

North Dakota Divorce Laws

Title 14 Domestic Relations And Persons

Chapter 14-03.1 Uniform Premarital Agreement Act

14-03.1-02. Formalities.

A premarital agreement must be a document signed by both parties. It is enforceable without consideration.

14-03.1-03. Content.

1. Parties to a premarital agreement may contract with respect to:

- a. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located.
- b. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property.
- c. The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event.
- d. The modification or elimination of spousal support.
- e. The making of a will, trust, or other arrangement to carry out the provisions of the agreement.
- f. The ownership rights in and disposition of the death benefit from a life insurance policy.
- g. The choice of law governing the construction of the agreement.
- h. Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

2. The right of a child to support may not be adversely affected by a premarital agreement.

14-03.1-04. Effect of marriage.

A premarital agreement becomes effective upon marriage.

14-03.1-05. Amendment - Revocation.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

14-03.1-06. Enforcement.

1. A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

a. That party did not execute the agreement voluntarily; or b. The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(1) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(2) Did not voluntarily sign a document expressly waiving any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(3) Did not have notice of the property or financial obligations of the other party.

2. If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

3. An issue of unconscionability of a premarital agreement is for decision by the court as a matter of law.

14-03.1-07. Enforcement of unconscionable provisions.

Notwithstanding the other provisions of this chapter, if a court finds that the enforcement of a premarital agreement would be clearly unconscionable, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provisions, or limit the application of an unconscionable provision to avoid an unconscionable result.

14-03.1-08. Enforcement - Void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

14-03.1-09. Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Chapter 14-04 Annulment Of Marriage

14-04-01. Grounds for annulling marriage.

A marriage may be annulled by an action in the district court to obtain a decree of nullity for any of the following causes existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, as defined in section 14-03-02, or that such party was of such age as to require the consent of the party's parents or guardian and such marriage was contracted without such consent, unless, after attaining legal age, such party freely cohabited with the other as husband or wife.
2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.
3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.
4. That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.
5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.
6. That either party was at the time of the marriage physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable.
7. That the marriage was incestuous.

14-04-02. Action to annul - Limitations of time.

An action to obtain a decree of nullity of marriage for causes mentioned in section 14-04-01 must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subsection 1, by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent, or by the party's parents or guardian at any time before such party has arrived at the age of legal consent.
2. For causes mentioned in subsection 2, by either party during the life of the other, or by such former husband or wife.
3. For causes mentioned in subsection 3, by the party injured, or a relative or guardian of the party of unsound mind, at any time before the death of either party.
4. For causes mentioned in subsection 4, by the party injured, within four years after the discovery of the facts constituting the fraud.
5. For causes mentioned in subsections 5 and 6, by the injured party, within four years after the marriage.
6. For causes mentioned in subsection 7, by either party at any time.

14-04-03. Legitimacy of children.

When a marriage is annulled, children begotten before the judgment are legitimate and succeed to the estate of both parents.

14-04-04. Custody of children.

The court shall award the custody of the children of a marriage annulled on the ground of fraud or force to a party based upon the best interests and welfare of the child criteria set forth in chapter 14-09.

14-04-05. Effect of judgment.

A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

Chapter 14-05 Divorce

14-05-01. Marriage - How dissolved.

Marriage is dissolved only:

1. By the death of one of the parties; or
2. By a judgment of a court of competent jurisdiction decreeing a divorce of the parties.

14-05-02. Effect of divorce.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons, but neither party to a divorce may marry except in accordance with the decree of the court granting the divorce. It is the duty of the court granting a divorce to specify in the order for judgment whether either or both of the parties shall be permitted to marry, and if so, when. The court shall have jurisdiction to modify the decree of divorce at any time so as to permit one or both of the parties to marry, if the court deems it right.

14-05-02.1. Decree to include social security numbers.

Each decree of divorce must include the social security numbers of the parties to the divorce.

14-05-03. Causes for divorce.

Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.

3. Willful desertion.
4. Willful neglect.
5. Abuse of alcohol or controlled substances.
6. Conviction of felony.
7. Irreconcilable differences.

14-05-03.1. Grounds for separation.

The court may grant a temporary or permanent decree of separation for any cause for which a divorce may be decreed.

14-05-04. Adultery defined.

Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

14-05-05. Extreme cruelty defined.

Extreme cruelty is the infliction by one party to the marriage of grievous bodily injury or grievous mental suffering upon the other.

14-05-06. Desertion defined.

Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert:

1. Persistent refusal to have reasonable matrimonial intercourse as husband and wife when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party when there is no just cause for such refusal, is desertion.
2. When one party is induced by the stratagem or fraud of the other party to leave the family dwelling place or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud and not by the other.
3. Departure or absence of one party from the family dwelling place caused by cruelty or by threats of bodily harm from which danger reasonably would be apprehended from the other is not desertion by the absent party, but it is desertion by the other party.
4. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.
5. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

6. Consent to a separation is a revocable act, and if one of the parties afterwards in good faith seeks a reconciliation and restoration but the other refuses it, such refusal is desertion.

