

# **Child Support Laws in Minnesota**

## **An Overview**

The legislature sets child support policy in Minnesota. This information brief provides introductory information and answers to common questions about laws on setting, modifying, paying, enforcing, and terminating child support. By providing a basic understanding of current law, it is intended to help legislators answer questions from individuals affected by a child support order and understand proposals for changes in the law. All section and chapter references in this information brief are to Minnesota Statutes as amended through the 2004 session.

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# The Players, Their Roles, and Getting Started

## Federal Government

Minnesota Statutes have long provided for child support orders in cases where parents separate, divorce, or have never married. In 1975, the federal government also became involved in this issue. Congress enacted laws aimed at establishing uniformity and setting minimum standards in state child support enforcement systems. The goal was to reduce the demand for public assistance by more effectively enforcing child support orders. The federal government began providing funding to states if their child support systems met federal requirements.

Currently, the federal government contributes about 76 percent of the state's total child support enforcement funding. Most of that contribution is funded through Federal Financial Participation (FFP), provided at a flat rate of 66 percent of state and county spending. The rest comes from financial incentives paid to the state and distributed to counties for paternity adjudications, establishment of support, child support enforcement, collections for both current support and arrears, and cost effectiveness. The state bears about 12 percent of the total cost and Minnesota's counties shoulder the remaining 12 percent. Over the years, to qualify for federal child support enforcement funding, as well as public assistance funding (Temporary Assistance for Needy Families), Congress has required states to have a child support program and enact various kinds of legislation on child support. States also must comply with a variety of federal regulations related to the funding.

## State Government

**Legislature.** The legislature sets child support policy in Minnesota. State policy is greatly influenced by the federal requirements that are prerequisites to receiving federal welfare and child support funds. However, the federal requirements are often general, leaving the details up to the legislature.

**Department of Human Services.** The Department of Human Services (DHS) is the primary executive branch agency responsible for supervising Minnesota's child support system, which is administered by county child support offices. The state agency:

- runs the statewide computer system and maintains statewide data on child support;
- provides training and assistance to the counties;
- operates Minnesota's centralized child support payment center;
- manages and disburses federal and state child support funding;
- maintains and manages administrative enforcement tools; and
- provides overall guidance for Minnesota's child support system.

**Counties.** Counties do a lot of the hands-on work in Minnesota's child support system. Counties deal directly with the families involved. Child support services are typically located within the county human or social services department. The caseworkers are called child support

officers (CSO). They work closely with the county attorney, who provides legal advice and represents the county (not the child or parents) in child support actions.

**Public Authority.** Minnesota’s child support statutes refer to the “public authority.” The public authority means the agency responsible for child support enforcement. The public authority can be either DHS or the county child support office.

**Judicial Branch.** The judicial branch interprets and applies the child support laws in individual cases. There are a few different types of decision makers who preside over child support matters. The first is a district court judge—a regular judge having authority over all matters in district court. Second, Hennepin and Ramsey counties utilize family court referees—similar to district court judges, but with jurisdiction limited to family law. And third, there are child support magistrates who hear only child support matters. [Minn. Stat. §§ 484.64; 484.65; 484.702.](#)

## **Obligor and Obligee**

“Obligor” is the legal term for the person ordered to pay maintenance or support. “Obligee” is the person to whom maintenance or support is owed. Usually the obligee is the parent with whom the child lives and the obligor is the other parent. But sometimes parents have joint custody, each parent has custody of one or more of the couple’s children, or the child is not in either parent’s custody. For accuracy and clarity, this information brief uses the terms obligor and obligee. [Minn. Stat. § 518.54, subds. 7 and 8.](#)

## **When is child support ordered?**

If a married couple with minor children is divorced or obtains a legal separation, a court must enter a support order against one or both parents. [Minn. Stat. § 518.551, subd. 5, para. \(a\).](#)

Generally, paternity must be established before a court will order child support. A court may order an alleged father to pay temporary child support if genetic tests indicate a likelihood of paternity of 92 percent or greater. [Minn. Stat. § 257.62, subd. 5.](#) Paternity can be established by court order or by the parents voluntarily executing a document called the Recognition of Parentage. [Minn. Stat. §§ 257.66 and 257.75.](#) In cases where paternity is uncontested, establishing paternity is relatively simple. However, if paternity is contested or involves multiple parties, establishing paternity can be complex.

