

# House Research Act Summary

**CHAPTER:** 280

**SESSION:** 2006 Regular Session

**TOPIC:** Family law

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## Overview

This act modifies provisions of child support and family law.

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- 1** **Notification of residence with certain convicted persons.** Adds § 257.026. Provides that a person granted or exercising custody of a child or parenting time with a child under this chapter or chapter 518, must notify the child's other parent, the county social service agency, and the court if the person knowingly marries or lives with a person who has been convicted of a crime listed in section 518.179, subdivision 2.
- 2** **Presumption.** Amends § 257.55, subd. 1. Strikes the clause regarding statistical probability of paternity.
- 3** **Actions under other paragraphs of section 257.55, subdivision 1.** Amends § 257.55, subd. 2. Corrects cross-references. Adds the presumption contained in section 257.55, subdivision 1.
- 4** **Positive test results.** Amends § 257.62, subd. 5. Inserts clarifying language. Adds that a determination under this subdivision that the alleged father is the biological father does not preclude the adjudication of another man as the legal father nor does it allow the donor of genetic material to claim to be the child's biological or legal parent.
- 5** **Interested third party; burden of proof; factors.** Amends § 257C.03, subd. 7. Adds to the factors considered when a person claims to be an interested third party that the person must show by clear and convincing evidence that granting the petition would not violate section 518.179, subdivision 1a.
- 6** **Withdrawal of consent.** Amends §259.24, subd. 6a. Adds that a consent to adopt executed

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under section 260C.201, subdivision 11, is irrevocable upon notice to both parents of the effect of the consent to adopt and acceptance by the court unless the court enters written findings the consent was obtained by fraud.

- 7 **Communication or contact agreements.** Amends § 259.58. Adds that for children under state guardianship when there is a written communication or contact agreement between the prospective adoptive parents and birth relatives, other than the birth parents, it must be included in the final adoption decree unless the parties agree to omit it. Provides that in cases of noncompliance with the agreement the court shall determine the terms of the agreement.
- 8 **Referees; appeal.** Amends § 484.65, subd. 9. Strikes the requirements for requesting a district court judge's review of a referee's recommended order or finding, making confirmation by a district court judge mandatory. Adds that 4<sup>th</sup> District Family Court referee orders and decrees may be appealed directly to the Court of Appeals in the same manner as judicial orders or decrees. States that this section is effective the day following final enactment.
- 9 **Filing fee.** Amends Minn. Stat. § 518.005, subd. 6. States that the \$50 filing surcharge fee for marriage dissolutions applies to the first paper filed for a party, rather than the initial pleading. Effective date is July 1, 2006.
- 10 **Moving child to another state.** Amends § 518.1705, subd. 7. Provides that parents may agree upon the legal standard that will govern the decision concerning removal of a child's residence from the state.
- 11 **General.** Amends § 518.175, subd. 1. Amends the parenting time statute to provide that in the absence of other evidence, there is a rebuttable presumption that a parent is entitled to at least 25 percent parenting time for the child. Adds that the percentage of parenting time may be determined by calculating the number of overnights a child spends with a parent or by another method if the parent has significant time with the child on separate days but the child does not stay overnight. Allows the court to consider the age of the child in making this determination.
- 12 This section is identical to section 11.
- 13 **Move to another state.** Amends § 518.175, subd. 3. Adds that the court shall apply the best interest factors when considering the request of the parent with whom the child resides to move the child's residence to another state. Provides that the burden of proof is on the parent requesting the move, unless the court finds the parent requesting permission to move is the victim of domestic abuse by the other parent, then the burden is on the parent opposing the move.
- 14 **Modification of order.** Amends § 518.18. Adds that the court may modify a prior custody order if the court has previously denied a request by the primary custodial parent to move the residence of the child to another state, and the primary custodial parent has relocated to another state despite the court's order.
- 15 **Scope, payment to public authority.** Amends § 518.551 by adding subd. 1a. Paragraph (a). Provides that this section applies to all proceedings involving a support order.

Paragraph (b). Requires the court to direct all support and maintenance payments to be made to the public agency as long as the obligee is receiving or has applied for public assistance, or has applied for child support or maintenance collection services.

Paragraph (c). States that payments made to the public authority, other than those made

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under section 518.6111 (income withholding) must be credited as of the date the payment is received by the central collection unit.