7. If one party deserts the other and before the expiration of the statutory period required to make the desertion a cause of divorce returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal must be deemed and treated as desertion by such party from the time of the refusal.

14-05-07. Willful neglect defined.

Willful neglect is the failure of either spouse to provide for the common necessities of life for the other party, when that spouse has the ability to do so and the party alleging neglect does not have the ability, or when a spouse fails to provide by reason of idleness, profligacy, or dissipation.

14-05-08. Abuse of alcohol or controlled substances defined.

Abuse of alcohol or controlled substances is that degree of use which disqualifies the person a great portion of the time from properly attending to business or which reasonably would inflict a course of great mental anguish upon the innocent party. For purposes of this chapter, "controlled substance" means a substance as defined in section 19-03.1-01.

14-05-08.1. Recognition of foreign decree of divorce and foreign annulment of marriage.

A decree of divorce or of annulment of marriage obtained in a court of another jurisdiction is of no force or effect in this state, if the parties to the marriage were domiciled in this state at the time such decree was rendered.

If a person obtains a decree of divorce or of annulment of marriage from a court of another jurisdiction and was domiciled in this state within less than twelve months prior to obtaining the decree and resumes residence in this state within six months after obtaining the decree, it is prima facie evidence that such person did not abandon the person's domicile in this state prior to obtaining the decree.

The provisions of this section do not apply to any divorce or annulment of marriage obtained in proceedings begun prior to the passage of this section.

14-05-09. Desertion, neglect, intemperance - Duration.

Willful desertion, willful neglect, or habitual intemperance must continue for one year before either is a ground for a divorce.

14-05-09.1. Irreconcilable differences defined.

Irreconcilable differences are those grounds which are determined by the court to be substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved.

14-05-10. Denial of divorce.

Divorces must be denied upon showing:

1. Condonation; or
2. Limitation and lapse of time.

14-05-13. Condonation defined - Requisites.

Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce. The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;
2. Reconciliation and remission of the offense by the injured party; and
3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent that the forgiving party must be treated with conjugal kindness. When the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from successive acts of ill treatment, which aggregately may constitute the offense, cohabitation, or passive endurance, or conjugal kindness shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete as to the acts complained of. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned and existing at the time of condonation avoids such condonation.

14-05-14. Revocation of condonation.

Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or
2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith or not fulfilled.

14-05-16. Limitation of time.

A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of the offense set up as a ground of divorce. The presumption arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action. There are no limitations of time for commencing actions for divorce, except such as are contained in this section.

14-05-17. Residence requirements.

A separation or divorce may not be granted unless the plaintiff in good faith has been a resident of the state for six months next preceding commencement of the action. If the plaintiff has not been a resident of this state for the six months preceding commencement of the action, a separation or divorce may be granted if the plaintiff in good faith has been a resident of this state for the six months immediately preceding entry of the decree of separation or divorce.

14-05-18. Presumption of domicile.

In actions for divorce, the presumption of law that the domicile of the husband is the domicile of the wife does not apply. After separation, each party may have a separate domicile, depending for proof upon actual residence and not upon legal presumptions.

14-05-20. Legitimacy of children - Adultery by husband.

When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

14-05-21. Legitimacy of children - Adultery by wife.

When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected, but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case. In every such case, all children begotten before the commencement of the action are to be presumed legitimate until the contrary is shown.

14-05-22. Custody of children - Visitation rights - Costs.

1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.
2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.
3. If the court finds that a parent has perpetrated domestic violence and that parent does not have custody, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised child visitation with that parent unless there is a showing by clear and convincing evidence that unsupervised visitation would not endanger the child's physical or emotional health.
4. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit all visitation and contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a

treatment program designed for such sexual abusers, and that supervised visitation is in the child's best interest. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that it serves a therapeutic purpose and is in the best interests of the child.

5. In any custody or visitation proceeding in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorneys' fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

14-05-23. Temporary support, attorney fees, and custody.

During any time in which an action for separation or divorce is pending, the court, upon application of a party, may issue an order requiring a party to pay such support as may be necessary for the support of a party and minor children of the parties and for the payment of attorney fees. The court in the order may award custody of minor children to a party. The order may be issued and served in accordance with the North Dakota Rules of Court. The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order which is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

14-05-24. Division of property.

1. When a divorce is granted, the court shall make an equitable distribution of the property and debts of the parties.
2. The court may redistribute property in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court or the party fails to comply with the terms of a court order distributing property and debts.

14-05-24.1. Spousal support.

Taking into consideration the circumstances of the parties, the court may require one party to pay spousal support to the other party for any period of time. The court may modify its spousal support orders.

14-05-25. Security for alimony - Disposition of homestead.

