

South Dakota Divorce Laws

Title 25 Domestic Relations

Chapter 25-3 Annulment of Marriage

25-3-1. Former marriage as ground--Party bringing action--Time of action. A marriage may be annulled by an action in the circuit court to obtain a decree of nullity if the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force. An action to obtain a decree of nullity of marriage for causes mentioned in this section must be commenced by either party during the life of the other, or by such former husband or wife.

25-3-2. Unsound mind as ground--Party bringing action--Time of action. A marriage may be annulled by an action in the circuit court to obtain a decree of nullity if either party was of unsound mind at the time of the marriage, unless such party, after coming to reason, freely cohabitated with the other as husband or wife. An action to obtain a decree of nullity of marriage for causes mentioned in this section must be commenced by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

25-3-3. Legitimacy of children after annulment for former marriage or mental illness. Where the marriage is annulled on the ground that a former husband or wife was living, or on the ground of mental illness, children begotten before the judgment are legitimate and succeed to the estate of both parents.

25-3-4. Annulment of underage marriage--Party bringing action--Time of action. A marriage may be annulled by an action in the circuit court to obtain a decree of nullity if the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent at the time of the marriage, and such marriage was contracted without the consent of his or her parents or guardian or person having charge of him or her, unless, after attaining the age of consent, such party for any time freely cohabitated with the other as husband or wife. An action to obtain a decree of nullity of marriage for causes mentioned in this section must be commenced 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 a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of legal consent.

25-3-5. Forced consent as ground--Party bringing action--Time of action. A marriage may be annulled by an action in the circuit court to obtain a decree of nullity if, at the time of the marriage, the consent of either party was obtained by force, unless such party afterwards freely cohabitated with the other as husband or wife. An action to obtain a decree of nullity of marriage for causes mentioned in this section must be commenced by the injured party, within four years after the marriage.

25-3-6. Fraud as ground--Party bringing action--Time of action. A marriage may be annulled by an action in the circuit court to obtain a decree of nullity if, at the time of the marriage, the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabitated with the other as husband or wife. An action to obtain a decree of nullity of marriage for causes mentioned in this section must be commenced by the party injured, within four years after the discovery of the facts constituting the fraud.

25-3-8. Physical incapacity as ground for annulment--Party bringing action--Time of action. A marriage may be annulled by an action in the circuit court to obtain a decree of nullity if 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. An action to obtain a decree of nullity of marriage for causes mentioned in this section must be commenced by the injured party, within four years after the marriage.

25-3-9. Parties bound by annulment. A judgment of nullity of marriage is conclusive only as against the parties to the action and those claiming under them.

25-3-10. Provision for maintenance--Vacation or modification. When an annulment is granted pursuant to this chapter, the court may provide for such maintenance of a former spouse as the court may deem just and may, at any time, vacate or modify such maintenance.

25-3-11. Provisions for child custody and support--Vacation or modification. In an action for annulment the court may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate and modify the same.

Chapter 25-4

Divorce And Separate Maintenance

25-4-1. Marriage dissolved only by death or divorce--Status of parties after divorce. Marriage is dissolved only:

- (1) By the death of one of the parties; or
- (2) By the judgment of a court of competent jurisdiction decreeing a divorce of the parties. The effect of such judgment is to restore the parties to the state of unmarried persons.

25-4-2. Grounds for divorce. Divorces may be granted for any of the following causes:

- (1) Adultery;
- (2) Extreme cruelty;
- (3) Willful desertion;
- (4) Willful neglect;
- (5) Habitual intemperance;
- (6) Conviction of felony;

(7) Irreconcilable differences.

25-4-3. Adultery defined. Adultery is the voluntary sexual intercourse of a married person with one of the opposite sex to whom he or she is not married.

25-4-4. Extreme cruelty defined. Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other, by one party to the marriage.

25-4-5. Willful desertion defined--Special conditions applicable. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

The special conditions or circumstances set forth in §§ 25-4-8 to 25-4-14, inclusive, shall also apply in establishing desertion under the provisions of this title.

25-4-8. Refusal of intercourse as desertion--Refusal to live together. 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.

25-4-9. Desertion by departure during absence of spouse induced by fraud. 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.

25-4-10. Desertion by cruelty or threats causing departure of spouse. Departure or absence of one party from the family dwelling place caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the other party.

25-4-11. Separation by consent not desertion. Separation by consent with or without the understanding that one of the parties will apply for a divorce is not desertion.

25-4-12. Intent to desert formed during proper absence. Absence or separation proper in itself becomes a desertion whenever the intent to desert is fixed during such absence or separation.

25-4-13. Desertion by refusal of reconciliation after separation. 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.

25-4-14. Offer to return curing desertion--Refusal of offer as desertion. 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 shall be deemed and treated as desertion by such party from the time of the refusal.

25-4-15. Willful neglect defined. Willful neglect is the neglect of a person to provide the common necessities of life for his or her spouse, when having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

25-4-16. Habitual intemperance defined. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

25-4-17. Continuous period of desertion, neglect, or intemperance required. Willful desertion, willful neglect, or habitual intemperance must continue for one year before either is a ground for divorce.

25-4-17.1. 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.

25-4-17.2. Dissolution of marriage--Legal separation--Continuance--Orders during continuance--Consent of parties. If from the evidence at the hearing, the court finds that there are irreconcilable differences, which have caused the irremediable breakdown of the marriage, it shall order the dissolution of the marriage or a legal separation. If it appears that there is a reasonable possibility of reconciliation, the court shall continue the proceeding for a period not to exceed thirty days. During the period of the continuance, the court may enter any order for the support and maintenance of the parties, the custody, support, maintenance, and education of the minor children of the marriage, attorney fees, and for the preservation of the property of the parties. At any time after the termination of the thirty-day period, either party may move for the dissolution of the marriage or a legal separation, and the court may enter its judgment decreeing the dissolution or separation.

The court may not render a judgment decreeing the legal separation or divorce of the parties on the grounds of irreconcilable differences without the consent of both parties unless one party has not made a general appearance.

25-4-17.3. Use of affidavits to establish jurisdiction and grounds for divorce. In any action for divorce or separate maintenance in which the parties have consented to the use of irreconcilable differences, the court may grant the divorce based on the affidavits of the parties establishing the requisite jurisdiction and grounds for the divorce or separate maintenance action without requiring their personal appearance.

25-4-17.4. Validation of divorce granted without personal appearance. Any divorce or separate maintenance which has been granted without the personal appearance of a party is hereby legalized and validated.

25-4-18. Chronic mental illness as discretionary ground. In case of incurable, chronic mania or dementia of either spouse having existed for five years or more, while under confinement by order of a court of record or of the Board of Mental Illness as provided by law, the court may in its discretion grant a divorce.

25-4-19. Grounds for denial of divorce. Divorces must be denied upon showing:

- (1) Connivance;
- (2) Collusion;

(3) Condonation; or

(4) Limitation and lapse of time.

25-4-20. Connivance defined. Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce. Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

25-4-21. Collusion defined. Collusion is an agreement between husband and wife that one of them shall commit or appear to have committed or to be represented in court as having committed acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

25-4-22. Condonation defined--Required elements. 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;

(3) Restoration of the offending party to all marital rights.

25-4-23. Condonation not implied by endurance of continuing conduct constituting ground for divorce.

Where the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from excessive acts of ill-treatment, which may aggregately 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.

25-4-24. Fraudulent concealment of ground of divorce avoiding condonation. 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.

25-4-25. Conjugal kindness as condition subsequent to condonation. Condonation implies a condition subsequent that the forgiving party must be treated with conjugal kindness.

25-4-26. Revocation of condonation and revival of ground for divorce. 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.

25-4-29. Lapse of time as ground for denial of divorce--Presumption of acquiescence--Other limitations not applicable. 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 contained in this section.

25-4-30. Residence requirements for divorce or separate maintenance. The plaintiff in an action for divorce or separate maintenance must, at the time the action is commenced, be a resident of this state, or be stationed in this state while a member of the armed services, and in order that each party be entitled to the entry of a decree or judgment of divorce or separate maintenance, that residence or military presence must be maintained until the decree is entered.

25-4-30.1. Venue of action--Change by defendant. An action for divorce or separate maintenance may be commenced in the county of residence of either party, subject to the right of the defendant to have the place of trial changed to the county where the defendant resides.

25-4-33. No presumption as to same domicile of parties--Separate domiciles after separation. In actions for divorce there is no presumption of law that the domicile of either party is the domicile of the other. After separation each party may have a separate domicile, depending for proof upon actual residence, and not upon legal presumption.

25-4-33.1. Automatic temporary restraining order upon service--Modification or revocation. Upon the filing of a summons and complaint for divorce or separate maintenance by the plaintiff, and upon personal service of the summons and complaint on the defendant, a temporary restraining order shall be in effect against both parties until the final decree is entered, the complaint dismissed, or until further order of the court:

- (1) Restraining both parties from transferring, encumbering, concealing, or in any way dissipating or disposing of any marital assets, without the written consent of the other party or an order of the court, except as may be necessary in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the temporary restraining order is in effect;
- (2) Restraining both parties from molesting or disturbing the peace of the other party; and
- (3) Restraining both parties from removing any minor child of the parties from the state without the written consent of the other party or an order of the court.

The provisions of the temporary restraining order shall be printed upon the summons and shall become an order of the court upon fulfillment of the requirements of service. However, nothing in this paragraph precludes either party from applying to the court for any further relief or for the modification or revocation of any order.

25-4-34. Waiting period before trial of divorce and separate maintenance actions--Temporary orders and preliminary proceedings during waiting period--Validity of proceedings commenced before 1964. An action for divorce or separate maintenance shall not be heard, tried, or determined by the court until at least sixty days have elapsed from the completed service of the plaintiff's summons and complaint therein. During said waiting period the court

may issue all orders required to effectuate the purposes expressed in §§ 25-4-38 and 25-4-45 or to protect any of the parties to the action during the pendency thereof.

This section shall not be construed to prohibit the taking of depositions, examination of parties before trial, the granting of orders respecting discovery, or proceedings to perpetuate testimony, prior to the hearing or trial of said action by the court.

Nothing in this section shall operate to nullify any action or proceeding for divorce commenced prior to July 1, 1964, notwithstanding the fact that the final judgment or decree in such action or proceeding is entered therein after said date.

25-4-38. Alimony pending action. While an action for divorce is pending, the court may in its discretion require one spouse to pay as alimony any money necessary to support the other spouse or the children of the parties, or to prosecute or defend the action.

25-4-39. Separate maintenance granted on denial of divorce. Though judgment of divorce is denied, the court may in an action for divorce provide for maintenance of a spouse and the children of the parties, or any of them, by the other spouse.