Paragraph (d). Provides that monthly amounts received by the public agency from the obligor that are greater than the amount of public assistance granted to the obligee must be remitted to the obligee.

- 16** **Failure of notice.** Amends § 518.551, subd. 6. Updates cross-reference.
- 17** **Contents of pleadings.** Amends § 518.5513, subd. 3. Updates cross-references.
- 18** **Pension plans.** Amends § 518.58, subd. 4. Adds the words "defined benefit."
- 19** **Potential income.** Adds § 518.7124. Moves the language defining "potential income" from the definitions contained in Laws 2005, chapter 164, section 5.
- 20** **[518.1781] Six-month review.** Amends Laws 2005, ch. 164, § 4. Clarifies that a six-month review can be requested only when a decree or order is signed on or after January 1, 2007.
- 21** **Definitions.** Amends Laws 2005, ch. 164, § 5.
- Adds in section 518.54, subdivision 4a, that a support order includes maintenance of a spouse or former spouse.
  - Modifies the definition of "obligor" contained in subdivision 8. Adds a reference to the parenting expense adjustment section that applies where parenting time is presumed equal, where the parent with primary physical custody could be an obligor depending on the relative incomes of the parties. Strikes language regarding cost-of-living adjustments related to medical support orders.
  - Makes technical changes in the definition of "parental income for child support" in subdivision 15.
  - Amends the definition of "basic support" in subdivision 17 by including a cross-reference to the statute dealing with computation of basic support, rather than restating part of the computation in the definition.
  - Amends the definition of "gross income" by striking language that appears in section 518.7123, dealing with the calculation of gross income.
  - Makes stylistic changes to definitions of "joint child" and "nonjoint child."
  - Strikes definition of "parenting time" which is moved to the parenting expense adjustment in section 40 of the act.
  - Strikes definition of "potential income," which has been replaced by the language in section 19 of the act.
  - Amends and clarifies the definition of "Social Security benefits."
  - Strikes the definition of "split custody" because the term is never used.

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- 22** **Providing income information.** Amends Laws 2005, ch. 164, § 8. Paragraph (a). Adds a cross-reference. Adds that the commissioner of human services is to prepare a financial affidavit form that must be used by the parties for disclosing financial information.
- Paragraph (c). Updates a cross-reference. Adds that the financial affidavit is to be served and filed with initial motion documents. Adds that the court may consider credible evidence from one party that the other party's financial affidavit is false or inaccurate.
- Adds paragraph (d). Provides that if the court determines a party does not have access to documents that are required to be disclosed, the court may consider testimony of that party as credible evidence of that party's income.
- 23** **Modification.** Amends § 518.64, subd. 2. Paragraph (a). Addresses an ambiguity in the standards governing modification of support or maintenance orders by requiring a showing that the change makes the terms of a current order unreasonable or unfair in all cases, except when an order is modified because of emancipation of a child. The current requirement appears in the middle of a series of clauses.
- Paragraph (b). Addresses situations where modification is allowed if the current support order is less than \$75.
- Paragraph (j). Adds that existing orders may be modified during the first year following the effective date of the new law when a parent or other caregiver of a child begins to receive public assistance; when there are changes in child care expenses; or when there are changes in health care coverage availability. Deletes the requirement that this paragraph expires January 1, 2008.
- 24** **Child care exception.** Amends Laws 2005, ch. 164, § 11. Adds that child care support must be based on actual child care expenses. Makes stylistic changes.
- 25** **[518.7123] Calculation of gross income.** Amends Laws 2005, ch. 164, § 14. Paragraph (a). Makes stylistic changes. Deletes from gross income advances, bonuses, dividends, severance pay, interest, honoraria, trust income, return on capital, Social Security benefits, gifts, and prizes. Adds military and naval retirement benefits, Social Security benefits received for a joint child, and potential income.
- Clarifies that gross income is the amount before participation in an employer-sponsored benefit plan that allows an employee to pay for a benefit or expense using pretax dollars, such as flexible spending plans and health savings accounts.
- Paragraph (b). Adds that gross income does not include compensation paid for employment in excess of a 40-hour work week, provided the party demonstrates and the court finds the excess employment began after filing the petition for legal separation or the petition related to custody, parenting time, or support.
- Paragraph (e). Makes stylistic changes.
- Paragraph (f). Makes stylistic changes.
- Paragraph (g). Adds that court ordered child support for a nonjoint child or spousal

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maintenance are deducted for purposes of determining gross income.