The court may require either party to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter and may enforce the same by appointment of a receiver or by any other remedy applicable to the case. When either the husband or the wife has a separate estate sufficient to give a proper support, the court in its discretion may withhold any allowance to that person out of the separate property of the other spouse. The court, in rendering the decree of divorce, may assign the homestead or such part thereof as to the court may seem just, to the innocent party, either absolutely or for a limited period, according to the facts in the case and in consonance with the law relating to homesteads. The disposition of the homestead by the court, and all orders and

decrees touching the alimony and maintenance of either party to a marriage and for the custody, education, and support of the children are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

14-05-25.1. Money judgment to secure division of property enforceable by contempt proceedings - Exemptions from process not available.

Failure to comply with the provisions of a separation or divorce decree relating to distribution of the property of the parties constitutes contempt of court. A party may also execute on a money judgment, and the obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02.

14-05-25.2. Enforcement of support order.

Any order or judgment for the support of a spouse or former spouse entered under this chapter may be enforced by any means permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. § 659] and not forbidden under title 32. Any such order or judgment may also be enforced in any manner provided for the enforcement of an order for the payment of child support under chapter 14-09 to the fullest extent permitted under section 459 of the Social Security Act [Pub. L. 93-647; 88 Stat. 2357; 42 U.S.C. § 659]. For purposes of enforcement under chapter 14-09, the order for support of a spouse or former spouse must be treated as though it were an order for child support. 14-05-26. Separate maintenance provided for when divorce denied.

Though a judgment of divorce is denied, the court in an action for divorce may provide for the maintenance of one spouse by the other and the maintenance of any or all children.

14-05-27. Separation - Spousal support - Division of property.

Upon the granting of a separation, the court may include in the decree an order requiring a party to pay for spousal support and for the support of any minor children of the parties. Subject to section 14-05-24, the decree may also provide for the equitable division of the property and debts of the parties.

14-05-28. Decree of separation - Effect.

The decree of separation confers upon the parties all the rights of property, business, and contracts as if unmarried and releases both parties from all obligations of maintenance, except as may be required by the decree.

14-05-29. Revocation of decree of separation - Divorce granted.

At any time after a decree for separation has been granted, the court may revoke the decree based upon any regulations or restrictions the court imposed in the decree. Application for revocation may be made by either party to the decree. The party making the application for revocation shall provide to the other party to the decree at least ten days' and not more than twenty days' notice of the application. Service must be made in the same manner as service of a summons in a civil action. If it appears to the court at the hearing of the application that reconciliation between the parties to the marriage is improbable, the court shall revoke the separation decree and, in lieu of that decree, shall render a decree divorcing the parties. If the court has not previously done so, the court shall provide for the equitable division of the property, shall make orders with respect to any minor children, and may provide for the payment of support to either party by the other.

Chapter 14-08.1 Civil Remedies For Child Support

14-08.1-01. Liability for support.

A person legally responsible for the support of a child under the age of eighteen years who is not subject to any subsisting court order for the support of the child and who fails to provide support, subsistence, education, or other necessary care for the child, regardless of whether the child is not or was not in destitute circumstances, is liable for the reasonable value of physical and custodial care or support which has been furnished to the child by any person, institution, agency, or county social service board. Any payment of public assistance money made to or for the benefit of any dependent child creates a presumption that such payment equals the reasonable value of physical and custodial care or support.

14-08.1-02. Procedure for action.

An obligation for the support of a child under section 14-08.1-01 may be asserted by a civil action. The action may be commenced in the district court of the county wherein the child or the defendant resides or may be found, or wherein the defendant has assets subject to attachment, garnishment, or execution.

14-08.1-03. Security required - Enforcement remedies.

In order to enforce an obligation for the support of a child under section 14-08.1-01, the court may make suitable provision for the future care or support of the child, require reasonable security for payments required under this chapter, and enforce the obligation by attachment, garnishment, or by other appropriate remedies, including proceedings under chapter 14-08 as nearly as may be.

14-08.1-05. Support order to be judgment.

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:

a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, and must be entered in the judgment docket, upon filing by the judgment creditor or the judgment creditor's assignee of a written request accompanied by a verified statement of arrearage or certified copy of the payment records maintained under section 50-09-02.1 and an affidavit of identification of the judgment debtor, and otherwise enforced as a judgment;

b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and

c. Not subject to retroactive modification.

2. The due and unpaid payments and any judgment entered in the judgment docket pursuant to this section are not subject to the statutes of limitation provided in chapter 28-01. Such judgments may not be canceled pursuant to section 28-20-35. For such judgments, the duration of a lien under section 28-20-13 and the period during which an execution may be issued are not subject to the time limitations in chapters 28-20 and 28-21.

3. Failure to comply with the provisions of a judgment or order of the court for the support of a child constitutes contempt of court. All remedies for the enforcement of judgments apply. A party or the party's assignee may also execute on the judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.

4. This section applies to all child support arrearages, whether accrued before or after the effective date of this section.

14-08.1-05.1. Past-due support - Plan of payment - Work activities.

1. In any case in which an individual owes past-due child support, the court may, by order, require the individual to:

- a. Pay past-due support in accordance with a plan approved by the court or the public authority;
- b. If the individual is subject to such a plan and is not incapacitated, to participate in such work activities as the court deems appropriate; and
- c. Participate in treatment for mental illness or drug or alcohol dependency.