If a child is in the custody of an entity or an individual other than a parent, either by court order or parental consent, a support order can be entered against the parents in favor of the individual or entity who has custody. [Minn. Stat. § 256.87, subd. 5.](#)

## **When does the county become involved?**

The county is not a party in all child support cases. Many child support obligations are set and paid without county involvement. There are two ways the county gets involved. First, an obligee who receives public assistance must assign the county the right to receive child support. Public assistance recipients, as a condition of continued eligibility for public assistance, must cooperate in establishing paternity and enforcing child support. Recipients may be exempted from this requirement if they can show good cause, such as a likelihood of physical or emotional abuse. [Minn. Stat. § 256.741](#).

The second way the county gets involved is if the obligor or obligee applies for child support enforcement services. For an application fee of \$25 any obligor or obligee who does not receive public assistance can obtain the county's full services in establishing parentage, locating parents, and establishing and enforcing child support orders. [Minn. Stat. § 518.551, subd. 7](#). If an obligee or obligor prefers to have only income withholding services, instead of full child support services, that person may apply for income withholding-only services, which is referred to as a "non IV-D case." A monthly fee of \$15 is charged to the obligor for this service. [Minn. Stat. § 518.6111, subd. 4](#).

Effective July 1, 2004, if the county provides full child support services to an obligee, the obligee will be charged a cost recovery fee of 1 percent of the amount of child support and spousal maintenance collected. Effective July 1, 2005, if the county provides child support enforcement services to an obligor, the obligor will be charged a cost recovery fee of 1 percent of the monthly court-ordered child support and spousal maintenance obligation. This cost recovery fee does not apply to persons receiving public assistance or who received some forms of public assistance within the 24 months prior to getting support enforcement services. Applicants for child support services who are receiving some forms of public assistance will not be charged a cost recovery fee for up to 24 months after leaving the assistance program. [Minn. Stat. § 518.551, subd. 7](#). If an applicant for full child support services does not wish to pay the 1 percent fee, that person may close their full services case and either have no child support services, or apply for income withholding-only services. [Minn. Stat. § 518.6111, subd. 4](#).

Because the original federal legislation on child support added a "Title IV-D" to the Social Security Act, county child support offices, which are subsidized by the federal program, are sometimes called "IV-D agencies." Child support enforcement services provided by IV-D agencies are often referred to as "IV-D services." Cases in which the county is a party are called "IV-D cases." IV-D cases are divided into public assistance cases (PA) and those where the obligor or obligee simply applies for support enforcement (NPA, or nonpublic assistance). IV-D cases also can include spousal maintenance if the child for whom child support is ordered is or was living with the obligee. [Minn. Stat. §§ 256.741; 256.87; 518.54, subd. 14; and various other provisions of chapter 518](#).

## **How is child support ordered?**

As previously stated, child support is ordered by either a district court judge, district court referee, or child support magistrate. Child support magistrates preside over IV-D cases only

(again, cases where the county is involved because the obligee receives public assistance or the obligor or obligee asks the county for child support enforcement services). Non-IV-D cases or IV-D cases where additional contested issues are involved (such as custody), are heard by a judge or referee in district court. **Minn. Stat. §§ 484.702 and 518.5513.**

Child support cases heard by child support magistrates are governed by a set of rules aimed to expedite and simplify the process. Accordingly, the procedures are called the “expedited process” or the “expedited child support hearing process.” The rules for the expedited process are promulgated by the Minnesota Supreme Court. **Minn. Gen. R. Prac. 351 to 379.**

Magistrates, judges, and referees all have the power to establish, modify, or enforce child support orders. In every case, the orders can be appealed to the Minnesota Court of Appeals. In cases heard by child support magistrates, orders can be appealed to district court or directly to the Minnesota Court of Appeals. For simplicity, this information brief uses the term “court” when referring to both the district court and the expedited process.

A person seeking to obtain, modify, or enforce a child support order should contact his or her county child support office or a private attorney for direction on how to proceed. Additionally, most county court administrators have forms available for people who represent themselves, and there are a variety of court forms available on the Minnesota State Court System web site (<http://www.courts.state.mn.us/ctforms/>). General information about child support can also be obtained from the Department of Human Services web site ([http://www.dhs.state.mn.us/main/groups/children/documents/pub/DHS\\_id\\_000160.hcsp](http://www.dhs.state.mn.us/main/groups/children/documents/pub/DHS_id_000160.hcsp)).

