

# **Minnesota’s Child Support Laws**

## **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 (1) help legislators answer questions from individuals affected by a child support order and (2) help legislators understand proposals for changes in the law. All section and chapter references in this information brief are to Minnesota Statutes as amended through the 2007 regular session.

**Please note:** This publication provides general information on child support laws. The House Research Department provides services to the Minnesota House of Representatives; it does not and cannot represent or provide legal services to individuals, private entities, or other government organizations. For advice with child support issues, an individual should ask his or her attorney, contact the local county child support office, or call the automated Child Support Help Line at the Minnesota Department of Human Services, 651-431-4400 or 1-800-657-3954.

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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 with child support systems that met federal requirements.

Currently, the federal government contributes about 75 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 adjudication, establishment of support, child support enforcement, collections for both current support and arrears, and cost effectiveness. The state bears about 11 percent of the total cost and Minnesota's counties shoulder the remaining 14 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 enact various kinds of legislation on child support. States also must comply with a variety of federal regulations related to 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 in nature, 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 overseeing 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 or child support workers. 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 local unit of government, acting on behalf of the state, that is 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 physical custody or equal parenting time, each parent has physical 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. § 518A.26, subs. 13 and 14.**

## **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. If a married couple with minor children lives apart, one parent or the public authority may go to court to seek a support order against the other parent. **Minn. Stat. § 518A.38, subd. 1.**

If a child is born to parents who are not married to each other, paternity must be established before a court will order child support. 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 most cases where paternity is uncontested, establishing paternity is relatively simple. However, if paternity is contested or involves multiple parties, establishing paternity can be complex. 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.**

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 to 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 harm. **Minn. Stat. § 256.741.**

The second way the county gets involved is if the obligor or obligee applies for child support enforcement services. Any obligee or obligor who does not receive public assistance can obtain the county's services in establishing parentage, locating parents, and establishing and enforcing child support orders by completing an application and paying the application fee.

## **What fees are charged for child support collection?**

Each applicant pays a \$25 application fee when requesting child support services from the county agency. If the applicant receives public assistance, the fee is not required.

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. 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. § 518A.51.** If an applicant for full child support services does not wish to pay the 1-percent fee, that person may apply for income withholding-only services. **Minn. Stat. § 518A.53, subd. 4.**

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. A monthly fee of \$15 is charged to the obligor for this service. **Minn. Stat. § 518A.53, subd. 4.**

In addition, in cases where neither the obligee or obligor has ever received public assistance, the county must assess an annual \$25 fee when at least \$500 of support has been collected. **Minn. Stat. § 518A.51.**

## **What is IV-D?**

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 include spousal maintenance if the child for whom child support is ordered is or was living with the obligee, and spousal maintenance-only cases when the only service needed is income withholding. A case that is for income withholding-only services is referred to as a “non-IV-D case.” **Minn. Stat. §§ 256.741; 256.87; 518A.26, subds. 10 and 21; and various other provisions of chapters 518 and 518A.**

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

As previously stated, child support is ordered by 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 or parenting time), are heard by a judge or referee in district court. **Minn. Stat. §§ 484.702 and 518A.46.**

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 magistrates, orders can be appealed to district court or directly to the Minnesota Court of Appeals. In Hennepin County, referee orders and decrees can be appealed directly to the Minnesota Court of Appeals. **Minn. Stat. § 484.65, subd. 9.** 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. There are a variety of court forms available on the Minnesota State Court System web site at <http://www.courts.state.mn.us/ctforms/>. General information about child support can also be obtained on the “Children” page of the Department of Human Services web site at [www.dhs.state.mn.us](http://www.dhs.state.mn.us), or by using the terms “child support” to search the DHS site.

## 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. §§ 518A.26, subs. 3 and 21; 518A.34.**

### What is medical support?

Medical support means providing appropriate health care coverage for the child, a cash contribution to reimburse for the cost of health care coverage or public coverage, or payment of the child's uninsured and unreimbursed health care expenses. The court must determine whether a parent has appropriate health care coverage for the child. In making this determination, the court must consider the following factors:

- (1) Is the coverage accessible?
- (2) Is the coverage comprehensive?
- (3) Is the coverage affordable?
- (4) Does the child have any special medical needs?