2. For purposes of this section, "work activities" may include:

- a. Unsubsidized employment;
- b. Subsidized private sector employment;
- c. Subsidized public sector employment;
- d. Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available;
- e. On-the-job training;
- f. Job search and job readiness assistance;
- g. Community service programs;
- h. Career and technical education training, not to exceed twelve months with respect to any individual;
- i. Job skills training directly related to employment;
- j. Education directly related to employment, in the case of an individual who has not received a high school diploma or a certificate of high school equivalency;
- k. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of an individual who has not completed secondary school or received such a certificate;

- l. The provision of child care services to an individual who is participating in a community service program; and
- m. Postsecondary education and any other activity permitted or required to be treated by the federal government as work for purposes of calculating a work participation rate.

14-08.1-06. Suspension of occupational, professional, or recreational license for nonpayment of child support or failure to obey subpoena.

When considering a contempt citation against a child support obligor who is in arrears in child support in an amount greater than three times the monthly child support obligation and the obligor is not current in a court-established plan to repay the unpaid child support arrears, or who has failed, after receiving appropriate notice, to comply with a subpoena relating to a paternity or child support matter, the court shall address and make specific findings on the issue of whether the obligor has or may obtain an occupational, professional, or recreational certificate, permit, or license that the court may withhold or suspend. The court may withhold or suspend any certificate, permit, or license issued by or on behalf of the state or any of its licensing authorities or occupational or professional boards, which the obligor is required to obtain prior to engaging in the obligor's occupation or profession. The court may withhold or suspend any certificate, permit, or license issued by lottery or by tag by the director of the game and fish department, which the obligor is required to obtain prior to engaging in a recreational activity. Following a decision to withhold or suspend an obligor's certificate, permit, or license for failure to pay child support, the court shall notify the obligor that the decision becomes final thirty days after the notification unless the obligor satisfies or makes arrangements to pay the entire outstanding payment due. Following a decision to withhold or suspend an obligor's certificate, permit, or license for failure to comply with a subpoena relating to a paternity or child support matter, the court shall notify the obligor that the decision becomes final unless the obligor complies with the subpoena within a time set by the court. The court shall notify the appropriate licensing authority, occupational or professional board, or the director of the game and fish department of the court's decision to withhold or suspend an obligor's certificate, permit, or license. A certificate, permit, or license withheld or suspended by an order issued under this section may be reissued only by order of the court. An appeal by an obligor who has had a certificate, permit, or license suspended under this section is an appeal from the court's order and may not be appealed to the licensing authority, occupational or professional board, or the director of the game and fish department.

14-08.1-07. Suspension of motor vehicle operator's license for nonpayment of child support or failure to obey subpoena.

When considering a contempt citation against a child support obligor who is in arrears in child support in an amount greater than three times the monthly child support obligation and the obligor is not current in a court-established plan to repay the unpaid child support arrears, or who has failed, after receiving appropriate notice, to comply with a subpoena relating to a paternity or child support matter, the court shall determine whether the obligor has a motor vehicle operator's license issued under chapter 39-06. The court may restrict or suspend a motor vehicle operator's license issued by the state which is held by the obligor. The court shall notify the department of transportation of the court's decision to restrict or suspend an obligor's motor vehicle operator's license. An appeal by an obligor who has had a motor vehicle operator's license restricted or suspended under this section is an appeal from the court's order and may not be appealed to the department of transportation. Except for statistical purposes, an entry on the driving record or abstract of a restriction or suspension under this section after the restriction or suspension ceases may not be available to the public other than by order of a court of competent jurisdiction. A suspension under this section is not subject to the financial responsibility reporting requirements.

Chapter 14-09 Parent And Child

14-09-05.1. Grandparental rights of visitation to unmarried minors - Mediation or arbitration.

The grandparents and great-grandparents of an unmarried minor may be granted reasonable visitation rights to the minor by the district court upon a finding that visitation would be in the best interests of the minor and would not interfere with the parent-child relationship. The court shall consider the amount of personal contact that has occurred between the grandparents or great-grandparents and the minor and the minor's parents. This section does not apply to agency adoptions or when the minor has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted under this section before the adoption of the minor may be terminated upon the adoption if termination of the rights is in the best interest of the minor. An application for visitation rights under this section may be considered by the district court in conjunction with a divorce proceeding involving the parent of the minor child. If any district court of this state retains jurisdiction over the custodial placement of the minor child or children by virtue of any prior proceedings, the rights conferred by this section may be enforced by the grandparents or the great-grandparents through motion under the prior proceeding. If no district court otherwise has jurisdiction, a proceeding to enforce grandparental rights may be brought against the custodial parent as a civil action and venued in the county of residence of the minor child. The district court may require mediation of the matter under chapter 14-09.1. If mediation fails and if the mediator agrees, the court may order the dispute arbitrated by the person who attempted mediation. Joinder of grandparents or of great-grandparents awarded visitation rights under this section must occur in any proceeding to terminate parental rights.

14-09-06. Priority of custody of father and mother.