## Calculating and Modifying Child Support

### What does the child support include?

- A monetary amount for the care, support, and education of the child, commonly referred to as “child support” or “basic support”
- Medical support
- Work- or education-related child care costs of the obligee, commonly referred to as “child care support”
- Support arrears or reimbursement of public assistance payments already made on behalf of the child

**Minn. Stat. §§ 518.54, subds. 4 and 4a; 518.551, subd. 5, para. (b).**

### What is medical support?

Medical support means health and dental insurance for the child, cash support to reimburse for the cost of health and dental insurance, or payment of the child’s uninsured and unreimbursed health care expenses. **Minn. Stat. §§ 518.171, subd. 1; 518.54, subd. 4a.**

The court must order the parent with the better group dependent coverage to name the child as a beneficiary. If the parents do not have group coverage, the obligor can be required to obtain individual coverage, pay reasonable and necessary medical expenses, or pay no less than \$50 per month to be applied to the medical or dental expenses or cost of coverage for the child. Unless the parents reach a different agreement, if the obligee does not receive public assistance and has the financial ability to pay, the court must order the parents to assume the child's medical care costs in proportion to each parent's share of their total combined net income. [Minn. Stat. § 518.171, subd. 1.](#)

### **How are child care costs handled?**

The court must allocate work- and education-related child care costs to each parent in proportion to each parent's net income after the transfer of child support and any spousal maintenance, unless the allocation would be substantially unfair. Substantial unfairness is presumed if, after transfer of child support, maintenance, and child care, the obligor's income would be at or below the federal poverty guidelines.

The cost of child care for this purpose is 75 percent of the actual cost paid, which reflects the approximate value of state and federal tax credits available to the obligee. The actual cost paid for child care is the total amount received by a child care provider from the obligee or any public agency.

The amount allocated for child care (1) is not subject to the automatic cost-of-living adjustment, (2) can be modified if costs substantially increase or decrease, and (3) terminates automatically upon notice from the public authority when child care costs end.

A court may authorize the obligor to provide child care while the obligee is working, if the parents are able to cooperate and the plan is in the child's best interests. [Minn. Stat. § 518.551, subd. 5, para. \(b\).](#)

### **How is the child support amount calculated?**

First, the obligor's monthly net income is calculated by deducting from gross income: state and federal income taxes, Social Security, reasonable pension contributions, union dues, dependent health insurance coverage or actual medical expenses, and any child support or maintenance currently being paid. Net income for child support purposes may be different than net income for tax purposes. The amount to be paid by an individual whose net income is under \$550 a month is left to the court's discretion. Every two years the Minnesota Supreme Court issues an order establishing the income limit or cap on the application of the child support guidelines. [Minn. Stat. § 518.551, subd. 5, paras. \(b\) and \(k\).](#)

The parents must provide documentation of earnings and income. If a parent is voluntarily unemployed or underemployed, the court must impute income to the parent based on past

employment history, or absent that, the court must impute an income to the parent equal to 150 percent of minimum wage at 40 hours per week. [Minn. Stat. § 518.551, subd. 5b.](#)

After the obligor's monthly net income is determined, the court must apply it to the child support guidelines in statute. The guidelines indicate what percentage of net income the obligor should pay as support, given the number of children involved. [Minn. Stat. § 518.551, subds. 5, para. \(b\).](#)

The guidelines' percentages were devised in 1983 based on amounts ordered by judges in certain Minnesota counties before that time and amounts indicated in the guidelines of other states at that time. Legislation enacted in 1991 requires DHS to conduct a review of the support guidelines every four years beginning no later than 1994. [Minn. Stat. § 518.551, subd. 5c.](#)

After determining the support amount under the statutory guidelines, the court may look at several statutory criteria that allow a deviation from that amount. These criteria, commonly referred to as "deviation factors," include:

- (1) the earnings, income, and resources of both parents,
- (2) the financial needs and resources and the physical and emotional condition of the child,
- (3) the child's living standard before dissolution, but recognizing the new existence of two households,
- (4) who gets the dependent income tax exemption,
- (5) the parents' debts, and
- (6) whether the obligor receives various kinds of public assistance.

Because of these factors for deviating from the guidelines, individuals with the same net income and number of children may be ordered to pay different amounts of child support based on the facts in the case. In any deviation from the guidelines, the court must make specific findings as to the reason and why it is in the best interests of the child to deviate from the guidelines. [Minn. Stat. § 518.551, subd. 5, paras. \(c\) and \(i\).](#)

## Special circumstances

**Independent contractors; self-employed.** Income from self-employment is equal to gross receipts minus ordinary and necessary expenses. "Ordinary and necessary expenses" for child support purposes include actual expenses, not specialized or accelerated business expense deductions allowed under the Internal Revenue Code. The obligor has the burden of proving his or her expenses. Again, net income for child support purposes may be different than taxable income. [Minn. Stat. § 518.551, subd. 5b, para. \(f\).](#)