25-4-40. Action for separate maintenance without divorce--Alimony and support. An action for separate maintenance may be maintained without request for divorce, upon any grounds which would be grounds for divorce, and in such cases the court shall have power to award temporary alimony, suit money, and permanent support for a spouse and the children of the parties, or any of them, by the other spouse.

25-4-41. Allowance for support when divorce granted. Where a divorce is granted, the court may compel one party to make such suitable allowance to the other party for support during the life of that other party or for a shorter period, as the court may deem just, having regard to the circumstances of the parties represented; and the court may from time to time modify its orders in these respects.

25-4-42. Security for payments required of spouse--Receivership--Allowance withheld when recipient's estate sufficient. The court may require a spouse to give reasonable security for providing maintenance, or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case. But when a spouse has a separate estate sufficient to give that spouse proper support, the court in its discretion may withhold any allowance to that spouse out of the separate property of the other spouse.

25-4-43. Support payments through clerk of courts--Payment to social services when assignment made to state--Back support--Accounting. When a divorce is granted or a decree for separate maintenance entered or thereafter, and when the court has provided for the maintenance of the children of the marriage, all payments so required by the order of the court may by order of the court be paid to the clerk of courts in the amount and at the time specified in said order, and the clerk shall forthwith disburse the money so received to the party entitled thereto. Upon receipt of written notice of assignment of support obligations to the State of South Dakota the clerk of courts shall pay the support to the Department of Social Services rather than to a family as long as such assignment remains in existence. When the department has no authorization to receive the current support, the department shall notify the clerk to stop sending current support payments to the state. However, back support due and owing prior to termination of public assistance shall be paid to the state. Thereupon adequate accounting records showing receipts and disbursements shall

be maintained by the clerk of courts, and the clerk of courts shall maintain a fact sheet in the original case file showing chronologically the date of receipts, dates of disbursements, and names of recipients.

25-4-44. Division of property between parties. When a divorce is granted, the courts may make an equitable division of the property belonging to either or both, whether the title to such property is in the name of the husband or the wife. In making such division of the property, the court shall have regard for equity and the circumstances of the parties.

25-4-45. Child custody provisions--Modification--Preference of child. In an action for divorce, the court may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same. In awarding the custody of a child, the court shall be guided by consideration of what appears to be for the best interests of the child in respect to the child's temporal and mental and moral welfare. If the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question. As between parents adversely claiming the custody, neither parent may be given preference over the other in determining custody.

25-4-45.1. Fault not considered in awarding property or child custody--Exceptions. Fault shall not be taken into account with regard to the awarding of property or the awarding of child custody, except as it may be relevant to the acquisition of property during the marriage or to the fitness of either parent in awarding the custody of children.

25-4-45.4. Counsel appointed for child in certain divorce or custody proceedings--Duty of counsel--Assistance--Costs. Notwithstanding the provisions of § 26-7A-31, if the court determines mediation as provided in § 25-4-56 is not feasible the court may appoint counsel for any child involved in any divorce or custody proceeding, in which the child is alleged to be neglected or abused, or if a parent, guardian, or custodian request counsel be appointed in such proceeding and if the court determines that it is in the best interest of the child to have counsel appointed for the child. The counsel shall be charged with representation of the child's best interests and may not be counsel for any other party involved. The court may designate other persons who may or may not be attorneys to assist in the performance of the counsel's duties. The court shall allocate the cost of the appointed counsel between the parents, guardian, or custodian of the child.

25-4-45.5. Consideration of assault conviction in custody award. In awarding custody involving a minor, the court shall consider a conviction of domestic abuse as defined in subdivision 25-10-1(1) or a conviction of assault against a person as defined in subdivision 25-10-1(2), except against any person related by consanguinity, but not living in the same household. The conviction creates a rebuttable presumption that awarding custody to the abusive parent is not in the best interests of the minor.

25-4-45.6. Consideration of conviction for death of other parent in custody award. In awarding custody or granting rights of visitation involving a minor, the court shall consider a conviction, excluding vehicular homicide, of a parent for the death of the other parent. A conviction for the death of the other parent creates a rebuttable presumption that awarding custody or granting visitation to the convicted parent is not in the best interests of the minor.

25-4-46. Alimony, support, property, and child custody provisions subject to review on appeal. The disposition of the homestead by the court, and all orders and decrees touching the alimony and maintenance of a spouse, and for the custody, education, and support of the children as above provided are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

25-4-47. Restoration of former name to wife--Validation of prior decrees. Whenever a decree of divorce is granted, the trial court may, in its discretion or upon the application of either party by the terms of the decree, restore to the woman her maiden name or the name she legally bore prior to her marriage to the husband in the divorce suit. All decrees of divorce previously entered restoring to the divorced woman her former name under this section are declared legal and valid and effective from their date of entry.

25-4-48. Legitimacy of children after divorce for adultery of 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.

25-4-49. Legitimacy of children after divorce for adultery of 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.

25-4-52. Visitation rights for grandparents--Enforcement by circuit court. The circuit court may grant grandparents reasonable rights of visitation with their grandchild, with or without petition by the grandparents, if the visitation is in the best interests of the grandchild and:

- (1) If the visitation will not significantly interfere with the parent- child relationship; or
- (2) If the parent or custodian of the grandchild has denied or prevented the grandparent reasonable opportunity to visit the grandchild.

The circuit court shall issue any orders necessary to enforce or to protect visitation rights granted pursuant to this section.

As used in this section, the term grandparents includes great-grandparents.

25-4-54. Visitation rights of grandparents--Child placed for adoption. The provisions of §§ 25-4-52 to 25-4-54, inclusive, do not apply if the child has been placed for adoption with a person other than the child's stepparent or grandparent. Any grandparent visitation rights granted pursuant to §§ 25-4-52 to 25-4-54, inclusive, prior to placement for adoption of the child with persons other than the child's stepparent or grandparent shall terminate upon the placement of the child for adoption.

25-4-55. Exclusion of child from custody proceedings. In proceedings under this chapter involving contested custody of a child, upon request of counsel for either party, the court may, for good cause and at its discretion, exclude the child from the proceedings.

25-4-56. Court authorized to order mediation or investigation--Allocation of costs. In any custody or visitation dispute between parents, the court shall, unless the court deems it inappropriate under the facts of the case, order mediation to assist the parties in formulating or modifying a plan, or in implementing a plan, for custody or visitation and shall allocate the cost of the mediation between the parties. The court may also direct that an investigation be conducted

to assist the court in making a custody or visitation determination and shall allocate the costs of such investigation between the parties.

25-4-59. Privacy of mediation proceedings. The mediator shall conduct the mediation proceedings in private. The mediator may exclude counsel from participation in the mediation proceedings.

25-4-60. Confidentiality of mediation communications and mediator's work product. Any communication, oral or written, in a mediation proceeding pursuant to § 25-4-56 is confidential and inadmissible as evidence in any proceeding. A mediator appointed pursuant to § 25-4-56 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 or visitation is at issue.

25-4-61. Written mediated agreement--Signing--Court approval. 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.

25-4-62. Recommendation by mediator to court upon parties' 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 the full hearing on the custody 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 or visitation.

Chapter 25-4a

Custody And Visitation Rights

25-4A-1. Custody or visitation rights enforceable by contempt proceedings. After notice and hearing, any decree or order of the court relating to custody of or visitation with a child may be enforced by contempt.

25-4A-2. Written request for order to show cause for violation of visitation or custody decree--Hearing date. Any party granted visitation or custody rights to a child by a court decree may request the court to enter an order to show cause why the other party should not be held in contempt of court for violation of the decree relating to visitation or custody of the child. Upon receipt of a written request for an order to show cause, the court may issue such an order and forthwith schedule a hearing date not less than thirty days in the future. No particular formality may be required of the moving party in making a written request for an order to show cause.

25-4A-3. Affirmative inquiry into contempt--Contemnor's rights. At the hearing, the court shall affirmatively inquire into the matters of visitation and custody and enter any orders the court deems appropriate. The alleged contemnor has the right to remain silent and the right to counsel.

25-4A-4. Affirmative defense by contemnor. An alleged contemnor may plead and prove that the movant voluntarily relinquished the actual care, control, and possession of the child for time encompassed by the court-ordered periods of possession. Such a relinquishment is an affirmative defense in whole or part to the order to show cause.

25-4A-5. Violation of custody or visitation decree--Punishment. Each violation of the custody or visitation provisions of a court decree may be punished by imprisonment in jail not to exceed three days, by fine not to exceed one thousand dollars, or both.

25-4A-6. Probation for contemnor. The contemnor may be placed on probation for a period of time, not to exceed five years or until discharge. The probation, if warranted, may be supervised by a probation officer who shall, if directed by the court, require reports from the contemnor and visit with the contemnor at the contemnor's home.

25-4A-7. Motion to revoke probation of contemnor. Any violation of the terms and conditions of the probation imposed by the court may be brought before the court by a motion to revoke probation. The motion to revoke probation may be made by the original moving party, the attorney general, or the state's attorney. If the motion to revoke probation alleges a prima facie case that the probationer has violated a term or condition of probation, the court may cause the probationer's arrest by warrant. An arrested probationer shall be brought promptly before the court causing the arrest.

25-4A-11. Plaintiff in custody action to file and serve guidelines--Guidelines as court order-- Custody of minors. Upon the filing of a summons and complaint for divorce or separate maintenance or any other custody action or proceeding, the plaintiff shall also file and serve upon the defendant a copy of the standard guidelines. The standard guidelines attached to the summons shall become an order of the court upon fulfillment of the requirements of service. Any minor child of the marriage shall remain in the custody of the parent who has been the primary caregiver for the minor child for the majority of time in the thirty days preceding the filing of the summons and complaint, unless the parties agree otherwise. The standard guidelines shall apply and continue in effect, unless the parties agree, or the court orders otherwise. Imposition of the standard guidelines creates no presumption as to who shall be awarded custody at any hearing.

25-4A-12. Visitation agreement other than standard guidelines--Requirements. Any agreement by the parties for visitation other than the standard guidelines shall be in writing, signed by both parties and filed with the court. The agreed plan shall be approved by court order and replace the standard guidelines or any plan previously filed.

25-4A-13. Objections to custody or visitation order--Hearing--Temporary order. If either party objects to the initial custody arrangement in § 25-4A-11 or the standard guidelines, the court shall order a hearing which shall be held not later than thirty days after the date of the objection. The court shall issue its temporary custody and visitation order after considering the best interests of the child consistent with the provisions of § 25-4-45.