The husband and father and wife and mother have equal rights with regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other, and when they so live in a state of separation without being divorced, the district court or judge thereof, upon application of either, may grant a writ of habeas corpus to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules provided by law for awarding the custody of a minor or the appointment of a general guardian.

14-09-06.1. Awarding custody - Best interests and welfare of child.

An order for custody of an unmarried minor child entered pursuant to this chapter must award the custody of the child to a person, agency, organization, or institution as will, in the opinion of the judge, promote the best interests and welfare of the child. Between the mother and father, whether natural or adoptive, there is no presumption as to who will better promote the best interests and welfare of the child.

14-09-06.2. Best interests and welfare of child - Court consideration - Factors.

1. For the purpose of custody, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:

- a. The love, affection, and other emotional ties existing between the parents and child.

- b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
- c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
- d. The length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity.
- e. The permanence, as a family unit, of the existing or proposed custodial home.
- f. The moral fitness of the parents.
- g. The mental and physical health of the parents.
- h. The home, school, and community record of the child.
- i. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- j. Evidence of domestic violence. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded sole or joint custody of a child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent's participation as a custodial parent. The court shall cite specific findings of fact to show that the custody or visitation arrangement best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, custody may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards custody to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent custody. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
- k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.
- l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child as defined in section 50-25.1-02.
- m. Any other factors considered by the court to be relevant to a particular child custody dispute.

2. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

14-09-06.4. Appointment of guardian ad litem or child custody investigator for children in custody, support, and visitation proceedings - Immunity.

In any action for an annulment, divorce, legal separation, or other action affecting marriage, where either party has reason for special concern as to the future of the minor children, and in any action where the custody or visitation of children is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the children concerning custody, support, and visitation. The court, in its discretion, may appoint a guardian ad litem or child custody investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the children's best interests. If appointed, the child custody investigator shall provide those services as prescribed by the supreme court. The court may direct either or both parties to pay the guardian ad litem or child custody investigator fee established by the court. If neither party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for such payment. Any guardian ad litem or child custody investigator appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the guardian ad litem or child custody investigator is a disputable presumption.

14-09-06.5. Allegation of harm to child - Effect.

If the court finds that an allegation of harm to a child by one parent against the other is false and not made in good faith, the court shall order the parent making the false allegation to pay court costs and reasonable attorney's fees incurred by the other parent in responding to the allegation.

14-09-06.6. Limitations on postjudgment custody modifications.

1. Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than two years after the date of entry of an order establishing custody, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 3.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
 - a. The persistent and willful denial or interference with visitation;
 - b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
 - c. The primary physical care of the child has changed to the other parent for longer than six months.

4. A party seeking modification of a custody order shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. If a prima facie case is established, the court shall set a date for an evidentiary hearing.

5. The court may not modify a prior custody order within the two-year period following the date of entry of an order establishing custody unless the court finds the modification is necessary to serve the best interest of the child and:

- a. The persistent and willful denial or interference with visitation;
- b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
- c. The primary physical care of the child has changed to the other parent for longer than six months.

6. The court may modify a prior custody order after the two-year period following the date of entry of an order establishing custody if the court finds:

- a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
- b. The modification is necessary to serve the best interest of the child.

7. The court may modify a prior custody order at any time if the court finds a stipulated agreement by the parties to modify the custody is in the best interest of the child.

8. Upon a motion to modify custody under this section, the burden of proof is on the moving party.

14-09-07. Residence of child.

A parent entitled to the custody of a child may not change the residence of the child to another state except upon order of the court or with the consent of the noncustodial parent, if the noncustodial parent has been given visitation rights by the decree. A court order is not required if the noncustodial parent:

- 1. Has not exercised visitation rights for a period of one year; or
- 2. Has moved to another state and is more than fifty miles [80.47 kilometers] from the residence of the custodial parent.

14-09-08. Mutual duty to support children.

Parents shall give their children support and education suitable to the child's circumstances. The Court may compel either or both of the parents to provide for the support of their children.

14-09-08.1. Support payments - Payment to state disbursement unit - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the state disbursement unit for remittance to the obligee.
2. a. Each party subject to the order shall immediately inform the state disbursement unit of the party's:
 - (1) Social security number;
 - (2) Residential and mailing addresses and any change of address;
 - (3) Telephone number;
 - (4) Motor vehicle operator's license number'
 - (5) Employer's name, address, and telephone number; and
 - (6) Change of any other condition which may affect the proper administration of this chapter.
- b. The requirements of subdivision a must be incorporated into each order for payment of child support.
- c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the court shall deem due process requirements for notice and service to have been met, with respect to the noticed party, by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
- d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
3. Whenever there is failure to make the payments as required, the clerk of court may, and upon request of the obligee or child support agency, shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district to issue a citation for contempt of court against the person who has failed to make the payments. The citation may be served on that person by first-class mail with affidavit of service to the person's last-known address.
4. The court of its own motion or on motion of a child support agency or the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, this section applies as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.

14-09-08.2. Support for children after majority - Retroactive application.