**Commissions; bonuses; lump-sum payments.** Depending on the facts, a court may conclude that income based on commissions or bonuses is reliable income and may set the child support amount accordingly. It is then the duty of the obligor to budget his or her income appropriately to make ongoing child support payments. Additionally, lump-sum payments may be withheld from an obligor to pay past due support or to pay future support if there is a history of willful nonpayment. [Minn. Stat. §§ 518.551, subd. 5, paras. \(a\) and \(c\)\(1\); 518.6111, subd. 11.](#)

**Seasonal employment.** Obligor who are seasonally employed are generally required to make equal monthly payments *throughout* the year. As with commissions, it is the obligor's duty to budget and save appropriately for months in which the obligor may have less income. Courts do have the discretion to construct support orders to reflect fluctuations in income. But because the expenses of raising a child are not seasonal, courts generally require equal monthly payments and the obligor must budget accordingly. [Minn. Stat. §§ 518.551, subd. 5, para. \(b\); 518.57, subd. 2.](#)

**Overtime.** Generally, it is assumed that obligors are not required to work overtime. However, if an obligor has a history of working overtime, the court may conclude that overtime is a normal, regular source of income for the obligor. In that case, the court can consider overtime earnings when setting child support. Similarly, if the overtime is a condition of employment, it is considered as income. Salaried employees may not deduct "overtime" for hours worked in excess of a 40-hour week. A court may also determine whether an obligor's compensation structure has been changed to manipulate a support obligation and may modify, or not modify, child support accordingly. Regardless of whether overtime is voluntary and regular or not, it may be withheld to pay existing arrearages. [Minn. Stat. §§ 518.551, subd. 5, para. \(b\)\(2\); 518.64, subd. 2, para. \(c\)\(2\).](#)

**Joint physical custody.** When parents have joint physical custody of a child, the determination of child support is more complicated and is not governed solely by the statutory child support guidelines. Instead, courts use an approach called the *Hortis/Valento* formula, which evolved and continues to evolve, from a series of court cases interpreting the child support guidelines in cases where both parents have custody of the child. Under this approach, each parent with joint physical custody is treated as an obligor as to the portion of time the child spends with the other parent. In other words, this approach requires each parent to pay the child support amount indicated under the guidelines, reduced by the percentage of time that the parent has physical custody of the child. The obligations owed by each parent are offset so that a payment obligation exists.

**MFIP participants.** When an obligee is a participant in the Minnesota Family Investment Program (MFIP), the state must distribute or pass through to the obligee all current child support that the obligee has assigned to the state. The state then reduces the obligee's MFIP grant by the total amount of the child support payment. [Minn. Stat. § 256.741, subd. 15.](#) For further information on MFIP, see the House Research report [Minnesota Family Assistance: A Guide to Public Programs Providing Assistance to Minnesota Families.](#)

## Can the support amount change?

A child support order amount may change through a cost-of-living adjustment or a modification. Arrears may also affect the monthly support payment.

**COLA.** Every child support order entered since 1983 must include a biennial cost-of-living adjustment (COLA) that is compounded. Orders entered before 1983 had to have a COLA added whenever an enforcement or modification action occurred in the case after 1983.

In all IV-D cases, the COLA takes effect the first of May of every other year after the support order is first entered or the COLA clause is added to an existing order. In non-IV-D cases, the COLA may take effect in any month, as long as it has been at least two years since the last adjustment. The court may use any cost-of-living indicator published by the U.S. Department of Labor to determine the appropriate percentage change in the support amount. The obligor is given 20 days notice before the COLA takes effect. The obligor may ask for a court hearing to oppose a COLA on grounds that the obligor has had an insufficient increase in income. If the obligor timely files a motion contesting the COLA, the COLA will be stayed pending the outcome of a court hearing. The court may order that the COLA go into effect in whole or in part, or not at all. If the obligor does not oppose the change, it goes into effect automatically. [Minn. Stat. § 518.641](#).

**Modifications.** The state must notify parties to IV-D cases every three years of the right to request a review of their cases to see if a modification is appropriate. In addition to the right to request a review every three years, any party in IV-D and non-IV-D cases, including the county, may request a review to see if a modification is appropriate.

Modification of support can be obtained based on:

- (1) substantially increased or decreased earnings of a party;
- (2) substantially increased or decreased needs of a party or child;
- (3) receipt of public assistance;
- (4) a change in the cost of living for either party that makes an order unreasonable and unfair;
- (5) extraordinary medical expenses of a child; or
- (6) addition of, or substantial increase or decrease in child care costs.