25-4A-15. Attorney fees and costs. The court may order either party to pay attorney fees and costs in an action filed under §§ 25-4A-9 to 25-4A-16, inclusive, in accordance with § 15-17-38 or any other applicable statute.

25-4A-16. Parents responsible for child support. The parents are responsible for payment of child support in accordance with § 25-7-6.

25-4A-17. Notice required before relocating child not living with both legal parents-- Exceptions. If an existing custody order or other enforceable agreement does not expressly govern the relocation of the principal residence of a child, a parent who intends to change his or her principal residence shall, provide reasonable written notice by certified mail or admission of service to the other legal parent of the child. Reasonable notice is notice that is given at

least forty-five days before relocation or a shorter period if reasonable under the specific facts giving rise to the relocation. Proof of the notice shall be filed with the court of record unless notice is waived by the court.

No notice need be provided pursuant to this section if:

- (1) The relocation results in the child moving closer to the noncustodial parent; or
- (2) The relocation is within the boundaries of the child's current school district; or
- (3) There is an existing valid protection order in favor of the child or the custodial parent against the noncustodial parent; or
- (4) Within the preceding twelve months, the nonrelocating parent has been convicted of violation of a protection order, criminal assault, child abuse, or other domestic violence and either the child or the custodial parent was the victim of the crime or violation.

25-4A-18. Contents of notice of relocation. The notice required in § 25-4A-17 shall contain the following:

- (1) The address and telephone number, if known, of the new residence;
- (2) The purpose for relocating;
- (3) Why the relocation is in the best interest of the child; and
- (4) The relocating party's proposed visitation plan for the nonrelocating parent upon relocation.

25-4A-19. Request for hearing on relocation--Presumption of consent. At the request of the nonrelocating parent, made within thirty days of the notice of relocation, the court shall hold a hearing on the relocation. If no request for hearing is made within thirty days of notice, the relocation is presumed to be consented to by the nonrelocating parent.

South Dakota Visitation Guidelines

Introduction

A powerful cause of stress, suffering, and maladjustment in children of divorce is not simply divorce itself, but continuing conflict between parents, before, during, and after divorce. Similar conflicts can occur between parents who were never married. To minimize harm to their children, parents should agree on a parenting arrangement that is most conducive to frequent and meaningful contact for the children with both parents, with as little conflict as possible. When parental maturity, personality, and communication skills are adequate, the ideal arrangement is reasonable time with the noncustodial parent on reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed visitation agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, however, the following guidelines will be used, unless a different schedule is court ordered. For most parents, these guidelines should be considered as only a minimum direction for interaction with the children.

Guideline 1. General Rules

Parents should always avoid speaking negatively about one another and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other. The basic rules of conduct and discipline established by the custodial parent should be the base-line standard for both parents and any step-parents, and consistently enforced by all, so that the children do not receive mixed messages about appropriate behavior.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. In South Dakota, grandparents have a legal right to reasonable visitation with their grandchildren, if it is in the best interests of the grandchildren. Usually the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother. It is recommended that the parents prepare an annual calendar of agreed dates so that both the parents and the children know where the children will be during the coming year.

In cases where both parents reside in the same community at the time of separation, and then one parent leaves the area, thus changing the visitation pattern, the court will consider apportioning between the parents the children's travel costs necessary to facilitate visitation with the noncustodial parent. In apportioning these costs, the court will consider such factors as the economic circumstances of the parents and the reasons prompting the move.

1.1. Parental Communication. Parents should always keep each other advised of their home and work addresses and telephone numbers. Whenever feasible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone, at their residences, and not at their places of employment.

1.2. Grade Reports and Medical Information. The custodial parent shall provide the noncustodial parent with grade reports and notices from school as they are received and shall authorize the noncustodial parent to communicate concerning the child directly with the daycare, the school, and the children's doctors and other professionals outside the presence of the custodial parent. Unless there are abuse, neglect, criminal, or protection orders to the contrary, the noncustodial parent shall also be listed as the children's parent and as an emergency contact with the daycare, the school, and all health professionals. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The custodial parent shall, as soon as reasonably possible, notify the noncustodial parent of all school or other events (for example, church or sports) involving parental participation. If the child is taking medications, the custodial parent shall provide a sufficient amount and appropriate instructions to the noncustodial parent.

1.3. Visitation Clothing. The custodial parent shall send an appropriate supply of children's clothing with them, which shall be returned clean (when reasonably possible), with the children, by the noncustodial parent. The noncustodial parent shall advise, as far in advance as possible, of any special activities so that the appropriate clothing belonging to the children may be sent.

1.4. Withholding Support or Visitation. Neither visitation nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and to visitation, neither of which is dependent upon the other. In other words, no support does not mean no

visitation, and no visitation does not mean no support. If there is a violation of either a visitation or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.

1.5. Adjustments in this Visitation Schedule. This schedule is to be understood as imposing specific requirements and responsibilities; however, when family necessities, illnesses, or commitments reasonably so require, the parents are expected to modify visitation fairly. The parent requesting modification shall act in good faith and give as much notice as circumstances permit.

1.6. Custodial Parent's Vacation. Unless otherwise specified in a court order or agreed by the parents, the custodial parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time the noncustodial parent takes with the children. The custodial parent should plan a vacation during the time when the noncustodial parent is not scheduled to spend time with the children.

1.7. Insurance Forms. The parent who has medical insurance coverage on the children shall supply to the other parent an insurance card and, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentist, or other provider not so approved or qualified should pay the additional cost thus incurred. When there is a contemplated change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parents to what is more important, i.e., allowing the child to remain with the original provider or taking advantage of economic or medical benefits offered by the new carrier. When there is an obligation to pay medical expenses, the parent responsible therefor shall be promptly furnished with the bill by the other parent. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was received.

1.8. Child Support Abatement. Unless a court order otherwise provides, support shall not abate during any period when the children are with the noncustodial parent. (South Dakota law allows for support abatement. See SDCL 25-7-6.14. However, no abatement may be taken unless there is a court order authorizing it.)

1.9. Missed Visitation. When events beyond either parent's control, such as illness, prevent a scheduled visitation, a mutually agreeable substituted visitation date shall be arranged, as quickly as feasible. Each parent shall timely advise the other when a particular visitation cannot be exercised. Missed visitation should not be unreasonably accumulated.

1.10. Visitation--A Shared Experience. Except with infants and adolescents, it usually makes sense for all the children to share the same schedule. Having brothers and sisters along may provide an important support for children. Infants have special needs that may well prevent a parent from being with both infants and older children at the same time. Adolescents have special needs for peer involvement and for some control in their own lives that may place them on different schedules from their younger brothers and sisters. Because it is intended that visitation be a shared experience between siblings and, unless these guidelines, a court order, or circumstances, such as age, illness, or a particular event suggest otherwise, all the children should spend time together with the noncustodial parent.

1.11. Telephone Communication. Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The custodial parent may call the children at reasonable hours when the children are with the noncustodial parent. The children may, of course, call either parent, though at reasonable hours and frequencies, and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom

the child is on vacation should make the child available for telephone calls every three days. At all other times, the parent with whom the child is staying shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available. A parent may wish to provide a child with a telephone calling card to facilitate communication with that parent.

1.12. Mail and E-mail Contact. Parents have an unrestricted right to send cards, letters, packages, and audio and video cassettes or CDs to their children. Children also have the same right to send items to their parents. Neither parent should interfere with this right. A parent may wish to provide a child with self-addressed, stamped envelopes for the child's use in corresponding with that parent. If the child and the parent have Internet capability, communication through e-mail should be fostered and encouraged.

1.13. Privacy of Residence. A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other parent. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping off the children should not leave the premises until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is his or her own, and the children's time with that parent is equally private.

1.14. Special Considerations for Adolescents. Generally, these guidelines apply to adolescents as well as younger children. Nonetheless, within reason, the parents should honestly and fairly consider the wishes of their teenagers on visitation. Neither parent should attempt to pressure their teenager to make a visitation decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

1.15. Day Care Providers. When parents reside in the same community, they should use the same day care provider. To the extent feasible, the parents should rely on each other to care for the children when the other parent is unavailable.

1.16. Special circumstances.

A. Child Abuse. When child abuse has been established against the noncustodial parent and a continuing danger is shown to exist, all visitation should cease or be allowed only under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases, if either parent abuses a child.

B. Spouse Abuse. Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse may be capable of doing so with children. Depending on the nature of the spouse abuse and the time and circumstances of its occurrence, the court may require that an abusive spouse successfully complete appropriate counseling before being permitted unsupervised time with the children.

C. Substance Abuse. The children should not be with a parent who is abusing substances.

D. Long Interruption of Contact. In those situations where the noncustodial parent has not had a continuing relationship with the child for an extended period, visitation should begin with brief visits and a very gradual transition to the visitation in these guidelines.

E. Kidnapping Threats. Noncustodial parents who have threatened to kidnap or hide the children should have no visitation or only supervised visits.

F. Breast Feeding Child. Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has

occurred without forcing, a nursing infant should have visits of only a few hours with the father. A mother should not use breast feeding beyond the normal weaning age as a means to deprive the father of visitation.

G. A Parent's New Relationship. Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parents' separation and divorce.

H. Religious Holidays and Native American Ceremonies. Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and should cooperate with each other on visitation to achieve these goals. These goals should not be used to deprive the noncustodial parent of visitation.

I. Other. The court will consider limiting or denying visitation or changing custody of parents who show neglectful, impulsive, immoral, criminal, assaultive, or risk-taking behavior with or in the presence of the children.

Guideline 2. Noncustodial Parent Visitation When Children Are Under Age Five.

2.1. Children Under Age Five Generally.

Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary caretaker who provides a sense of security, nurturing, and predictability. Generally, overnight visits for infants and toddlers are not recommended unless the noncustodial parent is very closely attached to the child and is personally able to provide primary care. Older preschool age children (three to five) are able to tolerate limited separations from the primary caretaker. The following guidelines for children under age five are designed to take into account children's developmental milestones as a basis for time with the noncustodial parent. Since children mature at different rates, these may need to be adjusted to fit the child's individual circumstances. These guidelines may not apply when the parents equally share caretaking responsibilities for the child and the child is equally attached to both parents. Yet in the majority of situations, those in which the custodial parent has been the primary caretaker and the noncustodial parent has maintained a continuous relationship with the child, but has not shared equally in child caretaking, the following guidelines should generally apply.

2.2. Infants--Birth to Six Months. Alternate parenting plans: (1) Three, two-hour visits per week, with one weekend day for six hours; or (2) Three, two-hour visits per week, with one overnight on a weekend for no longer than a twelve-hour period, if the child is not breast feeding and the noncustodial parent is capable of providing primary care.