**Minn. Stat. § 518A.41, subs. 1 and 3.**

If a parent has the child enrolled in health care coverage, the court must order that parent to continue coverage unless the parents request a change and the court finds that other coverage is more appropriate. If neither parent has appropriate health care coverage, the court must order the parents to contribute to the actual health care costs of the child on a pro rata basis. If the child is receiving any form of medical assistance, the parent with whom the child does not reside must pay a monthly amount toward the cost of medical assistance. **Minn. Stat. § 518A.41, subd. 4.**

### How are child care costs handled?

The court must allocate work- and education-related child care costs to each parent in proportion to the parent's combined parental income for child support (PICS). The costs will be adjusted by the estimated federal and state child care credits.

If the obligor meets the income eligibility requirements for basic sliding fee child care, the court will order the obligor to pay the basic sliding fee monthly co-payment amount if this is less than the obligor's proportionate share based on the combined PICS.

The amount allocated for child care is not subject to the automatic cost-of-living adjustment and can be modified if costs substantially increase or decrease. When the public authority provides child support enforcement services, the public authority must suspend collection of child care support when a party notifies the agency that the costs are not being incurred, and the agency has verified the information. The collection of child care support will resume when the agency is informed that the costs have resumed.

A court may allow the obligor to care for the child while the parent with whom the child resides is working or attending school. This is not a reason to deviate from the guidelines. **Minn. Stat. § 518A.40.**

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

Basic child support is calculated based on the combined gross income of both parents and is allocated based on each parent's proportionate share of the combined parental income for child support. **Minn. Stat. § 518A.34.** The parents must provide documentation of earnings and income at the time they file their initial pleadings or motion documents. **Minn. Stat. § 518A.28.**

A parent's gross monthly income includes any form of periodic payment including wages, worker's compensation benefits, unemployment benefits, military payments, pensions, disability benefits, self-employment income, and Social Security benefits for the parent and for the child if based on the parent's eligibility. Gross income is calculated before any deductions for taxes, employment benefits, or retirement plans. Gross income does not include child support received, public assistance received, or the parent's current spouse's income. Court-ordered spousal maintenance obligations are deducted from monthly gross income. **Minn. Stat. § 518A.29.**

The obligor is allowed a parenting expense adjustment based on the percentage of parenting time established by court order. If parenting time for the obligor and obligee is equal and parental incomes for child support are equal, no basic support will be ordered unless the court finds the expenses for the child are not equally shared. If the parenting times are equal, but the parents have different incomes, the parent with the greater income will pay basic support to the other parent. **Minn. Stat. §§ 518A.34 and 518A.36.**

The parents' monthly incomes after adjustments are then added together to determine the combined parental income for child support (PICS). A combined basic support amount is determined by applying the combined PICS amount and the number of joint children to the guideline child support chart in the statutes. The chart provides the presumptive amount of combined basic support the parents should pay. **Minn. Stat. §§ 518A.34 and 518A.35.**

The guideline amount is then split proportionately between the parents based on their proportionate share of the combined PICS. The obligor's proportionate share of the combined

basic support amount is the amount of basic support the obligor will be ordered to pay. **Minn. Stat. § 518A.34.**

After determining the support amount under the statutory guidelines, the court may look at several statutory criteria that allow a departure from that amount. These criteria, commonly known as “deviation factors,” include:

- (1) the earnings, income, and resources of both parents,
- (2) the extraordinary financial needs and resources and the physical and emotional condition of the child,
- (3) the child’s living standard if the parents were living together, but recognizing the new existence of two households,
- (4) whether the child has resided in a foreign country for more than one year that has a substantially higher or lower cost of living than this country,
- (5) who gets the dependent income tax exemption,
- (6) the parents’ debts, and
- (7) the obligor’s total payments for court-ordered child support.