There is a presumption of a substantial change in circumstances and the terms of an order are rebuttably presumed to be unreasonable and unfair if:

- (1) applying the guidelines would change the current order by at least 20 percent and at least \$50 higher or lower per month;
- (2) the medical support provisions of the current order are unenforceable;
- (3) the health care coverage ordered is not available to the child; or
- (4) the current order is for a percentage and not a specific dollar amount.

[Minn. Stat. § 518.64](#).

The birth of subsequent children to an obligor is generally not grounds for a reduction in support owed to previous children. However, if an *obligee* requests a support increase, then the court must consider the birth of subsequent children to an obligor. [Minn. Stat. § 518.551, subd. 5f](#).

If a parent has remarried, the new spouse's income cannot be considered in calculating the needs or resources of the parent. [Minn. Stat. §§ 518.551, subd. 5, para. \(b\)\(1\); 518.64, subd. 2, para. \(c\)\(1\)](#).

**Arrears.** If a parent owes both current support and arrears, the support amount can be increased by up to 20 percent per month to cover the arrears. (Note: for forgiveness of arrearages, see “Are there defenses to nonpayment of child support?” on [page 14.](#)) [Minn. Stat. § 518.6111](#), subd. 10.

## Payment and Enforcement

### How is child support typically paid?

The Minnesota Child Support Payment Center, a centralized unit run by DHS, must be used to collect and disburse support payments in all IV-D cases. Again, IV-D cases include when the obligee receives or used to receive public assistance or when the obligor or obligee has applied for support enforcement services from the county. The payment center may also be used in other cases when support is not paid directly from the obligor to the obligee. There are a few methods to pay child support. [Minn. Stat. §§ 518.5851 to 518.5853.](#)

**Withholding of wages or other income.** This is the preferred method of payment. The court must address income withholding in *all* cases by ordering that all support obligations are subject to income withholding or ordering a specific waiver of income withholding. If the court provides for income withholding, to utilize this payment method, the obligee or obligor must apply for either full IV-D services or non-IV-D income withholding-only services.

In IV-D cases, the court may waive income withholding if (1) one parent demonstrates to the court that there is good cause for the waiver and the court makes specific findings that income withholding would not be in the child’s best interest, or (2) effective July 1, 2004, the court may waive income withholding if the obligor and obligee sign a written agreement providing for an alternative payment arrangement that the court reviews and enters in the record. In non-IV-D cases, the court may waive automatic withholding if the parents sign a written agreement. [Minn. Stat. § 518.6111.](#)

An employer may not discharge, refuse to hire, or otherwise discipline an employee because a support withholding order exists against the employee. An employer who intentionally fails to comply with a court order for wage withholding is subject to paying interest, attorney fees, and sanctions, and can be found in contempt of court. [Minn. Stat. §§ 518.5513, subd. 5, and 518.6111, subd. 5, para. \(c\).](#)

**Escrow account.** With this alternative to income withholding, an obligor establishes a savings account in an amount equal to two months of child support. The county can withdraw from the account if the obligor misses a support payment by ten days or more. It is rarely used. [Minn. Stat. § 518.614.](#)

**Preauthorized transfer account.** If an obligor obtains income through a method that makes income withholding ineffective (such as being self-employed), the court must order the obligor to establish and maintain a deposit account for paying support. Failure to do so subjects the obligor to contempt of court proceedings. This option is rarely used. [Minn. Stat. § 518.6111, subd. 6.](#)

**Direct deposit.** Direct deposit permits an obligee who receives a monthly child support check from the Minnesota Child Support Payment Center to receive child support payments through an electronic transfer to the obligee's checking account, savings account, or a stored value card account. The stored value card account allows an obligee to make purchases or withdraw cash from automatic teller machines using the stored value card.

**Direct payment.** In cases where the county is involved, direct payment from the obligor to the obligee is discouraged because it can result in problems tracking and crediting payments. In cases where the county is not involved, parties can make direct payments to one another.

## **How is support enforced if payments are not made?**

**Parent locator services.** Often, the first step in enforcing child support is locating the obligor. The county has access to the records of many state agencies, businesses, and other organizations for the purpose of locating obligors to establish paternity and child support, modify or enforce child support, or distribute collections. [Minn. Stat. § 256.978](#).

**Work reporting system.** Employers are required to report all hires to DHS, excluding individuals hired for less than two months for gross earnings under \$250 per month. The report information is used for support enforcement in Minnesota or interstate actions. An employer who intentionally fails to comply is subject to a civil penalty of \$25 for each unreported employee (the penalty is \$500 if the noncompliance is a result of a conspiracy between the employer and the employee). Additionally, both parents are required, unless otherwise ordered, to provide change in address, telephone number, driver's license number, Social Security number, or employer information to the other party, the court, and the child support office within ten days of a change. [Minn. Stat. § 256.998](#).