2.3. Infants--Six to Eighteen Months. Alternate parenting plans: (1) Three, three-hour visits per week with one weekend day for six hours; or (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the noncustodial parent is capable of providing primary care; or (3) Child spends time in alternate homes, but spends significantly more time at one of them and no more than two twelve-hour overnights per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.

2.4. Toddlers--Eighteen to Thirty-six Months. Alternate parenting plans: (1) The noncustodial parent has the child up to three times per week for a few hours on each visit, on a predictable schedule; or (2) Same as (1) but with one overnight per week; or (3) Child spends time in alternate homes, but with more time in one than the other with two or three overnights spaced regularly throughout the week. This arrangement requires an adaptable child and cooperative parents.

2.5. Preschoolers--Three to Five-Years-Old. Alternate parenting plans: (1) One overnight visit (i.e., Saturday morning to Sunday evening) on alternate weekends and one midweek visit, at the conclusion of which the child is returned to the custodial parent's home at least one-half hour before bedtime; or (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other home. In addition, for preschoolers, a vacation of no longer than two weeks with the noncustodial parent.

2.6. Children in Day Care. In families where a child has been in day care before the parental separation, the child may be able to tolerate flexible visits earlier because the child is more accustomed to separations from both parents. The noncustodial parent who exercises visitation of a child under age five should not during the visits place the child with a baby-sitter or day care provider. If the noncustodial parent cannot be with the child personally, the child should be returned to the custodial parent. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as baby-sitters.

2.7. Holidays. For toddlers and preschool age children, when the parents live in the same or nearby communities, the parents should alternate each year Christmas Eve and Christmas Day, so that the children spend equal time with each parent during this holiday period. Other major holidays should also be divided between the parents.

Guideline 3. Noncustodial Parent Visitation When Children Are Over Age Five and the Parents Reside No More Than 200 Miles Apart

3.1. Weekends. Alternate weekends from Friday at 5:30 P.M. to Sunday at 7:00 P.M.; the starting and ending times may change to fit the parents' schedules. Or an equivalent period of time if the noncustodial parent is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits are the responsibility of the noncustodial parent.

3.2. Mother's Day--Father's Day. The alternate weekends will be shifted, exchanged, or arranged, so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and regular visitation shall be resolved under Paragraph 1.9.

3.3. Summer Visitation. One-half of the school summer vacation. At the option of the noncustodial parent, the time may be consecutive or it may be split into two blocks of time. If a child goes to summer school and it is impossible for the noncustodial parent to schedule this visitation time other than during summer school, the noncustodial parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the noncustodial parent's community.

3.4. Winter (Christmas) Vacation. One-half the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the noncustodial parent shall have the first half in even-number years. Holidays, such as Christmas, are extremely important as times of shared enjoyment, family tradition, and meaning. Families living in the same or nearby communities should plan for the children to spend part of each important holiday at both homes. If the parents are unable to work out a sharing arrangement for Christmas and they live in the same or nearby communities, in those years when Christmas does not fall in a parent's week, that parent shall have from 2:00 P.M. to 9:00 P.M. on Christmas Day.

3.5. Holidays. Parents shall alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day weekends will begin on Friday and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; the 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 P.M. and end at 7:00 P.M. on the appropriate days.

3.6. Children's Birthdays. Like holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved under Paragraph 1.9. If the birthday falls on a weekday, it shall be celebrated from 2:00 P.M. to 8:00 P.M. (or so much of that period as the noncustodial parent elects to use).

3.7. Parents' Birthdays. The children should spend the day with the parent who is celebrating his or her birthday, unless it interferes with a noncustodial parent's scheduled time during a holiday or vacation.

3.8. Conflicts between Regular and Holiday Weekends. When there is a conflict between a holiday weekend and the regular weekend visitation, the holiday takes precedence. Thus, if the noncustodial parent misses a regular weekend because it is the custodial parent's holiday, the regular alternating visitation schedule will resume following the holiday. If the noncustodial parent receives two consecutive weekends because of a holiday, the regular alternating weekend schedule will resume the following weekend with the custodial parent. The parents are to make up missed weekends resulting from holiday conflicts.

3.9. Visitation Before and During Vacations. The custodial parent will have the weekend before the beginning of the noncustodial parent's summer extended visitation period(s) with the children, regardless of whose weekend it may be. Similarly, the noncustodial parent's alternating weekend schedule shall resume the second weekend after each extended summer visitation period. Weekend visitation "missed" during the summer vacation period will not be "made up." During any extended summer visitation of more than three consecutive weeks, it will be the noncustodial parent's duty to accommodate, at a mutually convenient time, a 48-hour continuous period of visitation for the custodial parent, unless impractical because of distance.

3.10. Notice of Canceled Visitation. Whenever possible, the noncustodial parent shall give a minimum of three-days notice of intent not to exercise all or part of the scheduled visitation. When such notice is not feasible, the maximum notice permitted by the circumstances, and the reason therefor, shall be provided to the other parent. Custodial parents shall give the same type of notice when events beyond their control make the cancellation or modification of scheduled visitation necessary. If the custodial parent cancels or modifies the noncustodial parent's time with a child because the child has a scheduling conflict, the noncustodial parent should be given the opportunity to take the child to the scheduled event or appointment.

3.11. Pick Up and Return of Children. When the parents live in the same community, the responsibility of picking up and returning the children should be shared. Usually the noncustodial parent will pick up and the custodial parent will return the children to that parent's residence. The person picking up or returning the children during times of visitation has an obligation to be punctual, arriving at the agreed time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

3.12. Additional Visitation. The children's time with the noncustodial parent should be liberal and flexible. For most parents, these guidelines should be considered as only the minimum and are not meant to foreclose the parents from

agreeing to such time-sharing with the children as the parents find reasonable and in the best interests of their children at any given time.

Guideline 4. Noncustodial Parent Visitation When Children Are Over Age Five and the Parents Reside More Than 200 Miles Apart

4.1. Extended visitation. All but three weeks of the school summer vacation period and, on an alternating basis, the school winter (Christmas) vacation and spring break.

4.2. Priority of Summer Visitation. Summer visitation with the noncustodial parent takes precedence over summer activities (such as sports), when the visitation cannot be reasonably scheduled around such events. Even so, the conscientious noncustodial parent will often be able to enroll the child in the same or similar activity in the noncustodial parent's community.

4.3. Notice. At least 60 days advance written notice should be given by the noncustodial parent of the date for commencing extended summer visitation, so that the most efficient means of transportation may be obtained and the parents and the children may arrange their schedules. Failure to give the precise number of days notice does not give the custodial parent the right to deny visitation.

4.4. Additional Visitation. Where distance and finances permit, additional visitation, such as for holiday weekends or special events, is encouraged. When the noncustodial parent is in the area where the children reside, or the children are in the area where the noncustodial parent resides, liberal visitation shall be accommodated. Because the noncustodial parent does not get weekly time with the children, the children can miss some school to spend time with the noncustodial parent, so long as it does not substantially impair the children's scholastic progress.

Chapter 25-7

Support Obligations

25-7-6.1. Obligation of parents to support child--Liability of absent parent--"Continued absence from the home". The parents of a child are jointly and severally obligated for the necessary maintenance, education, and support of the child in accordance with their respective means. Until established by a court order, the minimum child support obligation of a parent who fails to furnish maintenance, education, and support for his child, following a continued absence from the home, is the obligor's share of the amount shown in the support guidelines, commencing on the first day of the absence. For the purposes of this section, "continued absence from the home," means that the parent or child is physically absent from the home for a period of at least thirty consecutive days, and that the nature of the absence constitutes family dissociation because of a substantial severance of marital and family ties and responsibilities, resulting in the child losing or having a substantial reduction of physical care, communication, guidance, and support from the parent.

25-7-6.2. Support obligation schedule. The child support obligation shall be established in accordance with the following schedule subject to such revisions or deviations as may be permitted pursuant to §§ 25-7-6.1 to 25-7-6.18, inclusive. Except as provided in this chapter, the combined monthly net incomes of both parents shall be used in determining the obligation and divided proportionately between the parents based upon their respective net incomes. The noncustodial parent's proportionate share establishes the amount of the child support order.

If the obligation using only the noncustodial parent's monthly net income is an obligation within the emboldened areas of the schedule, that amount shall be compared to the noncustodial parent's proportionate share using both parents' monthly net incomes. The lesser amount establishes the noncustodial parent's child support order.

MonthlyNetIncome OneChild TwoChildren ThreeChildren FourChildren FiveChildren SixChildren

0-800	100	150	180	200	220	240
850	125	175	205	225	245	265
900	150	200	230	250	270	290
950	175	225	255	275	295	315
1,000	200	250	280	300	320	340
1,050	225	275	305	325	345	365
1,100	250	300	330	350	370	390
1,150	275	325	355	375	395	415
1,200	291	350	380	400	420	440
1,250	302	375	405	425	445	465
1,300	313	400	430	450	470	490
1,350	324	425	455	475	495	515
1,400	336	450	480	500	520	540
1,450	347	475	505	525	545	565
1,500	358	500	530	550	570	590
1,550	369	525	555	575	595	615
1,600	380	550	580	600	620	640
1,650	391	566	605	625	645	665
1,700	402	582	630	650	670	690
1,750	413	598	655	675	695	715
1,800	424	615	680	700	720	740
1,850	436	631	705	725	745	765
1,900	447	647	730	750	770	790
1,950	458	663	755	775	795	815
2,000	469	679	780	800	820	840
2,050	480	695	805	825	845	865
2,100	491	710	830	850	870	890
2,150	499	722	849	875	895	915
2,200	508	734	864	900	920	940
2,250	516	747	879	925	945	965
2,300	524	759	893	950	970	990
2,350	533	771	908	975	995	1,015
2,400	541	784	923	1,000	1,020	1,040
2,450	550	796	937	1,025	1,045	1,065
2,500	558	808	952	1,050	1,070	1,090
2,550	566	820	966	1,068	1,095	1,115
2,600	571	827	973	1,075	1,120	1,140
2,650	576	833	980	1,083	1,145	1,165
2,700	580	840	988	1,091	1,170	1,190
2,750	585	846	995	1,099	1,191	1,215
2,800	590	852	1,002	1,107	1,200	1,240