**Minn. Stat. § 518A.43, subd. 1.**

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. In any departure 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. § 518A.37, subd. 2.**

In the case of low-income obligors, there is a self-support adjustment allowed that is equal to 120 percent of the federal poverty guidelines for one person. If the obligor’s gross income is less than 120 percent of the federal poverty guidelines for one person, a minimum support amount applies. A minimum support order is \$50 for one or two children, \$75 for three or four children, and \$100 for five or more children. The allowance for a self-support adjustment does not apply to an obligor who is incarcerated. **Minn. Stat. §518A.42.**

## **Special Circumstances**

**Potential income.** If a parent is voluntarily unemployed, underemployed, employed less than full-time, or there is no direct evidence of income, the court must calculate child support based on potential income of that parent. The court will determine potential income by imputing income based on the parent’s probable earnings based on employment potential, recent work history, and occupational qualifications; or if the parent is receiving unemployment or workers’ compensation, by using that amount as the individual’s income; or by imputing income based on the full-time wages the parent could earn at 150 percent of the current federal or state minimum wage, whichever is higher. If a parent is physically or mentally incapacitated, or is incarcerated other than for nonpayment of support, the parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis. **Minn. Stat. § 518A.32.**



**Independent contractors; self-employed.** Income from self-employment or operation of a business means gross receipts minus ordinary and necessary expenses. “Ordinary and necessary expenses” for child support purposes does not include expenses, such as accelerated depreciation expenses or investment tax credits allowed under the Internal Revenue Code, or expenses the court determines are inappropriate or excessive. The person seeking to deduct an expense, including depreciation, has the burden to prove the expense is ordinary and necessary. **Minn. Stat. § 518A.30.**

**Expense reimbursements; in-kind payments.** If received in the course of employment, self-employment, or operation of a business, expense reimbursements and in-kind payments are counted as income if they reduce living expenses. **Minn. Stat. § 518A.29.**

**Social Security or veterans’ benefits.** If a child receives Social Security benefits, veterans’ benefits, or veterans dependents’ education assistance due to the eligibility of a parent, the amount will be included in the gross income of the parent on whose eligibility the benefits are based. If the obligee, as representative payee for the child, receives the benefits for the child, then the amount of benefit will be subtracted from the obligor’s net child support obligation. **Minn. Stat. § 518A.31.**

**Commissions; bonuses; lump-sum payments.** Commissions and bonuses are considered when determining gross income. 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. §§ 518A.29, para. (a); 518A.53, subd. 11.**

**Seasonal employment.** Obligor who are seasonally employed generally are required to make equal monthly payments throughout the year. Courts do have 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. § 518A.38, 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. §§ 518A.29; 518A.39, subd. 2, para. (d)(2).**

**Joint physical custody.** When parenting time and parental incomes for determining child support are equal, no basic support is owed unless the court determines the expenses for the child are not shared equally. When parenting time is equal, but parental incomes for determining child support are not equal, the parent with the higher income will pay child support. **Minn. Stat. § 518A.36, subd. 3.**

**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*, June 2006.

## Can the support amount change?

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

**COLA.** Every child support order entered since 1983 must include a biennial 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 it finds appropriate to determine the 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. § 518A.75.**

**Modifications.** The state must notify parents 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 gross income of an obligee or obligor;
- (2) substantially increased or decreased needs of an obligee, obligor, or child;
- (3) receipt of public assistance;
- (4) change in the cost of living for either parent;
- (5) extraordinary medical expenses of a child;
- (6) a change in the availability of appropriate health care coverage or a substantial increase or decrease in health care coverage costs;
- (7) addition of or substantial increase or decrease in child care costs; or
- (8) emancipation of a child.

**Minn. Stat. § 518A.39, subd. 2, para. (a).**

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 \$75 higher or lower per month; or if the current order is less than \$75 per month, it results in an order at least 20 percent per month higher or lower;
- (2) the medical support provisions of the current order are unenforceable;
- (3) the health care coverage ordered is not available to the child;
- (4) the current order is for a percentage and not a specific dollar amount;
- (5) the gross income of an obligee or obligor has decreased by at least 20 percent through no fault or choice of the party; or
- (6) a deviation was granted because the child lived in a foreign country and the child no longer resides in the foreign country or the factor is no longer applicable.