**Income withholding.** If withholding was not ordered, income withholding may later be implemented. In IV-D cases, income withholding may take effect without a court order if the obligor requests income withholding, the obligor or obligee initiates it through the public authority, or the public authority starts it through its administrative authority under [Minnesota Statutes, section 518.5513](#), subdivision 5. In non-IV-D cases, the obligee can make a written motion to the court. Income withholding will then be implemented if the court finds that previous support has not been paid on a timely, consistent basis or that the obligor has threatened to stop or reduce payments. [Minn. Stat. § 518.6111](#).

**Action against employer.** If a withholding order is in effect but the employer is not following it, the obligee or county can take action against the employer to require compliance. [Minn. Stat. § 518.6111, subd. 5, para. \(c\)](#). The county can also sanction the employer for noncompliance. [Minn. Stat. § 518.5513, subd. 5, para. \(a\)\(5\)](#).

**Occupational license sanctions.** The occupational license of an obligor who fails to make child support payments may be suspended upon the request of the obligee or county. Arrearages must be at least three times the monthly support obligation. The obligor can avoid suspension by

entering into and complying with a written payment agreement. Failure to comply with a written payment agreement will result in a suspension. [Minn. Stat. §§ 518.551, subd. 12; 518.553.](#)

**Driver's license suspension and motor vehicle title liens.** An obligor who is at least three times the monthly support obligation behind in support payments and is not complying with a written payment agreement is subject to (1) loss of his or her driver's license, and (2) a lien on the obligor's equity in a motor vehicle worth over \$2,000. The obligor can avoid suspension by entering into and complying with a written payment agreement. [Minn. Stat. §§ 518.551, subds. 13 and 14; 518.553.](#)

An obligor whose driver's license is suspended for nonpayment of support may seek a one-time 90-day limited license. To qualify for a limited license, the obligor must meet certain eligibility requirements and establish that the obligor's livelihood, attendance at a chemical dependency treatment or counseling program, role as a family homemaker, or attendance at a post-secondary educational institution depends upon the use of the driver's license. [Minn. Stat. §§ 171.186, subd. 4; 171.20, subd. 4; 171.30, subd. 1; 518.551, subd. 13.](#)

**Recreational license suspension.** An obligor who is at least six times the monthly support obligation behind in support payments and is not complying with a written payment agreement (or an obligor who does not comply with a subpoena) is subject to loss of hunting and fishing privileges. Before utilizing this enforcement tool, the court must find that other substantial enforcement mechanisms have been attempted but have proven unsuccessful. [Minn. Stat. §§ 518.551, subd. 15; 518.553.](#)

**Payment agreements.** An obligor who is behind in support payments can avoid certain child support enforcement actions, including occupational license suspension, driver's and recreational license suspension, and motor vehicle title liens by entering into and complying with a written payment agreement. When proposing or approving payment agreements, the court, child support magistrate, or public authority must consider the obligor's financial circumstances and consider a graduated payment plan tailored to an obligor's individual financial circumstances. [Minn. Stat. § 518.553.](#)

**Social Security numbers.** Federal law requires the state to have procedures to record the Social Security number of any applicant for an occupational license, driver's license, recreational license, or marriage license, and parties to certain family law matters. [42 U.S.C. § 666 \(a\)\(13\); Minn. Stat. §§ 13.69, subd. 1; 97A.482; 171.06, subd. 3; 171.07, subd. 14.](#)

**Judgment docketing/Real property lien.** Minnesota law provides a summary method for docketing a civil judgment against an obligor and allows for increases in the judgment as monthly arrearages accumulate. After this happens, the judgment is a lien on any real property the obligor owns in the county where the judgment was docketed. The lien also attaches to the obligor's homestead, though it can only be enforced against the homestead by collecting from the proceeds if the property is sold. Registered (Torrens) land requires that a notice of judgment also be filed with the county recorder before the lien is effective. [Minn. Stat. § 548.091.](#)

Minnesota law also provides for a child support judgment by operation of law. Any support payment that is not paid becomes a judgment by operation of law (without court intervention) on

and after the date it is due and is entitled to full faith and credit in this state and any other state. [Minn. Stat. § 548.091, subd. 1a.](#)

Once entered and docketed, all child support judgments survive for ten years. All child support judgments may be administratively renewed until paid in full, in an amount equal to the unpaid principle plus the accrued unpaid interest. [Minn. Stat. § 548.091, subds. 2 and 3b.](#)