2,850 594 859 1,009 1,115 1,209 1,265
2,900 599 865 1,016 1,123 1,217 1,290
2,950 604 872 1,023 1,131 1,226 1,312
3,000 609 878 1,030 1,139 1,234 1,321
3,050 615 888 1,041 1,150 1,247 1,334
3,100 622 898 1,053 1,163 1,261 1,349
3,150 630 908 1,064 1,176 1,275 1,364
3,200 637 918 1,076 1,189 1,288 1,379
3,250 644 928 1,087 1,201 1,302 1,393
3,300 651 938 1,099 1,214 1,316 1,408
3,350 658 948 1,110 1,227 1,330 1,423
3,400 665 958 1,122 1,239 1,343 1,438
3,450 673 968 1,133 1,252 1,357 1,452
3,500 679 977 1,144 1,265 1,371 1,467
3,550 686 987 1,155 1,277 1,384 1,481
3,600 692 996 1,166 1,289 1,397 1,495
3,650 698 1,005 1,177 1,301 1,410 1,509
3,700 705 1,014 1,188 1,313 1,423 1,523
3,750 711 1,024 1,199 1,325 1,437 1,537
3,800 717 1,033 1,210 1,337 1,450 1,551
3,850 723 1,042 1,221 1,350 1,463 1,565
3,900 730 1,051 1,232 1,362 1,476 1,579
3,950 737 1,061 1,244 1,374 1,490 1,594
4,000 744 1,072 1,256 1,388 1,505 1,610
4,050 752 1,082 1,268 1,401 1,519 1,626
4,100 759 1,093 1,281 1,415 1,534 1,641
4,150 767 1,104 1,293 1,429 1,549 1,657
4,200 774 1,114 1,305 1,442 1,563 1,673
4,250 782 1,125 1,317 1,456 1,578 1,688
4,300 789 1,136 1,330 1,469 1,593 1,704
4,350 797 1,146 1,342 1,483 1,607 1,720
4,400 804 1,157 1,354 1,496 1,622 1,735
4,450 811 1,166 1,365 1,508 1,635 1,749
4,500 817 1,176 1,376 1,520 1,648 1,763
4,550 824 1,185 1,387 1,533 1,661 1,778
4,600 830 1,194 1,398 1,545 1,674 1,792
4,650 837 1,204 1,409 1,557 1,688 1,806
4,700 843 1,213 1,420 1,569 1,701 1,820
4,750 850 1,222 1,431 1,581 1,714 1,834
4,800 856 1,232 1,442 1,593 1,727 1,848
4,850 863 1,241 1,453 1,606 1,740 1,862
4,900 869 1,251 1,464 1,618 1,754 1,876
4,950 876 1,260 1,475 1,630 1,767 1,891
5,000 882 1,269 1,486 1,642 1,780 1,905
5,050 889 1,279 1,497 1,654 1,793 1,919

5,100 895 1,288 1,508 1,666 1,806 1,932
5,150 900 1,295 1,517 1,676 1,817 1,944
5,200 905 1,303 1,526 1,686 1,828 1,956
5,250 910 1,310 1,535 1,696 1,839 1,968
5,300 915 1,318 1,544 1,706 1,850 1,979
5,350 920 1,325 1,553 1,717 1,861 1,991
5,400 925 1,332 1,563 1,727 1,872 2,003
5,450 930 1,340 1,572 1,737 1,883 2,014
5,500 934 1,347 1,581 1,747 1,894 2,026
5,550 939 1,355 1,590 1,757 1,905 2,038
5,600 944 1,362 1,599 1,767 1,916 2,050
5,650 949 1,370 1,608 1,777 1,927 2,061
5,700 954 1,377 1,618 1,787 1,938 2,073
5,750 959 1,384 1,627 1,797 1,948 2,085
5,800 964 1,392 1,636 1,808 1,959 2,097
5,850 969 1,399 1,645 1,818 1,970 2,108
5,900 974 1,407 1,654 1,828 1,981 2,120
5,950 979 1,414 1,663 1,838 1,992 2,132
6,000 984 1,422 1,672 1,848 2,003 2,143
6,050 990 1,430 1,683 1,860 2,016 2,157
6,100 996 1,440 1,694 1,872 2,029 2,171
6,150 1,002 1,449 1,705 1,884 2,042 2,185
6,200 1,009 1,458 1,716 1,896 2,055 2,199
6,250 1,015 1,468 1,727 1,908 2,068 2,213
6,300 1,022 1,477 1,738 1,920 2,081 2,227
6,350 1,028 1,486 1,749 1,932 2,094 2,241
6,400 1,034 1,495 1,760 1,944 2,108 2,255
6,450 1,041 1,505 1,770 1,956 2,121 2,269
6,500 1,047 1,514 1,781 1,968 2,134 2,283
6,550 1,054 1,523 1,792 1,981 2,147 2,297
6,600 1,060 1,532 1,803 1,993 2,160 2,311
6,650 1,066 1,542 1,814 2,005 2,173 2,325
6,700 1,073 1,551 1,825 2,017 2,186 2,339
6,750 1,079 1,560 1,836 2,029 2,199 2,353
6,800 1,086 1,569 1,847 2,041 2,212 2,367
6,850 1,092 1,579 1,858 2,053 2,226 2,381
6,900 1,098 1,588 1,869 2,065 2,239 2,395
6,950 1,105 1,597 1,880 2,077 2,252 2,410
7,000 1,111 1,607 1,891 2,089 2,265 2,424
7,050 1,118 1,616 1,902 2,102 2,278 2,438
7,100 1,124 1,625 1,913 2,114 2,291 2,452
7,150 1,130 1,634 1,924 2,126 2,304 2,466
7,200 1,137 1,644 1,935 2,138 2,317 2,480
7,250 1,143 1,653 1,946 2,150 2,331 2,494
7,300 1,150 1,662 1,957 2,162 2,344 2,508

7,350 1,156 1,671 1,968 2,174 2,357 2,522
7,400 1,162 1,681 1,979 2,186 2,370 2,536
7,450 1,169 1,690 1,989 2,198 2,383 2,550
7,500 1,175 1,699 2,000 2,210 2,396 2,564
7,550 1,182 1,709 2,011 2,223 2,409 2,578
7,600 1,188 1,718 2,022 2,235 2,422 2,592
7,650 1,194 1,727 2,033 2,247 2,435 2,606
7,700 1,201 1,736 2,044 2,259 2,449 2,620
7,750 1,207 1,746 2,055 2,271 2,462 2,634
7,800 1,214 1,755 2,066 2,283 2,475 2,648
7,850 1,220 1,764 2,077 2,295 2,488 2,662
7,900 1,226 1,772 2,087 2,306 2,500 2,675
7,950 1,231 1,780 2,096 2,316 2,511 2,687
8,000 1,237 1,788 2,105 2,327 2,522 2,699
8,050 1,242 1,796 2,115 2,337 2,533 2,710
8,100 1,247 1,804 2,124 2,347 2,544 2,722
8,150 1,253 1,812 2,133 2,357 2,555 2,734
8,200 1,258 1,820 2,143 2,368 2,567 2,746
8,250 1,263 1,827 2,152 2,378 2,578 2,758
8,300 1,269 1,835 2,161 2,388 2,589 2,770
8,350 1,274 1,843 2,171 2,398 2,600 2,782
8,400 1,280 1,851 2,180 2,409 2,611 2,794
8,450 1,285 1,859 2,189 2,419 2,622 2,806
8,500 1,290 1,867 2,198 2,429 2,633 2,818
8,550 1,296 1,874 2,208 2,440 2,644 2,830
8,600 1,301 1,882 2,217 2,450 2,656 2,842
8,650 1,307 1,890 2,226 2,460 2,667 2,853
8,700 1,312 1,898 2,236 2,470 2,678 2,865
8,750 1,317 1,906 2,245 2,481 2,689 2,877
8,800 1,323 1,914 2,254 2,491 2,700 2,889
8,850 1,328 1,922 2,263 2,501 2,711 2,901
8,900 1,333 1,929 2,273 2,511 2,722 2,913
8,950 1,339 1,937 2,282 2,522 2,734 2,925
9,000 1,344 1,945 2,291 2,532 2,745 2,937
9,050 1,350 1,953 2,301 2,542 2,756 2,949
9,100 1,355 1,961 2,310 2,552 2,767 2,961
9,150 1,360 1,969 2,319 2,563 2,778 2,973
9,200 1,366 1,977 2,329 2,573 2,789 2,984
9,250 1,371 1,984 2,338 2,583 2,800 2,996
9,300 1,377 1,992 2,347 2,594 2,812 3,008
9,350 1,382 2,000 2,356 2,604 2,823 3,020
9,400 1,387 2,008 2,366 2,614 2,834 3,032
9,450 1,393 2,016 2,375 2,624 2,845 3,044
9,500 1,398 2,024 2,384 2,635 2,856 3,056
9,550 1,403 2,031 2,394 2,645 2,867 3,068

9,600	1,409	2,039	2,403	2,655	2,878	3,080
9,650	1,414	2,047	2,412	2,665	2,889	3,092
9,700	1,420	2,055	2,422	2,676	2,901	3,104
9,750	1,425	2,063	2,431	2,686	2,912	3,116
9,800	1,430	2,071	2,440	2,696	2,923	3,127
9,850	1,436	2,079	2,449	2,707	2,934	3,139
9,900	1,441	2,086	2,459	2,717	2,945	3,151
9,950	1,447	2,094	2,468	2,727	2,956	3,163
10,000	1,452	2,102	2,477	2,737	2,967	3,175

The share of the custodial parent is presumed to be spent directly for the benefit of the child.

25-7-6.3. Determination of parents' monthly net income--Sources of income. The monthly net income of each parent shall be determined by the parent's gross income less allowable deductions, as set forth herein. The monthly gross income of each parent includes amounts received from the following sources:

- (1) Compensation paid to an employee for personal services, whether salary, wages, commissions, bonus, or otherwise designated;
- (2) Self-employment income including gain, profit, or loss from a business, farm, or profession;
- (3) Periodic payments from pensions or retirement programs, including social security or veteran's benefits, disability payments, or insurance contracts;
- (4) Interest, dividends, rentals, royalties, or other gain derived from investment of capital assets;
- (5) Gain or loss from the sale, trade, or conversion of capital assets;
- (6) Unemployment insurance benefits;
- (7) Worker's compensation benefits; and
- (8) Benefits in lieu of compensation including military pay allowances.

If the income of the parents is derived from seasonal employment, or received in payments other than regular, recurring payments, such income shall be annualized to determine a monthly average income.

25-7-6.4. Rebuttable presumption of employment at minimum wage. Except in cases of physical or mental disability, it shall be presumed for the purposes of determination of child support that a parent is capable of being employed at the minimum wage and his child support obligation shall be computed at a rate not less than full-time employment at the state minimum wage. Evidence to rebut this presumption may be presented by either parent.

25-7-6.5. Assets considered when income insufficient. If a child's needs are not being met through the income of the parents, assets shall be considered. If the parents have savings, life insurance, or other assets in amounts unrelated to income, these holdings shall be considered. The parents' ability to borrow may be used to determine financial ability.