- 26 Paragraph (h). Adds that gross income does not include public assistance benefits received.  
**[518.7125] Income from self-employment or operation of a business.** Amends Laws 2005, ch. 164, § 15. Deletes rent and royalties from gross receipts.

- 27 Adds that the person seeking to deduct an expense, including depreciation, has the burden of proving that it is ordinary and necessary.  
**[518.713] Computation of child support obligations.** Amends Laws 2005, ch. 164, § 16. Technical and clarifying amendments are included, in particular specifying calculations that apply to both parents versus calculations that apply only to the obligor. Corrects cross-references and strikes redundant cross-references.

- 28 Adds that the calculations of the basic support obligation and a determination of which parent is the obligor, as contained in section 518.722, parenting expense adjustment, apply if the parenting time of the parties is presumed equal.  
**General factors.** Amends Laws 2005, ch. 164, § 17, subd. 1. Makes technical and clarifying changes to the statute dealing with the general factors for deviation from the child support guidelines.

- 29 **[518.715] Written findings.** Amends Laws 2005, ch. 164, § 18.

**Subd. 1. No deviation.** Adds that if the court does not deviate from the presumptive support obligation under section 518.713, the court must make written findings that state each parent's gross income and each parent's PICS.

**Subd. 2. Deviation.** Adds that if the court deviates from the presumptive child support obligation computed under section 518.713, the written findings must include each parent's gross income and each parent's PICS. Makes stylistic changes.

**Subd. 3. Written findings in every case.** References section 518.713. Makes stylistic changes.

- 30 **[518.717] Deduction from income for nonjoint children.** Amends Laws 2005, ch. 164, § 20. Allows a parent a deduction from income if the parent has a nonjoint child who primarily resides in the parent's household, and the parent is not obligated to pay child support to the other parent or legal custodian of the child under an existing child support order.
- 31 **[518.718] Social Security or veteran's benefit payments received on behalf of the child.** Amends Laws 2005, ch. 164, § 21. Amends the statute addressing Social Security or veteran's benefit payments.
- 32 **Order.** Amends Laws 2005, ch. 164, § 22, subd. 2. Amends the health care obligation order requirements by striking language referring to a cost of living adjustment.
- 33 **Determining appropriate health care coverage.** Amends Laws 2005, ch. 164, § 22, subd. 3. Clarifies language regarding a determination of appropriate health care coverage. Changes "party" to "parent."
- 34 **Ordering health care coverage.** Amends Laws 2005, ch. 164, § 22, subd. 4. Strikes language providing that a presumption of no less than \$50 per month must be applied to actual health care costs of joint children or to the cost of health care coverage. Changes

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"party" and "parties" to "parent" and "parents."

- 35** **Offset.** Amends Laws 2005, ch. 164, § 22, subd. 16. States that if a party does not request a hearing, the public authority administratively can remove the offset if the child's health care coverage is terminated; when the party does not enroll the child in other health coverage; and when a modification motion is not pending. Makes stylistic changes.
- 36** **Collecting unreimbursed or uninsured medical expenses.** Amends Laws 2005, ch. 164, § 22, subd. 17. Clarifies language and process of collecting unreimbursed or uninsured medical expenses.

Paragraph (a). Adds that this subdivision and subdivision 18 apply when there is a court order that has apportioned contributions for unreimbursed or uninsured medical expenses.

Paragraph (b). Adds that if a court order has been signed apportioning expenses, a two-year limitation provision must be applied to any requests made on or after January 1, 2007. States that this applies retroactively to orders signed prior to January 1, 2007. Provides that requests made after January 1, 2007, may include expenses going back no further than January 1, 2005.

Paragraph (f). Adds that if the other party does not respond to the request for reimbursement within 30 days, the requesting party may commence enforcement under subdivision 18; file a motion for court-ordered monthly payment; or notify the public authority, if the public authority provides services.

- 37** **Enforcing unreimbursed or uninsured medical expenses as arrears.** Amends Laws 2005, ch. 164, § 22, subd. 18. Paragraph (a). Clarifies that unreimbursed or uninsured medical expenses are collected as arrears.