**Creditor's remedies.** The county may try to collect the judgment using traditional creditor's legal remedies such as levy, execution, and garnishment against any other property the obligor may own that could help pay the arrears, such as a bank account or boat. In some cases, the county may collect money from a person or entity indebted to the obligor. The county may also intercept or seize reemployment insurance, workers' compensation payments, and lottery winnings. [Minn. Stat. §§ 13B.06; 393.07, subd. 9; 518.551, subd. 1, para. \(b\); 518.5513, subd. 5; 552.06.](#)

**Financial Institution Data Match (FIDM).** FIDM is an enforcement tool that allows the child support agency to match obligors who owe child support arrears to the financial assets the obligors own, such as bank accounts. If an obligor is behind in support payments by at least five times the monthly support obligation, the obligor is not complying with a written payment agreement, and the arrears have been submitted for federal or state tax intercept, the account assets may be seized by a FIDM levy and applied to the child support arrears. [Minn. Stat. §§ 13B.06; 552.04; 552.06.](#)

**Contempt of court.** Contempt of court is another enforcement tool available to the obligee or the county. If the court finds that the obligor refuses to pay a support order he or she is able to pay, the court may impose a fine or conditional jail sentence. [Minn. Stat. §§ 518.617; 588.02.](#)

**Tax refunds and credits.** The Minnesota Department of Revenue (DOR) has the authority to intercept the tax credit or refund of an obligor who owes child support arrears and forward it to the county or obligee as reimbursement for the support owed. [Minn. Stat. §§ 270A.01 to 270A.12; 289A.50, subd. 5.](#)

**Reports to credit agencies.** By administrative action, DHS reports to credit agencies any obligor who is more than three times the monthly child support obligation in arrears.

**Passport denial.** The passport application of an obligor who is at least \$5,000 in arrears in child support and is not complying with a written repayment agreement may be denied.

**Publication of names.** DHS, in collaboration with the Attorney General's Office, may make public information on obligors who are not in compliance with child support orders. [Minn. Stat. § 518.575.](#)

**Arrearage collection projects.** The county can refer cases with arrears that are at least 90 days past due to either a private collection agency or the DOR. The DOR can use the same creditor's remedies it uses on tax cases for the support arrears collections. [Minn. Stat. § 256.9792.](#)

**Seek employment orders.** The county may seek a court order requiring an unemployed obligor in arrears to seek employment if the obligor is not complying with a payment plan. [Minn. Stat. § 518.616](#).

**Criminal charges.** Under certain circumstances, obligors who knowingly fail to pay child support can face state criminal charges ranging from misdemeanors to felonies. [Minn. Stat. § 609.375](#). It is also a federal crime to willfully fail to pay child support for a child living in another state. The child support agency may refer a case for federal criminal prosecution if the obligor (1) had the ability to pay the support obligation during the period of nonpayment; (2) willfully failed to pay; (3) had a past due support obligation that remained unpaid for at least one year or is in an amount greater than \$5,000; and (4) resides in a state other than that of the child's residence. [28 U.S.C. § 228](#).

## **How is support enforced if the obligor or obligee lives in another state?**

Minnesota has adopted the Uniform Interstate Family Support Act (UIFSA), which provides procedures for interstate support enforcement. The act authorizes Minnesota courts to (1) request assistance from other states to enforce the rights of an obligee living here when the obligor lives in another state, and (2) enforce the obligation of an obligor living here whose children live in another state. Support enforcement authorities and other government agencies have wide latitude in sharing information, both within and between states, for the purpose of tracking down parents who owe child support. [Minn. Stat., ch. 518C](#).

There are many practical difficulties in enforcing a legal obligation against someone who lives in another state, but individuals with this problem may seek help from either a private attorney with experience in interstate enforcement or from the county child support office. While still complicated, recent federal and state law changes have attempted to unify and simplify interstate child support enforcement.

## **Are there defenses to nonpayment of child support?**

Essentially, no. By statute, interference with visitation is expressly not a defense to failure to pay child support. [Minn. Stat. § 518.612](#). Even unemployment or other decrease or loss of income is not a defense. Arrearages will accumulate until the obligor files a motion to modify the existing support order or works out some other legally enforceable compromise with the county or obligee.