25-7-6.6. Profits or losses shown on federal income tax schedules as gross income--Court allowance of deduction. Gross income from a business, profession, farming, rentals, royalties, estates, trusts, or other sources, are the net profits or gain, or net losses shown on any or all schedules filed as part of the parents' federal income tax returns or as part of any federal income tax returns for any business with which he is associated, except that the court may allow or disallow deductions for federal income taxation purposes which do not require the expenditure of cash, including, but not limited to, depreciation or depletion allowances, and may further consider the extent to which household expenses, automobile expenses, and related items are deductible or partially deductible for income tax purposes. In the event a court disallows depreciation, it may consider necessary capital expenditures which enhance the parent's current income for child support purposes.

25-7-6.7. Allowable deductions from monthly gross income. Deductions from monthly gross income shall be allowed as follows:

- (1) Income taxes withheld figured on the basis of two dependent exemptions for a single taxpayer paid monthly rather than actual amount withheld;
- (2) Estimated income taxes payable, prorated monthly;
- (3) FICA taxes withheld from wages or salary;
- (4) Retirement fund amounts withheld or paid directly to an IRS qualified retirement plan, in a reasonable amount;
- (5) Actual business expenses of an employee, incurred for the benefit of his employer, not reimbursed;
- (6) Payments made on other support and maintenance orders.

25-7-6.8. Schedule used for child support obligations--Sex of obligor disregarded. The schedule in § 25-7-6.2 shall be used to set child support obligations, and shall be applied regardless of the sex of the obligor.

25-7-6.9. Income above the schedule--Child support adjusted to appropriate level. For a combined net income above the schedule in § 25-7-6.2, the child support obligation shall be established at an appropriate level, taking into account the actual needs and standard of living of the child.

25-7-6.10. Factors considered for deviation from schedule. Deviation from the schedule in § 25-7-6.2 shall be considered if raised by either party and made only upon the entry of specific findings based upon any of the following factors:

- (1) The income of a subsequent spouse or contribution of a third party to the income or expenses of that parent but only if the application of the schedule works a financial hardship on either parent;
- (2) Any financial condition of either parent which would make application of the schedule inequitable;
- (3) The federal income tax consequences arising from claiming the child as a dependent;
- (4) Any special needs of the child;

- (5) For agreements entered into prior to July 1, 1986, if it is established by clear and convincing evidence, that debts or property were exchanged for child support and it appears equitable to continue such arrangement;
- (6) The effect of agreements between the parents regarding extra forms of support for the direct benefit of the child;
- (7) The obligation of either parent to provide for subsequent natural children or stepchildren. However, an existing support order may not be modified solely for this reason; or
- (8) The voluntary act of either parent which reduces that parent's income.

25-7-6.11. Periodic adjustments in support. The court setting the support shall have the authority to require periodic adjustments in the support.

25-7-6.12. Review and amendment of schedule. The Governor shall, commencing in the year 2000, establish quadrennially a commission on child support. The commission shall review the provisions of this chapter, shall report its findings to the Governor and the Legislature, and may propose amendment thereof to the Legislature.

25-7-6.13. Modification of prior orders of support. All orders for support entered and in effect prior to July 1, 2001, may be modified in accordance with this chapter without requiring a showing of a change in circumstances from the entry of the order.

25-7-6.14. Abatement of portion of child support--Shared responsibility cross credit. As used in this section, basic visitation means a parenting plan whereby one parent has physical custody and the other parent has visitation with the child of the parties. In a basic visitation situation, unless the parties otherwise agree and the agreement is approved by the court, the court may, if deemed appropriate under the circumstances, order an abatement of not less than thirty-eight percent nor more than sixty-six percent of the child support if:

- (1) A child spends ten or more days in a month with the obligor; and
- (2) The days of visitation and the abatement amount are specified in the court order.

The court shall allow the abatement to the obligor in the month in which the visitation is exercised, unless otherwise ordered. The abatement shall be pro-rated to the days of visitation. It shall be presumed that the visitation is exercised. If the visitation exercised substantially deviates from the visitation ordered, either party may file a petition for modification without showing any other change in circumstances.

As used in this section, shared responsibility means a parenting plan whereby each parent provides a suitable home for the child of the parties, the court order allows the child to spend at least one hundred twenty days in a calendar year in each home, and the parents share the duties, responsibilities, and expenses of parenting. In a shared responsibility situation, unless the parties otherwise agree and the agreement is approved by the court, the court may, if deemed appropriate under the circumstances, order a shared responsibility cross credit. The cross credit shall be calculated by multiplying the combined child support obligation using both parents' monthly net incomes by 1.5 to arrive at a shared custody child support obligation. The shared custody child support obligation shall be apportioned to each parent according to his or her net income. A child support obligation is computed for each parent by multiplying that parent's

portion of the shared custody child support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are offset, with the parent owing more child support paying the difference between the two amounts. It shall be presumed that the shared responsibility parenting plan is exercised. If the parenting plan exercised substantially deviates from the parenting plan ordered, either party may file a petition for modification without showing any other change in circumstances.

The court shall consider each case individually before granting either the basic visitation or shared responsibility adjustment to insure that the adjustment does not place an undue hardship on the custodial parent or have a substantial negative effect on the child's standard of living.

25-7-6.15. Allocation of travel costs by court. If travel costs are substantial due to the distance between the parents, the court may order the allocation of such costs, taking into consideration the circumstances of the respective parties as well as which parent moved and the reason that the move was made.

25-7-6.16. Insurance--Computation of costs--Apportioned between parents. The court may enter an order for health and dental insurance coverage. Medical insurance shall be provided for the benefit of the minor child whenever practical. The cost of the insurance attributable to the child shall be determined by dividing the out-of-pocket cost of the insurance to the parent by the number of individuals insured thereunder. However, if information is provided at the time of hearing regarding the actual additional costs for the child's share of the insurance, that figure shall be used. The cost so computed shall be apportioned between the parents on the basis of income or income imputed as provided in §§ 25-7-6.1 to 25-7-6.17, inclusive. If one parent pays the entire amount, that parent shall either be reimbursed by the other parent for that parent's portion of the payment or shall receive a credit against his or her support obligation, whichever is appropriate. Any additional, reasonable medical costs, including optometric, dental or orthodontic, counseling, or other health care costs for each minor child which exceed two hundred fifty dollars in any year and are not covered by insurance, shall be apportioned between the parents in proportion to the support obligation of each parent.

25-7-6.17. Large adjustment in support phased in. In cases resulting in an adjustment of more than twenty-five percent in the support award, the court may phase in the adjustment over time.

25-7-6.18. Order allocating child care expenses. The court may enter an order allocating the reasonable child care expenses for the child, which are due to employment of either parent, job search of either parent, or the training or education of either parent necessary to obtain a job or enhance earning potential. The court may consider whether the federal child care tax credit for such minor child is available as a benefit to the custodial parent. If the federal child care tax credit is available to the custodial parent, it shall be calculated at twenty-five percent of the eligible expense.

25-7-6.19. Credit for child support arrearages for parent with primary physical custody during period of custody. Notwithstanding the provisions of § 25-7A-17 or 25-7-7.3, if, by agreement of the parties, the obligor had primary physical custody of the child for more than four consecutive months, the court may credit the obligor for child support arrearages which accumulated during the period the obligor had actual physical custody of the child.

25-7-7.1. Continuation of duty to support. A parent's duty to support his child continues if the child is placed with the Department of Social Services for custody, for temporary guardianship, or for care and placement.

25-7-7.2. Expenses incurred on child's behalf--Fee schedule. The secretary of social services may, pursuant to chapter 1-26, establish a fee schedule for all expenses incurred on a child's behalf while in the care of the department. Such fees may not exceed actual costs.

25-7-7.3. Past due support payments not subject to modification--Exception. Any past due support payments are not subject to modification by a court or administrative entity of this state, except those accruing in any period in which there is pending a petition for modification of the support obligation, but only from the date that notice of hearing of the petition has been given to the obligee, the obligor, and any other parties having an interest in such matter.

25-7-7.4. Unpaid payment or installment of support as judgment. Any payment or installment of support under an order for support, as defined by § 25-7A-1, whether entered by a court or an administrative entity of this state or of any other state or jurisdiction, which is unpaid after the date it is due, is a judgment by operation of law, with the full force, effect, and attributes of a judgment of this state, including enforceability, and is entitled, as a judgment, to full faith and credit in this state.

25-7-7.6. Court may order payment of arrearages. If, at any time, unpaid child support arrearages exist, the court may order the support obligor to pay towards the arrearages such sums as are ordered by the court, in addition to any other remedies of the support obligee.

25-7-8. Stepparent's duty to support spouse's children. A stepparent shall maintain his spouse's children born prior to their marriage and is responsible as a parent for their support and education suitable to his circumstances, but such responsibility shall not absolve the natural or adoptive parents of the children from any obligation of support.

25-7-16. Nonsupport of child by parent as misdemeanor--Felony where parent leaves state-- Spiritual treatment-- Unemployment. A parent of a minor child who intentionally omits without lawful excuse to furnish necessary food, clothing, shelter, medical attendance, other remedial care, or other means of support for the person's child is guilty of a Class 1 misdemeanor. If a parent, during a violation, leaves the state and is absent for more than thirty days, the person is guilty of a Class 6 felony. If a child is under treatment solely by spiritual means, the court may, as provided under § 26-8A-22, order that medical treatment be provided for the child. For the purposes of this section, unemployment without justifiable excuse or without verifiability of searching for employment is not a lawful excuse for noncompliance.

25-7-17. Abandonment or nonsupport of child by parent as prima facie evidence of intent. Proof of abandonment or desertion of a child by a parent, or the omission by a parent to furnish necessary food, clothing, shelter, medical attendance, other remedial care, or other means of support for his child is prima facie evidence that the abandonment, desertion, or omission is intentional and without lawful excuse.

