than \$50 per month must be applied to the actual health care costs of the children or to the cost of health care coverage.
22. Chapter 164, Sec. 22, Subd. 16, regards the "offset" available to an obligor: if the parent with primary physical custody is an obligor ordered to contribute to the other party's cost for carrying health care coverage for the joint child, then the obligor's child support obligation is subject to an offset. If the public authority provides services, it may remove the offset to a party's child support obligation when (1) the party's court-ordered health care coverage for the joint child terminates; (2) the party does not enroll the joint child in other health care coverage; and (3) a modification motion is not pending.

23. Chapter 164, Sec. 22, Subd. 17, modifies the provisions relating to the collection of unreimbursed or uninsured medical expenses. A request for reimbursement must be made to the other party within two years of the date the requesting party incurred the unreimbursed or uninsured medical expense. If a court order has been signed ordering the contribution to the unreimbursed or uninsured medical expenses, a two year limitations provision must be applied to any requests made on or after the law's effective date (January 1, 2007.) This provision applies retroactively to court orders signed before the law's effective date, and requests for reimbursement made on or after the effective date may include expenses incurred before the effective date and on or after January 1, 2005. If the other party does not respond to the request for reimbursement within 30 days, then the requesting party may commence enforcement against the other party, file a motion for a court-ordered monthly payment amount; or notify the public authority, if the public authority provides services.
24. Chapter 164, Sec. 22, Subd. 18, rewrites the provision dealing with enforcement for unreimbursed or uninsured medical expenses as arrears. If the liable party is the parent with primary physical custody, the unreimbursed or uninsured medical expenses must be deducted from any arrears the requesting party owes the liable party. If unreimbursed or uninsured expenses remain after the deduction, the expenses must be collected by returning 20% of the current child support obligation to the requesting party, if the requesting party owes a child support obligation to the liable party. If the requesting party does not owe a current child support obligation then a payment agreement is required. If the liable party is not the parent with primary physical custody, the expenses must be deducted from any arrears the requesting party owes the liable party. If expenses remain after the deduction, then the expenses must be added and collected as arrears from the liable party.
25. Chapter 164, Sec. 23, Subd. 1 is amended by replacing "parental income for determining child support" with "PICS."
26. Chapter 164, Sec. 23, Subd. 2, is amended by replacing "parental income for determining child support" with "PICS."
27. Chapter 164, Sec. 24, [§ 518.722] amends the provision regarding the Parenting Expense Adjustment. The definition of the parenting expense adjustment now exists in Subd. 1 of the section. ("The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs costs of caring for the child, including, but not limited to, food, transportation, recreation, and household expenses.") The percentage of parenting time granted to or presumed for a parent is defined as "the percentage of time a child is scheduled to spend with the parent during the calendar year according to a court order." Calculation of the parenting expense adjustment remains the same: If the percentage of parenting time is less than 10%, there is no adjustment; if the percentage of parenting time is between 10% and 45%, the adjustment is 12%; and if the parenting time is between 45.1% and 50%, the parenting time is presumed equal.

28. Chapter 164, Sec. 25, [§ 518.724] amends the ability to pay, self-support adjustment provisions of the law and clarifies the calculations that are used to determine the obligor's income available for support. If the obligor's income available for support is equal to or less than 120% of the federal poverty guidelines for one person, then the provisions of the minimum basic support amount (Subd. 2) apply.
29. Chapter 164, Sec. 26, Subd. 2, the basic support amounts, are revised based on the economic evaluation of the basic support schedule that was required by the law, and completed in December of 2005.
30. Chapter 164, Sec. 31, is the "repealer" which reinstates definitions that should not have been repealed and reinstates language at the beginning of the child support guidelines dealing with payments to the public authority.
31. Chapter 164, Sec. 32, the effective date, is amended to read that the provisions of the new law apply to actions commenced or motions filed after the effective date (January 1, 2007), including those involving support orders in effect before the effective date. The provisions of the new law apply to actions or motions for past support or reimbursement filed on or after January 1, 2007. The terms and provisions of any court orders in effect before January 1, 2007, remain in full force and effect until modified by subsequent orders, judgments, decrees of dissolutions, or legal separations signed on or after January 1, 2007, when the provisions of the new law must be applied.

C. CHILDREN

Chapter 159, HF 1889, Effective 08/01/2005

Relates to the public policy behind the laws regarding child welfare by implementing child protection, child care, and child and family support provisions, amending, and adding to the following Minnesota Statutes: §§ 119A, 119B, 144D, 256.978, 256D, 256I, 256J, 257, 259, 260, 260C, 548, 626, and by repealing Minn. Stat. §§ 626.5551, Subds. 1, 2, 3.4, 5; Minn. Rules parts 9500, 1206, Subpts. 20, 26d, 27; 9560.0220, Subpt. 6, item B; 9560.0230, Subpt. 2.

D. DOMESTIC ABUSE

Chapter 76, HF 2110, Effective 05/25/2005

Amends Minn. Stat. § 518B.01, Subd. 6, to limit the findings a court is required to make when granting custody and parenting time in the context of a domestic abuse hearing. The following underlined language was added to Subd. 6, [Relief By the Court]:

In awarding temporary custody, or establishing temporary parenting time with the minor children of the parties, on a basis which gives primary consideration to the

safety of the victim and the children, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. The court need not make findings of the best interest factors under §§ 257.025, 518.17 or § 518.175 that are not considered by the court.

Chapter 136, HF 1, Effective 08/01/2005

As part of the Omnibus Public Safety Finance bill, appropriating money to the courts, Public Safety and Corrections Departments, and providing other law enforcement grants, Minn. Stat. § 518B.01, Subd. 22, was amended to enlarge the definition of a domestic abuse no contact order to include orders in criminal proceedings for harassment or stalking charged under § 609.749 and committed against a family or household member, a violation of an order for protection, or a violation of a prior domestic abuse no contact order.

Chapter 136, HF 1, Effective 08/01/2005

As part of the Omnibus Public Safety Finance bill, appropriating money to the courts, Public Safety and Corrections Departments, and providing other law enforcement grants, Minn. Stat. § 609.02 was amended to include as a “qualified domestic violence related offense” strangulation. The definition of “strangulation” was added: “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.”

E. SPOUSAL MAINTENANCE

Chapter 116, SF 1479, Effective 05/27/2005

The Department of Human Services is authorized to collect spousal maintenance, even when no child support order is being collected.

§ 518.54, Subd. 4a defines a “support order” as a judgment, decree or order, whether temporary, final, or subject to modification, issued by a court or administrative agency of competent jurisdiction, to include (3) for the maintenance of a spouse. § 518.54, Subd. 14 is amended to add that “an obligation for spousal maintenance is not a IV-D case.” Subd. 15 is added to Minn. Stat. § 518.54 that states “income withholding only services” means the services provided by the public authority to collect payments pursuant to a support order but does not include other enforcement services provided by the public authority for IV-D cases. The applicant for services must initiate the notices required for income withholding. The services provided are income withholding services only, not enforcement services.

F. MISCELLANEOUS

Chapter 31, SF 1116, Effective 05/06/2005

Subd. 3 is added to Minn. Stat. § 86B.501 to require all children under the age of 10, who are aboard a watercraft that is not anchored for the purpose of swimming or diving, to wear an appropriate personal flotation device.

Chapter 137, HF 473, Effective 06/03/2005

Amends Minn. Stat. § 550.37, Subd. 4, to exempt from creditors' remedies all wedding rings or other religious or culturally recognized symbols of marriage exchanged between the debtor and the spouse at the time of marriage, and in the debtor's possession, so long as the value of the item does not exceed \$1,225.