Paragraph (b). Adds that if the liable party is the parent with primary physical custody, the unreimbursed or uninsured medical expenses must be deducted from any arrears the requesting party owes. If unreimbursed or uninsured medical expenses remain after the deduction, this paragraph provides the manner in which the expenses must be collected.

Paragraph (c). Adds that if the liable party is not the parent with primary physical custody, the unreimbursed or uninsured medical expenses must be deducted from any arrears the requesting party owes the liable party. If unreimbursed expenses remain after the deduction, the expenses must be added and collected as arrears.

- 38** **Child care costs.** Amends Laws 2005, ch. 164, § 23, subd. 1. Substitutes "PICS" for "parental income for child support."
- 39** **Low-income obligor.** Amends Laws 2005, ch. 164, § 23, subd. 2. Substitutes "PICS" for "parental income for child support."
- 40** **[518.722] Parenting expense adjustment.** Amends Laws 2005, ch. 164, § 24.

**Subd. 1. General.** Adds the definition of "parenting time" to this section.

**Subd. 2. Calculation of parenting expense adjustment.** Instructs the court to find the adjustment percentage corresponding to the percentage of parenting time allowed the obligor from the table, multiply the adjustment percentage by the obligor's basic child support obligation, and subtract the parenting expense adjustment from the

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obligor's basic child support obligation to obtain the obligor's basic support obligation after parenting expense adjustment.

**Subd. 3. Calculation of basic support when parenting time presumed equal.**

Paragraph (a). Provides that if parenting time is equal, and parental incomes for determining child support are equal, no basic support shall be paid unless the court finds that the expenses for the child are not equally shared.

Paragraph (b). Provides that if parenting time is equal, but parental incomes for determining child support are not equal, the parent having the greater income shall be obligated for basic child support calculated as follows: multiply basic support calculated under section 518.713 by 0.75; prorate this amount between the parents based on each parent's proportionate share of the combined PICS; and subtract the lower amount from the higher amount. The resulting figure is the obligation.

Strikes language that is relocated to other parts of this act.

- 41 Ability to pay; self-support adjustment.** Amends Laws 2005, ch. 164, § 25. Makes stylistic changes. Provides calculations.

**Subd. 1. Ability to pay.** Maintains calculation regarding the self support reserve.

Adds that if the obligor's income available for support is equal to or greater than the obligor's support obligation, the court shall order child support under section 518.713. Adds that if the obligor's income available for support is more than the minimum support amount under subdivision 2, but less than the guideline amount, the court shall apply a reduction to the child support obligation until the support order is equal to the obligor's income available for support. Specifies the order in which support obligations are to be paid. Adds that if the obligor's income available for support is equal to or less than the minimum support amount under subdivision 2 or if the obligor's gross income is less than 120 percent of the federal poverty guidelines for one person, the minimum support amount under subdivision 2 applies.

**Subd. 2. Minimum basic support amount.** Makes stylistic and technical changes.

**Subd. 3. Exception.** Adds that this section does not apply to an obligor who is incarcerated.

- 42 Basic support; guidelines.** Amends Laws 2005, ch. 164, § 26, subd. 2, as amended by Laws 2005, 1<sup>st</sup> Spec. Sess. ch. 7, § 27. Revises the support guidelines.
- 43 Repealer.** Amends Laws 2005, ch. 164, § 31. Deletes section 518.54, subdivisions 2, 4, and 4a from the repealer.
- 44 Effective date.** Amends Laws 2005, ch. 164, § 32. Adds that the provisions of this act apply to all support orders in effect prior to January 1, 2007, except that the provisions used to calculate parties' support obligations apply to actions or motions filed after January 1, 2007. Adds that provisions of this act used to calculate parties' support obligations apply to actions or motions for past support or reimbursement filed after January 1, 2007.
- 45 Effective date.** Amends 2006 H.F. No. 2656, article 5, section 48, the effective date if enacted. Changes the effective date of July 1, 2006, to August 1, 2006, for protective orders issued by a tribal court in Minnesota and August 1, 2007, for all other foreign protective

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orders.

- 46** **Revisor's instruction.** Instructs the revisor to change cross-references in Minnesota Statutes from section 518.171 to 518.179.
- 47** **Repealer.** Repeals Minnesota Statutes 2004, section 518.54, subdivision 6; and Laws 2005, chapter 164, section 12.