Chapter 25-7a

Collection Of Child Support

25-7A-1. Definition of terms. Terms used in this chapter mean:

(1) "Administrative order," a judgment or order of an agency of the executive branch of state government, or an agency of comparable jurisdiction of another state, ordering payment of a set or determinable amount of support money, or ordering withholding of income;

- (2) "Arrearage," the total amount of unpaid support obligations;
- (3) "Assistance," money payments made by the Department of Social Services which are paid to, or for the benefit of, any dependent child, including payments made so that food, shelter, medical care, clothing, transportation, education, or other necessary goods, services, or items may be provided, and payments made to compensate for the provision of those necessities;
- (4) "Court order," a judgment or order of a circuit court of this state or a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support money;
- (5) "Delinquency," any payment under an order for support which becomes due and remains unpaid;
- (6) "Department," the Department of Social Services;
- (7) "Dependent child," a needy child under the age of eighteen or under the age of nineteen and a full-time student in a secondary school if, before he attains the age of nineteen, it is determined that he may reasonably be expected to complete the program at the secondary school, who has been deprived of support or care by a natural parent, an adoptive parent, or a stepparent, by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or who is a child of an unemployed parent and who is living with a person in a place of residence maintained by such person as his home;
- (8) "Income," any form of payment to a person, regardless of source, including wages, salary, commission, bonuses, compensation as an independent contractor, workers' compensation, unemployment compensation, disability, annuity and retirement benefits, gift or inheritance, all gain derived from capital or labor, profit gained through the sale or conversion of capital assets, and any other payments, including personal property, money and credits on deposit with or in the possession of, or made by any person, private entity, federal or state government, any unit of local government, school district or any entity created by public act. However, for the purposes of income withholding, income excludes:
- (a) Any amount required by law or as a condition of employment to be withheld, other than creditor claims, including federal, state, and local taxes, social security and other retirement contributions;
- (b) Any amount exempted by federal law; and
- (c) Public assistance payments;
- (9) "Need," the necessary costs of food, clothing, shelter, education, and medical care for the support of a dependent child;
- (10) "Obligee," any person or entity to whom a duty of support is owed;
- (11) "Obligor," any person who owes a duty to make payments under an order for support;
- (12) "Order for support," a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, which provides for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or of the parent with whom the

child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include costs and fees, interest and penalties, income withholding, attorney's fees, and other relief;

(13) "Parent," the natural parent, adoptive parent, or stepparent of a dependent child;

(14) "Payor," any person or other entity owing income or having personal property or money and credits belonging to an obligor;

(15) "Person," a natural person, firm, limited liability company, corporation, association, political subdivision, or agency of government;

(16) "Secretary," the secretary of social services;

(17) "Spouse," any parent who has legal custody of a child in accordance with a court or administrative order;

(18) "Standard of need," the need established by the Department of Social Services;

(19) "Support enforcement services," establishing and enforcing support obligations, locating support obligors, and establishing paternity under the Title IV-D state plan;

(20) "Title IV-D agency," the agency established by Part D of Title IV of the Social Security Act (42 U.S.C. §§ 651 to 667) for the purpose of administering the state's plan for establishing and enforcing support obligations, locating support obligors, and establishing paternity;

(21) "Medical support," the provision of a health insurance benefit plan, including any employer sponsored group health plan or self-insured plan, or any individual health insurance policy, to meet the medical needs of a dependent child including the cost of any premium required by such a health insurance benefit plan;

(22) "Business day," a day on which state offices are open for regular business;

(23) "Employee," any person who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986, 26 U.S.C. § 3401-3406, as of January 1, 1997;

(24) "Employer," any person or entity who is an employer as defined in section 3401(d) of the Internal Revenue Code of 1986, 26 U.S.C. § 3401-3406, as of January 1, 1997, and includes any governmental entity and any labor organization;

(25) "Labor organization," the meaning given the term in section 2(5) of the National Labor Relations Act, 29 U.S.C. § 151 et seq., as of January 1, 1997, and includes any entity or hiring hall which is used by the organization and an employer to carry out the requirements described in section 8(f)(3) of the act;

(26) "Date of hire," the date a person is added to an employer's payroll to provide services to the employer, or the date a person actually provides services for an employer, whichever occurs earlier;

(27) "Newly hired employee" or "new hire," any person hired to provide services for an employer and required to provide an Internal Revenue Service W-4 form to the employer, including a person who is rehired, reemployed, or reinstated

following thirty consecutive days of termination or layoff even if the person does not provide a new or revised W-4 form to the employer;

(28) "Recreational or sporting license," any state issued hunting or fishing license.

25-7A-4. Statement required of certain parents. Upon demand by the Department of Social Services, any parent in the state, whose absence from the home is the basis upon which the department is paying public assistance on behalf of a dependent child, shall complete a statement, under oath, of his current monthly income, his total income over the past thirty-six months, the number of dependents he is supporting, the amount he is contributing regularly toward the support of all children for whom application for assistance is made, his current monthly living expenses, and all other pertinent information to determine his ability to support his children. This section also applies to a parent who owes support to an obligee who has applied for support enforcement services, and to both obligor and obligee in a petition for modification filed pursuant to § 25-7A-22.

25-7A-5. Notice of support debt--Service on parent--Contents of notice. The secretary of social services may initiate an action for support by issuing a notice of a support debt, which shall be served without summons or other pleadings on the alleged responsible parent in the manner provided for service of a summons in a civil action or by certified mail, return receipt requested. The notice, whether based on subrogation power of attorney, assignment of a support obligation established by a court, administrative order or judgment or based on the furnishing of assistance by the Department of Social Services for any dependent child or spouse, or based on the obligation fixed by chapter 25-7, or support due to an obligee or another state who has applied for support enforcement services, shall contain the following statements:

(1) The name of the dependent child or spouse for whom support is owed;

(2) The monthly support for which the parent is responsible, including a statement of the debt accrued and accruing, and the monthly payment to be made on the state debt accrued, or due to an obligee or another state who has applied for support enforcement services, as established by:

(a) Subrogation to or assignment of a court or administrative order, judgment or decree establishing a set or determinable amount of child or spousal support; or

(b) Payment of assistance by the department for a dependent child or spouse where there is no court or administrative order, judgment or decree;

(3) A statement that if the parent does not request a hearing within ten days from the day of service, the secretary:

(a) Will request the court enter an order establishing the amount of child support, accrued and accruing, which the parent is responsible for and the amount of the total monthly payment due on the accrued debt to the state, or to an obligee or another state who has applied for support enforcement services, and on the monthly support obligation;

(b) May request that the court enter an order for health insurance coverage;

(c) May request that the court enter an order for genetic testing costs; and

- (d) May request that the court enter an order adjudicating paternity and custody of the child;
- (4) A statement that the parent served with a notice of support debt may, within ten days of the day of service of the notice of support debt, submit a written response to the notice objecting to all or any part of the notice and requesting a hearing;
- (5) A statement that an order entered under subdivision (3) of this section, establishing the payment obligation of the parent is subject to collection action, including an order for income withholding under this chapter, levy and execution under the laws of this state or any other collection actions authorized by law;
- (6) A reference to this chapter;
- (7) A statement that an order for support entered under this chapter is filed with the appropriate clerk of courts and is a lien as provided by law;
- (8) A statement that if the parent has any questions he may telephone or visit the nearest department office or consult an attorney;
- (9) A statement that the parent has an obligation to report any change of address or employment to the department; and
- (10) Any other information the secretary finds appropriate.

25-7A-6. Hearing requested by parent--Hearing before referee--Referee's report--Filing objections to report--Hearing on report--Order of court--Service of order by mail--Objection to modification without hearing. If a parent served with a notice of support debt under § 25-7A-5 makes a timely request for a hearing, the secretary of social services shall file the notice of support debt, proof of service thereof, and response thereto in the office of the clerk of the circuit court in the county of residence of that parent. The matter shall be set for hearing before a referee who is a member in good standing of the State Bar Association and is appointed by the court, pursuant to statute, and after due notice to all parties by first class mail. The referee shall make a report to the court, recommending the amount of the debt due to the state, if any, and the monthly support obligation of the parent and the arrearage debt due to the obligee or another state who has applied for support enforcement services, or for health insurance coverage or genetic testing costs.

The referee shall file the report with the court and cause copies thereof to be served by mailing to the parties and the secretary. Any party shall have ten days from the date of service of the report in which to file objections to the report. If no objection is filed, the circuit court may thereafter, and without further notice, enter its order. If any objection is filed, the circuit court shall fix a date for hearing on the report, the hearing to be solely on the record established before the referee. The circuit court may thereafter adopt the referee's report, or may modify it, or may reject and remand it with instructions or for further hearing. The secretary shall serve the parent the court's order by certified mail, return receipt requested, at the parent's last known address, and shall file proof of service.

If the circuit court's order modifies the referee's report and no hearing was held before the court before entry of its order, any party has ten days from the date of service of the order in which to file an objection to that modification. If an objection is filed, the circuit court shall fix a date for hearing on the objection and after the hearing shall enter its order.

The secretary shall serve the order by certified mail, return receipt requested, at the parent's last known address, and shall file proof of service.

25-7A-14. Interest on support debt or judgment. The Department of Social Services or any support obligee may collect interest on the unpaid principal balance of a support debt or judgment for support at the Category D rate of interest as established in § 54-3-16.

25-7A-15. Payor holding amount in excess of debt--Release of excess to obligor. If any payor has income, deposits, accounts, or balances in excess of the amount of the debt claimed by the Department of Social Services or any support obligee, the payor may, without liability under this chapter, release the excess to the obligor.

25-7A-16. Grounds for release of lien. The secretary of social services may release and satisfy a lien on all or part of the property or income of the obligor or return seized property or income without liability, if assurance of payment is adequate, if the action facilitates the collection of the debt, or if the obligor provides surety satisfactory to the secretary. The release or satisfaction does not operate to prevent future action to collect from the same or other property or income of the obligor.

25-7A-17. Agreement between parents relieving duty of support--Rights of department or support obligee not terminated. An agreement between parents or other responsible persons relieving a party of any duty of support or responsibility or purporting to settle past, present, or future support obligations as settlement or prepayment may not act to reduce or terminate any rights of the Department of Social Services or any support obligee to recover from parents or other responsible persons for support provided, unless the department or any support obligee has consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction.

25-7A-20. Enforcement of spousal support obligation. The department shall enforce the support obligation due to a spouse or former spouse who is living with his child, but only if a support obligation has been established for the spouse and the child support obligation is being enforced.

25-7A-21. Judgment for arrearage due obligee in absence of court order. The secretary of social services may, in the absence of a court order, initiate an action pursuant to the provisions of this chapter to establish a current monthly child support obligation and obtain a judgment for arrearage which is due to an obligee who is not receiving public assistance, but who has applied for support enforcement services, or upon request of the Title IV-D agency of another state for support enforcement services.

25-7A-22. Modification of child support--Hearing before referee--Referee's report-- Objections--Service of court order--Objection to modification without hearing. If the support order was entered in this state and this state maintains continuing exclusive jurisdiction over the support order in accordance with chapter 25-9B, or if the support order was registered in this state and the requirements of § 25-9B-611 or 25-9B-613 are satisfied, an obligor, an obligee, or the assignee may file a petition, on forms prescribed by the department, to increase or decrease child support. For any support order entered or modified after July 1, 1997:

(1) The order may be modified upon showing a substantial change in circumstances if the petition is filed within three years of the date of the order; or

(2) The order may be modified without showing any change in circumstances if the petition is filed after three years of the date of the order.