1. A judgment or order requiring the payment of child support until the child attains majority continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
 - a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
 - b. The child resides with the person to whom the duty of support is owed.
2. A judgment or order may require payment of child support after majority under substantially the circumstances described in subsection 1.
3. The person to whom the duty of support is owed under either subsection 1 or 2 may file an affidavit with the district court stating that the requirements of subsection 1 are met, the school in which the child is enrolled, and the anticipated date of the child's graduation. Upon filing of the affidavit, the child support continues pursuant to subsection 1 or pursuant to the terms of a judgment or order described in subsection 2. A fee may not be charged for filing such an affidavit.
4. The clerk of court shall serve the affidavit by first-class mail upon the person owing the duty of support. If at any time thereafter the person owing the duty of support files a motion with the court, supported by that person's affidavit that the child is no longer enrolled in or attending high school, the court shall determine if the child is enrolled in and attending high school and shall enter an order accordingly.
5. This section applies to child support orders concerning children described in subsection 1 or 2, regardless of the date of entry of the order, provided that the affidavit described in subsection 3 is filed not later than ninety days after the child graduates from high school or reaches age nineteen, whichever occurs first.
6. This section does not preclude the entry of an order for child support which continues after the child reaches age eighteen, if the parties agree, or if the court determines the support to be appropriate.
7. For purposes of this section, a child is treated as being in school during summer vacation if the child was enrolled in and attending school and did not graduate from high school at the end of the school period immediately preceding the summer vacation.

14-09-08.3. Duration of child support obligations.

Unless dates for the commencement or termination of a child support obligation are specified by the court's order, a judgment or order requiring the payment of child support is effective as to the child in the month in which the order is signed and continues until the end of the month in which the support obligation terminates.

14-09-08.6. Obligor's duties upon review - Failure to provide information.

1. The obligor shall provide information to the child support agency concerning the obligor's income, which is sufficient to accomplish the review, no later than five working days before the date of review. The information must be furnished by

providing an income report, in the form and manner required by the public authority, accurately completed and attested to by the obligor, earnings statements secured from the obligor's current income payer if the obligor changed employment after the end of the latest income tax year for which the obligor filed a return, and providing:

a. A verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review; or

b. A written authorization by which the child support agency may secure a verified copy of the latest income tax return, filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.

2. If the obligor has not produced information under subsection 1 concerning the obligor's income, sufficient to accomplish the review, the child support agency may base its review determination on the assumption that the obligor's income has increased at the rate often percent per year since the child support order under review was entered or last modified.

14-09-08.17. Delinquent obligor may not renounce claims.

An obligor whose child support obligation is delinquent may not renounce, waive, or disclaim any interest that obligor might otherwise claim in a decedent's estate, a trust, or a similar device, to the extent necessary to satisfy the delinquency. Any attempt to renounce, waive, or disclaim such an interest is void if attempted after notice of the delinquency is furnished to the person administering the estate, trust, or similar device, and is otherwise voidable.

14-09-09. Liability of stepparent for support.

A stepparent is not bound to maintain the spouse's dependent children, as defined in section 50-09-01, unless the child is received into the stepparent's family. If the stepparent receives them into the family, the stepparent is liable, to the extent of the stepparent's ability, to support them during the marriage and so long thereafter as they remain in the stepparent's family. Such liability may be enforced against the stepparent by any person furnishing necessities to such children. If the children are received into the stepparent's family and supported by the stepparent, it is presumed that the stepparent does so as a parent, in which case the children are not liable to the stepparent for their support, nor the stepparent to them for their services. The legal obligation of a natural or adoptive parent to support that person's children is not affected by the liability imposed upon their stepparent by this section.

14-09-09.6. Voluntary income withholding for support - Limitations.

An obligor may execute a document voluntarily authorizing income withholding from current or future income due the obligor from an income payer in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An income withholding authorization made under this section is binding on the income payer one week after service upon the income payer by first-class mail, or in any other manner agreed to by the income payer, of a true copy of the executed income withholding authorization. The income payer shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payer may deduct a fee of three dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payer with an income withholding authorization

issued under this section discharges the income payer's liability to the obligor for that portion of the obligor's income. The income payer may not use the income withholding authorization as a basis for any disciplinary action against the obligor.

14-09-09.7. Child support guidelines.

1. The department of human services shall establish child support guidelines to assist courts in determining the amount a parent should be expected to contribute toward the support of the child under this section. The guidelines must:

a. Include consideration of gross income. For purposes of the guidelines, gross income does not include an employee benefit over which the employee does not have significant influence or control over the nature or amount unless:

(1) That benefit may be liquidated; and

(2) Liquidation of that benefit does not result in the employee incurring an income tax penalty.

b. Authorize an expense deduction for determining net income.

c. Designate other available resources to be considered.

d. Specify the circumstances that should be considered in reducing support contributions on the basis of hardship.

e. Include consideration of extended periods of time a minor child spends with the child's obligor parent.

f. Authorize a rebuttal of the presumption provided in subsection 3 in cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.