**Minn. Stat. § 518A.39, subd. 2, para. (b).**

Modifications of existing support orders in 2007 will be very limited. A change in the law does not constitute a change in circumstances for modifying a child support order. **Minn. Stat. § 518A.39, subd. 2, para. (i).**

If the court grants the request for modification, the support order is modified retroactively only from the date the parties were served with notice of the motion for modification. **Minn. Stat. § 518A.39, subd. 2, para. (e).**

The birth of a subsequent nonjoint child is generally not grounds for a modification of support owed to previous children. However, if a motion to modify support is based on other grounds, the court may consider the birth of the nonjoint child as a factor in determining the support obligation. **Minn. Stat. §§ 518A.33; 518A.39, subd.2, para. (c).**

If a parent has remarried, the new spouse's income cannot be considered in calculating the needs or resources of the parent. **Minn. Stat. §§ 518A.29, para. (f); 518A.39, subd. 2, para. (d)(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 16.] **Minn. Stat. § 518A.53, 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 has received 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 payment vehicles. **Minn. Stat. §§ 518A.54 to 518A.56.**

**Withholding of wages or other income.** Income withholding 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 orders income withholding, either the obligee or obligor must apply for either full IV-D services or non-IV-D income withholding-only services to begin this payment method.

In IV-D cases, the court may waive income withholding if (1) one parent demonstrates to the court there is good cause for the waiver, the court makes specific findings that income withholding would not be in the child's best interest, and past payments have been made on time, or (2) the obligee and obligor sign a written alternative 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. § 518A.53.**

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. §§ 518A.46, subd. 5: 518A.53, 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 public authority can withdraw from the account if the obligor misses a support payment by ten days. This option is rarely used. **Minn. Stat. § 518A.58.**

**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. § 518A.53, subd. 6.**

**Direct payment.** In cases where the public authority 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 public authority is not involved, parties can make direct payments to one another if income withholding is waived.

**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.

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

**Six-month review.** Each order that initially establishes custody, parenting time, or support that is signed on or after January 1, 2007, includes a form that allows either party to request a six-month review. If a hearing is requested, the court will review whether child support is current and whether the parties are complying with the parenting provisions of the order. **Minn. Stat. § 518.1781.**

**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 automatic 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 518A.46, 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. § 518A.53.**

**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, subds. 2 and 3b.**

**Driver's license suspension and motor vehicle title liens.** An obligor who is behind in support payments in an amount equal to at least three times the monthly support obligation 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. §§ 518A.65; 518A.67; 518A.69.**

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 postsecondary 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; 518A.65.**

**Recreational license suspension.** An obligor who is behind in support payments in an amount equal to at least six times the monthly support obligation 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. §§ 518A.68; 518A.69.**

**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. §§ 518A.56; 518A.69.**

**Payment agreements.** An obligor who is behind in support payments can avoid certain child support enforcement actions, including occupational license sanctions, 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. § 518A.69.**

**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. § 518A.53, subd. 5, para. (c).** The county can also sanction the employer for noncompliance. **Minn. Stat. § 518A.46, subd. 5, para. (a)(5).**

**Social Security numbers.** Federal law requires the state to have procedures to record the Social Security number of an 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.**

**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. §§ 518A.72; 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.

**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; 518A.46, subd. 5; 518A.50, para. (b); 552.06.**

**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 payment 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. § 518A.74.**

**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. § 518A.64.**

**Criminal charges.** Under certain circumstances, obligors who knowingly fail to pay child support can face 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 legal 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. **Minn. Stat. § 518A.39, subd. 2, para. (e).**

In all cases, it is imperative for an obligor to seek a support 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. § 518A.26, subd. 5.** 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 and administrative mechanisms to enforce a judgment for arrears can continue until the back payments are complete. **Minn. Stat. § 518A.60.**



## **Whom 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, 651-431-4400, or 1-800-657-3954. Information on child support is available by searching for “child support” on the DHS website at [www.dhs.state.mn.us](http://www.dhs.state.mn.us). Any individual with an existing IV-D case may access up-to-the minute payment or case information at [www.childsupport.dhs.state.mn.us](http://www.childsupport.dhs.state.mn.us).

*For more information about children, visit the children and youth area of our web site, [www.house.mn/hrd/issinfo/child.htm](http://www.house.mn/hrd/issinfo/child.htm).*

## 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, including child support arrearages
<b>171</b>	<b>Drivers' 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> – divorce; parenting time; parenting education programs; six-month review
<b>518A</b>	<b>Child Support</b> – setting child support amount; determining gross income; modifications; medical support; child care support; enforcement mechanisms; income withholding; child support payment center
<b>518C</b>	<b>Uniform Interstate Family Support Act</b> – personal jurisdiction; multi-state proceedings; multi-state support orders; application/choice of law; registration, enforcement, and modification of support orders; determination of parentage; determining controlling child support order; multiple obligees
<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