If a petition is filed, the secretary of social services shall file the petition in the office of the clerk of the circuit court where the original order for support is filed. Any response shall also be provided to the petitioning party. The matter shall be set for hearing before a referee who is a member in good standing of the State Bar Association and is appointed by the court, pursuant to statute, and after due notice to all parties by first class mail. The referee shall make a report to the court, recommending the amount of the monthly support obligation of the parent or for health insurance coverage.

The referee shall file the report with the court and cause copies thereof to be served by mailing to the parties and the secretary. Any party shall have ten days from the date of service of the report in which to file objections to the report. If no objection is filed, the circuit court may thereafter, and without further notice, enter its order. If any objection is filed, the circuit court shall fix a date for hearing on the report, the hearing to be solely on the record established before the referee. The circuit court may thereafter adopt the referee's report, or may modify it, or may reject and remand it with instructions or for further hearing. The secretary shall serve the parent the court's order by certified mail, return receipt requested, at the parent's last known address, and shall file proof of service.

If the circuit court's order modifies the referee's report and no hearing was held before the circuit court before entry of its order, any party has ten days from the date of service of the order in which to file an objection to that modification. If an objection is filed, the circuit court shall fix a date for hearing on the objection and after the hearing shall enter its order. The secretary shall serve the order by certified mail, return receipt requested, at the parent's last known address, and shall file proof of service.

25-7A-23. Order for withholding of income or property--Written agreement in lieu of order. Upon entry or modification of any order for support, an order for withholding of income or property shall be entered, which shall take effect immediately, unless the obligor or obligee demonstrates, and the court finds, that there is good cause not to require immediate income withholding or if the parties make a written agreement which provides for an alternative arrangement approved by the court. The department may also enter into a written agreement that provides for an alternative payment arrangement in lieu of issuing an order for withholding of income or property as provided in this section. If immediate income withholding is not required, withholding shall take effect if the obligor becomes delinquent in paying any part of the order for support, or upon the date the obligor requests withholding of income, whichever first occurs.

25-7A-24. Order for withholding of income served upon obligor where delinquent or support arrearage owed. If an order for support does not contain a provision for immediate withholding of income or property and an obligor becomes delinquent in any part of the payment of support obligations pursuant to the order for support, or an arrearage exists, the department shall prepare and serve an order for withholding of income on the payor as provided by § 25-7A-30. The department shall also advise the obligor of the procedures to contest the withholding.

25-7A-26. Petition to stay service of order for withholding--Grounds. The obligor may contest the order for withholding of income by filing a written request for administrative review with the department within ten days after service of the order. The grounds for contesting the withholding shall be limited to:

(1) A dispute concerning the existence or amount of the order for support or delinquency or arrearage; or

(2) The proper identity of the obligor.

The department may adopt rules pursuant to chapter 1-26 to implement the provisions of this section.

25-7A-32. Amount withheld for support and arrearage. The amount actually withheld for support and arrearage may not be in excess of fifty percent of wages, salaries, commissions, bonuses, compensation as an independent contractor, workers compensation, unemployment compensation, or disability benefits. However, the total amount of arrearage may be withheld from personal property, money, and credits, or other income not otherwise exempt herein.

25-7A-38. Modification, suspension or termination of order for withholding. At any time, either upon petition of an obligor or obligee and hearing thereon, or without petition, the department may:

(1) Modify, suspend, or terminate the order for withholding because of a modification, suspension, or termination of the underlying order for support or arrearage judgment;

(2) Reduce the amount of income to be withheld to reflect payment in full of the arrearage by income withholding or otherwise;

(3) Suspend the order for withholding because of inability to deliver income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery; or

(4) Terminate the order for withholding if no current support obligation is due and the arrearage has been paid.

25-7A-42. Notice of new payor to department by obligee--Violation as misdemeanor. Any obligor whose income is being withheld or who has been served with a notice of delinquency pursuant to this chapter shall notify the department of any new payor within seven days. A violation of this section is a Class 2 misdemeanor.

25-7A-43. Notice of other support payments to department by obligee. Any obligee shall provide notice to the department of any other support payment made, including but not limited to a set-off under federal and state law or partial payment of the delinquency.

25-7A-56. Prohibition against issuance or renewal of professional license, registration, certification, or permit of applicant in child support arrearage--Adoption of rules by state agencies. A state agency or board may not issue or renew the professional, sporting, or recreational license, registration, certification, or permit of any applicant after receiving notice from the Department of Social Services that the applicant has support arrearages in the sum of one thousand dollars or more, unless the applicant first makes satisfactory arrangements with the Department of Social Services for payment of any accumulated arrearages. An applicant who disputes a determination by the Department of Social Services that the applicant has support arrearages of one thousand dollars or more shall, upon request, be given a due process hearing by the department. Upon recommendation by the department, the licensing agency or board may issue a temporary license, registration, certification, or permit to the applicant pending final resolution of the due process hearing. The department may promulgate rules pursuant to chapter 1-26 to implement the provisions of this section.

The term professional license, registration, certification, or permit as specified by this section includes appraisers as specified in chapter 36-21B; abstractors as specified in chapter 36-13; accountants as specified in chapter 36-20A;

barbers as specified in chapter 36-14; chiropractors as specified in chapter 36-5; cosmetologists as specified in chapter 36-15; counselors as specified in chapter 36-32; dentists and dental hygienists as specified in chapter 36-6A; electricians as specified in chapter 36-16; engineers, architects, and surveyors as specified in chapter 36-18; embalmers and funeral directors as specified in chapter 36-19; nurses as specified in chapter 36-9; nurse practitioners and nurse mid-wives as specified in chapter 36-9A; physical therapists as specified in chapter 36-10; medical assistants as specified in chapter 36-9B; hearing aid dispensers as specified in chapter 36-24; physicians and surgeons as specified in chapter 36-4; physician's assistants as specified in chapter 36-4A; advanced life support personnel as specified in chapter 36-4B; nursing facility administrators as specified in chapter 36-28; optometrists as specified in chapter 36-7; pharmacists as specified in chapter 36-11; plumbers as specified in chapter 36-25; podiatrists as specified in chapter 36-8; psychologists as specified in chapter 36-27A; real estate brokers and salesmen as specified in chapter 36-21A; social workers as specified in chapter 36-26; veterinarians as specified in chapter 36-12; insurance brokers, agents, and solicitors as specified in chapter 58-30; teachers and administrators as specified in chapters 13-42 and 13-43; attorneys as specified in chapter 16-16; securities agents, securities brokers, investment advisers, or investment adviser representatives as specified in chapter 47-31B; pilots as specified in chapter 50-11; day care providers as specified in chapter 26-6; gaming employees as specified in chapter 42-7B; and law enforcement officers as specified in chapter 23-3. The state agencies or boards which govern the professions, recreational licenses, and occupations listed in this paragraph may adopt rules pursuant to chapter 1-26 to implement the provisions of this section for their particular profession or occupation.

25-7A-56.1. Revocation, suspension, or restriction of licenses of child support obligors. A circuit court may revoke, suspend, or restrict a person's drivers, professional, occupational, sporting, or recreational license if the person owes past-due support, or if the person, after receiving appropriate notice, fails to comply with a subpoena or warrant relating to a paternity or child support proceeding.

25-7A-56.10. Garnishment of unemployment benefits. Upon receiving notice from the Department of Social Services that a person owes child support, the Department of Labor shall immediately withhold funds from the person's unemployment insurance benefits and forward the withheld amounts to the Department of Social Services. The Department of Labor shall withhold the amount as designated by the Department of Social Services except that the amount actually withheld may not be in excess of fifty percent of the person's benefits. The person shall also be notified that the person may contest the withholding by filing a written request for administrative review with the Department of Social Services in accordance with § 25-7A-26.

25-7A-57. Award of attorney fees and costs in child support modification hearings. In any hearing for modification of support, the referee may recommend the imposition of attorney fees and costs. If the referee determines that the filing is frivolous or vexatious, the referee may also recommend the imposition of any additional costs incurred by the innocent parent including lost wages, travel expenses, and the cost of the referee.

25-7A-58. Health insurance for dependent child. If an order for support requires a parent of a dependent child to provide health insurance coverage for that child, any insurer subject to chapter 58-33 and who is engaged in the business of health insurance as well as any employer or union who provides family health insurance coverage to its employees or members, upon receiving written notice of such order and an application from either the noncustodial parent, custodial parent, or the department, or upon receiving a national medical support notice from any Title IV-D agency, is required to allow enrollment of such dependent child without regard to any applicable enrollment season restrictions and without being subject to underwriting restrictions or exclusionary riders. The insurer or plan administrator shall also complete the applicable sections of the national medical support notice within forty business days of the date of the notice and forward the notice to any person or entity specified in the notice. No insurer, employer, or union providing family health insurance

benefit plans as set out in this section may eliminate or cancel the ordered medical support coverage for the dependent child unless it is provided evidence that:

- (1) The original court or administrative order is no longer in effect;
- (2) The dependent child is or will be enrolled in comparable health insurance coverage through another insurer or employer and which coverage will take effect not later than the effective date of the elimination or cancellation of the previous health insurance coverage;
- (3) As an employer or union, and not a health insurer subject to the provisions of this section, who previously provided family health insurance benefit coverage to its employees or members, the employer or union has eliminated family health insurance coverage to all of its employees or members; or
- (4) Any available continuation coverage is not elected, or the period of such coverage has expired.

Optional or supplementary coverages are not required to be included in the medical support health insurance coverage unless specifically required by the order for support. Any person or insurer who fails to comply with this section is, in addition to any other penalties permitted by law, subject to the enforcement and penalty provisions of Title 58.

Any employer who intentionally fails to comply with any duties imposed by this section commits a petty offense.

25-7A-60. Garnishment of wages for expenditure made by state for dependent child under the medical assistance program. The Department of Social Services may garnish wages, salary, earnings, or other employment income of the obligor, pursuant to the provisions of chapter 21-18 or applicable provisions of this chapter, to reimburse the state for any expenditures made on behalf of a dependent child under the medical assistance program as provided by Title XIX of the Social Security Act as amended to January 1, 1994, in order to recover any money received by the obligor from third-party liability sources which are necessary to reimburse either the custodial parent or the provider of the medical services for expenditures made or services rendered on behalf of a dependent child for covered medical services under the obligor's group or private family health insurance plan. Any claims for current or past-due child support obligations shall have priority over claims for expenditures made under the Title XIX medical assistance program as set out in this section.

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.