2. The department shall accept and compile pertinent and reliable information from any available source in order to establish the child support guidelines. Copies of the guidelines must be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.

3. There is a rebuttable presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes, applying criteria established by the public authority which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:

a. State the child support amount determined through application of the guidelines;

b. Identify the criteria that rebut the presumption of correctness of that amount; and

c. State the child support amount determined after application of the criteria that rebut the presumption.

4. The department shall institute a new rulemaking proceeding under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial rulemaking proceeding must be commenced with a notice of proposed adoption, amendment, or repeal by August 1, 1998, and subsequent rulemaking proceedings must be so commenced at least once every four years thereafter. Before commencing any rulemaking proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative council.

14-09-09.11. Income withholding order.

When a judgment or order requires the payment of child support, it may be enforced by an income withholding order, as provided in this chapter, in addition to any other remedies provided by law.

14-09-09.13. Procedure - Notice to obligor.

If immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, if an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding, the public authority shall serve the notice required under this section upon the obligor whenever issuing an income withholding order. The notice must state:

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by a child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income payer from the obligor's income in each month as determined under section 14-09-09.30.
4. That the income payer may withhold an additional sum of three dollars to cover the income payer's expenses.
5. That the income withholding order has been issued without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.
7. That if the obligor contests the income withholding order pursuant to section 14-09-09.14, a hearing will be held and the court will determine and issue an order consistent with the requirements of section 14-09-09.14.
8. That the income withholding order applies to any current or subsequent income payer or period of employment.

14-09-09.14. Hearing upon obligor's request.

1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 14-09-09.13, the court shall hold a hearing within ten working days after the date of the request.

a. The court may order that the income withholding order be withdrawn if at the hearing the obligor establishes:

(1) In a case where withholding would be based on an alleged delinquency, that there has been a mistake in the identity of the obligor; or

(2) In a case where an approved request for withholding has been made by the obligee, that the approval of the request constituted an abuse of discretion.

b. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld.

c. In the absence of a finding of a mistake of fact in a case where withholding would be based on an alleged delinquency, or in the absence of an abuse of discretion in the approval of an obligee's request for withholding, the court shall confirm the income withholding order. Payment of past-due support after issuance of notice under section 14-09-09.13 may not be the basis for an order that the income withholding order be withdrawn.

2. An obligor is not precluded, by subsection 1, from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the court precluded from granting such relief. An obligor's request for such relief, whether made by motion under rule 60(b) of the North Dakota Rules of Civil Procedure or otherwise, may not be considered during the hearing described in subsection 1.

14-09-09.17. Amendment - Termination of income withholding order.

Upon amendment or termination of an income withholding order, the public authority shall send appropriate notice to the income payer. An income withholding order is to be amended by the public authority when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income payers have been subjected to income withholding orders with respect to a child support obligation, the public authority shall suspend the income withholding order directed to one or more income payers, provided that the amount of child support withheld by the remaining income payer or payers equals the amount determined under section 14-09-09.30. The public authority shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The public authority shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income payer.

14-09-09.24. Immediate income withholding.

1. Except as provided in subsection 2 or 3, each judgment or order which requires the payment of child support, issued or modified on or after January 1, 1990, subjects the income of the obligor to income withholding, regardless of whether the obligor's support payments are delinquent.

2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1, demonstrates, and the court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the court need not subject the income of the obligor to immediate withholding.

3. If an obligor, who would otherwise be subject to immediate income withholding under subsection 1 in at least one case in which services are being provided by a child support agency under title IV-D, demonstrates, and a child support agency finds there is good cause not to require immediate income withholding, the child support agency may enter into a written agreement with an obligor that provides for an alternate payment arrangement in lieu of immediate income withholding. Notwithstanding section 14-09-09.13, any failure to comply with an agreement under this subsection subjects the income of the obligor to income withholding under this section. Any obligee aggrieved by a finding of a child support agency under this subsection may seek review of the finding under subsection 2 of section 50-09-14.

4. A finding that there is good cause not to require immediate income withholding under subsection 2 or 3 must be based on at least:

a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;

b. Proof of timely payment of previously ordered support, if any; and

c. A requirement that the obligor keep the clerk and the public authority informed of any employment-related health insurance to which the obligor has access.

5. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:

a. Provides that the obligor shall keep the clerk and the public authority informed of any employment-related health insurance to which the obligor has access;

b. Describes the provisions by which regular payment of child support is assured; and

c. Is reviewed and approved by the court and entered into the court's records.

14-09-09.25. Requests by obligee for income withholding - Approval - Procedures and standards.

1. An obligee may apply to a child support agency for approval of an income withholding request. The income of the obligor becomes subject to income withholding on the date an approved request is made.

2. The public authority shall establish procedures and standards for the approval of obligee requests for income withholding. The standards established must include consideration of:

a. An obligor's threat to discontinue child support payments; and

b. An obligor's having made child support payments sufficient to avoid a delinquency but insufficient to conform to the ordered amount.

3. Upon application of an obligee requesting income withholding, the child support agency shall promptly approve or disapprove the request. The child support agency may not approve the obligee's request in a case where the court has determined that there is good cause not to require immediate income withholding unless the court first changes its determination.