A modification of a support obligation may not be retroactive except for the time period while a modification motion is pending. Minnesota law provides four instances when retroactive modification, beyond the time period while the motion is pending, is permitted. They are:

- (1) if the court finds a party was prevented from seeking a modification because of a significant disability, or material misrepresentation or fraud by the other party and the party seeking modification promptly served a motion when practicable;

- (2) the party seeking retroactive modification received needs-based Social Security or public assistance benefits during the period for which retroactive modification is sought;
- (3) the order was entered by default, the party shows good cause for not appearing, and the record has no factual evidence (or contains clearly erroneous evidence) regarding the obligor's ability to pay; or
- (4) the party seeking retroactive modification was institutionalized or incarcerated for an offense other than nonsupport of a child during the period for which modification is sought and lacked the financial ability to pay support.

The child care expense (day care) portion of a support order can be modified retroactively, effective as of the date the expenses decreased. [Minn. Stat. § 518.64, subd. 2, para. \(d\)](#).

In all cases, it is imperative for an obligor to seek a court order to modify, suspend, or terminate the support obligation if the obligor obtains custody of the child. Otherwise, the obligor will continue to owe child support, and any nonpayment will result in the accrual of arrears and interest.

### **When does a child support order end?**

Usually a support order ends when the child turns 18 or completes secondary school, but not later than when the child reaches age 20. However, parents can negotiate a court order that provides for support to continue later, such as through college education. Support can continue indefinitely for a child incapable of self-support because of a physical or mental condition. [Minn. Stat. § 518.54, subd. 2](#). Parents should be aware that privately negotiated agreements can be altered by the court if the court determines the agreement is not in the best interests of the child. If the obligor is in arrears in support payments when the child reaches the age of majority, income withholding or other legal mechanisms to enforce a judgment for arrears can continue until the arrears are paid in full. [Minn. Stat. § 518.6195](#).

### **Who should individuals call if they have questions?**

Anyone affected by a child support order can get more information about the process by calling his or her county child support office or the automated Child Support Help Line at DHS, 651-296-2542.

**Selected Chapters in the Minnesota Statutes Relating to Child Support**

<b>Chapter</b>	<b>Title – topics contained in the chapter related to child support</b>
<b>13</b>	<b>Government Data Practices</b> – classification and accessibility of child support data
<b>13B</b>	<b>Matching Programs; Computerized Comparison of Data</b> – child support or maintenance obligor data matches
<b>16D</b>	<b>Debt Collection</b> – state debt collection
<b>97A</b>	<b>Game and Fish</b> – collection of Social Security numbers for child support enforcement
<b>171</b>	<b>Driver’s Licenses and Training Schools</b> – license suspension/nonpayment of support
<b>214</b>	<b>Examining and Licensing Boards</b> – license suspension/nonpayment of support
<b>256</b>	<b>Human Services</b> – monetary contributions by parents when child is in state custody; protection of location of party in certain circumstances; work reporting system; location of parents; access to records; child support incentives; arrearage collection projects
<b>256J</b>	<b>Minnesota Family Investment Program</b> – compliance system/child support
<b>257</b>	<b>Children; Custody, Legitimacy</b> – establishing parentage; promises to render support
<b>259</b>	<b>Change of Name, Adoption</b> – putative fathers’ adoption registry
<b>268</b>	<b>Department of Economic Security</b> – intercept of reemployment insurance for child support
<b>299C</b>	<b>Bureau of Criminal Apprehension</b> – use of criminal justice data communications network in child support cases
<b>393</b>	<b>Local Social Services Agency</b> – duties/powers of local support enforcement agency; contempt proceedings
<b>484</b>	<b>District Courts</b> – expedited child support hearing process
<b>518</b>	<b>Marriage Dissolution</b> – setting child support amount; determining income; modifications; medical support; license suspensions; motor vehicle liens; parent education programs; various enforcement mechanisms; income withholding; child support payment center; contempt proceedings
<b>518C</b>	<b>Uniform Interstate Family Support Act</b> personal jurisdiction; multistate proceedings; multistate support orders; application/choice of law; registration, enforcement, and modification of support orders; determination of parentage; determining controlling child support order;
<b>548</b>	<b>Judgments</b> – docketing of judgments for child support arrearages
<b>550</b>	<b>Executions, Redemption, Exemptions</b> – levy and execution on personal property, money, earnings, and financial institutions
<b>551</b>	<b>Attorney’s Summary Executions</b> – child support collection by levy and execution
<b>552</b>	<b>Support Judgment Debts Summary Execution</b> – child support collection by levy and execution
<b>571</b>	<b>Garnishment</b> – child support collection by garnishment
<b>588</b>	<b>Contempts</b> – willful failure to pay child support constituting contempt of court
<b>609</b>	<b>Criminal Code</b> – criminal nonsupport of child