14-09-09.30. Monthly amount due.

1. If there is a current monthly support obligation, the total amount of child support due in each month is the sum of the obligor's current monthly support obligation; and

a. The amount the obligor is ordered to pay toward any outstanding arrearage; or

b. If no order to repay an arrearage exists, an amount for application to any arrearage equal to twenty percent of the obligor's current monthly support obligation; or

2. If there is no current monthly support obligation, the total amount of child support due in each month is:

a. An amount equal to the greater of:

(1) The amount the obligor is ordered to pay toward any outstanding arrearage; or

(2) The sum of the obligor's most recent monthly support obligation and twenty percent of the obligor's most recent monthly support obligation;

b. An amount the obligor is ordered to pay toward an arrearage during periods when the supported child resides with the obligor pursuant to a court order; or

c. An amount the obligor is ordered to pay toward an arrearage if that amount is included in an order issued when there is no current monthly support obligation.

3. The total amount of child support due in each month under this section may be increased at the request of the obligor to repay an arrearage or by agreement with the public authority.

14-09-09.31. Child support exempt from process.

A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation.

14-09-09.32. Agreements to waive child support.

An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child

support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction. A copy of the order of approval must be provided to the state disbursement unit. As used in this section, "child support" does not include spousal support.

14-09-09.34. Lump sum payments.

1. An income payer who has been served with an income withholding order issued under section 14-09-09.15 for an obligor which includes an amount for past-due support shall notify the public authority before making any lump sum payment of one thousand dollars or more to the obligor. "Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.
2. An income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make more than one-half of the payment to the obligor for thirty days from the date of the notice to the public authority or until the income payer receives written authorization from the public authority to make the lump sum payment to the obligor, whichever occurs first.
3. Notwithstanding subsection 2, an income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make a lump sum payment to an obligor if the income payer has been notified that an execution, garnishment, attachment, or other process has been initiated regarding the lump sum payment to satisfy a child support obligation of the obligor.
4. An income payer who owes a lump sum payment under this section is subject to the duties and liabilities in section 14-09-09.3 unless the context indicates otherwise.
5. This section does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under section 14-09-09.15.

14-09-24. Interference with visitation - Attorney's fees - Enforcement remedies and tools.

In any proceeding in which child visitation is properly in dispute between the parents of a child, the court shall award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the child. The court may use any remedy that is available to enforce a child support order and which is appropriate to enforce visitation.

14-09-28. Parental custody and visitation rights and duties.

1. Each parent of a child has the following custody and visitation rights and duties:
 - a. Right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information.
 - b. Right to attend educational conferences concerning the child. This right does not require any school to hold a separate conference with each parent.

- c. Right to reasonable access to the child by written, telephonic, and electronic means.
 - d. Duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment. The parent shall provide to the other parent a description of the serious accident or serious illness, the time of the serious accident or serious illness, and the name and location of the treating health care provider.
 - e. Duty to immediately inform the other parent of a change in residential telephone number and address.
 - f. Duty to keep the other parent informed of the name and address of the school the child attends.
2. The court shall include in an order establishing or modifying visitation the rights and duties listed in this section; however, the court may restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion. The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.

Chapter 14-09.1 Contested Child Proceedings Mediation

14-09.1-01. Purpose.

The purpose of this chapter is, through mediation, to enable the parties in contested child custody, support, or visitation proceedings to resolve the dispute voluntarily.

14-09.1-02. Mediation authorized - Exception.

In any proceeding involving an order, modification of an order, or enforcement of an order for the custody, support, or visitation of a child in which the custody or visitation issue is contested, the court may order mediation at the parties' own expense. The court may not order mediation if the custody, support, or visitation issue involves or may involve physical or sexual abuse of any party or the child of any party to the proceeding.

14-09.1-05. Privacy.

The mediator shall conduct the mediation proceedings in private. The mediator may not exclude counsel from participation in the mediation proceedings.

14-09.1-06. Confidentiality.

Any communication, verbal or written, in a mediation proceeding under this chapter is confidential and inadmissible as evidence in any proceeding. A mediator appointed under this chapter may not be a witness and the notes and work product of the mediator are not subject to discovery or subpoena in the proceeding in which the contested child custody, support, or visitation is at issue.

14-09.1-07. Mediation agreement.

The mediator shall reduce to writing any agreement of the parties. The mediator shall inform the parties of their right to review the agreement with counsel before they sign the agreement. After the agreement is signed by the parties, the mediator shall present the agreement to the court. The agreement is not binding upon the parties until approved by order of the court.

14-09.1-08. Failure to agree.

The mediator may report to the court at any time that the parties are unable to reach an agreement. The mediator may recommend to the court that a full hearing on the custody, support, or visitation issue be held within thirty days. The mediator may not make a substantive recommendation to the court concerning the contested issue of custody, support, or visitation.

Note: Laws may have changed since our last update. For the latest information on these divorce laws, speak to a local divorce lawyer in the state.