

New Hampshire Divorce Laws

TITLE XLIII DOMESTIC RELATIONS

CHAPTER 457 MARRIAGES

457:5-a Petition for Annulment; Orders by Court. –

In the event a petition for annulment is filed by the parent or guardian of a minor, as provided in RSA 457:5, the superior court is hereby authorized to make such orders as in the discretion of the court will protect the interest of the minor child, including but not limited to orders directing the minor child to return to its parents or guardian and such orders may be issued ex parte. The party against whom the orders are issued may file a written request with the clerk of the superior court and request a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk. The request shall be filed with the clerk of court for the county in which the petition of annulment is filed.

CHAPTER 458 ANNULMENT, DIVORCE AND SEPARATION

Void Marriages

458:1 Without Decree. –

All marriages prohibited by law on account of the consanguinity or affinity of the parties, or where either has a former wife or husband living, knowing such wife or husband to be alive and knowing that their marriage had not been legally dissolved, if solemnized in this state, shall be absolutely void without any legal process.

458:2 Petitions. –

If any doubt exists whether any marriage is void, or as to the effect of any former decree of divorce or nullity between the parties, a petition may be filed as in other cases, and a decree of divorce or nullity may be made.

458:3 Jurisdiction. –

In any proceedings for annulment for any cause whether under statute or under common law, the court shall have jurisdiction to declare an annulment of a marriage entered into in this state even though neither party has been at any time a resident herein.

Jurisdiction to Grant Divorce

458:4 Limitation. –

The jurisdiction of the court to grant divorce is limited to cases where there is jurisdiction over the parties and of the alleged cause as defined in RSA 458:5 and 458:6.

458:5 Over Parties. –

Jurisdiction of the parties exists in the following cases only:

- I. Where both parties were domiciled in the state when the action was commenced.
- II. Where the plaintiff was so domiciled and the defendant was personally served with process within the state.
- III. Where the plaintiff was domiciled in the state for one year next preceding the time when the action was commenced.

Where the domiciled plaintiff has filed a petition, the non-domiciled defendant may have affirmative relief upon filing a cross petition.

458:6 Over Cause of Action. –

Jurisdiction of the cause for divorce exists when it wholly arose or accrued while the plaintiff was domiciled in the state, and not otherwise.

Causes for Divorce

458:7 Absolute Divorce, Generally. –

A divorce from the bonds of matrimony shall be decreed in favor of the innocent party for any of the following causes:

- I. Impotency of either party.
- II. Adultery of either party.
- III. Extreme cruelty of either party to the other.
- IV. Conviction of either party, in any state or federal district, of a crime punishable with imprisonment for more than one year and actual imprisonment under such conviction.
- V. When either party has so treated the other as seriously to injure health or endanger reason.
- VI. When either party has been absent 2 years together, and has not been heard of.
- VII. When either party is an habitual drunkard, and has been such for 2 years together.
- VIII. When either party has joined any religious sect or society which professes to believe the relation of husband and wife unlawful, and has refused to cohabit with the other for 6 months together.
- IX. When either party, without sufficient cause, and without the consent of the other, has abandoned and refused, for 2 years together, to cohabit with the other.

458:7-a Absolute Divorce, Irreconcilable Differences. –

A divorce from the bonds of matrimony shall be decreed, irrespective of the fault of either party, on the ground of irreconcilable differences which have caused the irremediable breakdown of the marriage. In any pleading or hearing of a petition for divorce under this section, allegations or evidence of specific acts of misconduct shall be improper and inadmissible, except where child custody is in issue and such evidence is relevant to establish that parental custody would be detrimental to the child or at a hearing where it is determined by the court to be necessary to establish the existence of irreconcilable differences. If, upon hearing of an action for divorce under this section, both parties are found to have committed an act or acts which justify a finding of irreconcilable differences, a divorce shall be decreed and the acts of one party shall not negate the acts of the other nor bar the divorce decree. The court's findings and decree may be based on oral testimony or written stipulations of the parties.

458:7-b Reconciliation. –

Whenever, before or during a hearing but before a final decree, the court shall determine that there is a likelihood for rehabilitation of the marriage relationship, the court shall refer the parties to an appropriate counseling agency within its jurisdiction, which referral may be made according to RSA 167-B or as the parties request, with the approval of the court. If the court determines that there is a reasonable possibility of reconciliation, the court shall continue the proceedings and require that both parties submit to marriage counseling.

Procedure

458:9 Venue; Notice. –

All petitions initiated under RSA 168-A, RSA 458, and RSA 458-C shall be brought in the county in which either party lives and before the superior court; and notice thereof shall be given to the respondent as required by this section.

I. If the parties file a joint petition, the petition shall be filed at the appropriate court without further service or notice required.

II. An individual petition shall be filed with the appropriate court, together with the filing fee, by the petitioner. Upon the filing of a petition, the court shall issue orders of notice, attached to the petition, which the petitioner shall then serve on the respondent as provided in this section:

(a) Service within the state shall be made either by:

(1) A sheriff, in hand or by leaving an attested copy of the petition, orders of notice, and an appearance form at the respondent's abode, within 25 days of receipt of orders of notice. The return of service shall state the street and number, or some other description, of the abode. The petitioner shall file the return of service with the court as proof of service.

(2) Certified mail, return receipt requested, restricted delivery, mailed within 7 days of receipt of orders of notice, signed by the addressee only. The petitioner shall file the return receipt with the court as proof of service.

(b) Service outside the state shall be made either by:

(1) An officer authorized to make service of process in the state where the respondent lives. Proof of out-of-state service shall be made by a return of the officer under oath, accompanied by

an official certificate of his or her official character or authority. The petitioner shall file the return of service with the court as proof of service.

(2) Certified mail, return receipt requested, restricted delivery, signed by the addressee only. The petitioner shall file the return receipt with the court as proof of service.

III. When the residence of the respondent is not known, the petition shall state the respondent's last known post office address, and the name and post office address of some near relative of the respondent, if any is known to the petitioner, and otherwise the name and post office address of some friend of the respondent, such facts to be verified by the petitioner's personal affidavit filed with the petition. The petitioner shall file the petition with the court together with the name and address of a newspaper published in the city or town nearest to the respondent's last known address. Service shall then be ordered by publication in the newspaper, with publication to be completed not less than 15 days before the return date, and by certified mail addressed to the respondent, care of the relative or friend of the respondent, or otherwise as the court may order. Publication may be waived for good cause upon motion to the court.

458:11 Service on Correspondent. –

Any person not a party to the proceedings who is accused of adultery with the petitionee in a petition or cross petition for divorce or petition or cross petition for legal separation shall be duly served seasonably with an attested copy of such petition with the usual order of notice. Such service shall not be required when it appears that the third party resides outside the state or when the third party has been convicted of adultery with the petitionee as charged in the petition. Such third party, regardless of residence, shall have the right to appear and be heard in the proceedings.

458:12 Insanity of Petitionee. –

If the petitionee is insane and has no legal guardian other than the spouse, the court may appoint a guardian to appear for and answer for the petitionee. Although the insanity of the petitionee may be considered by the court in determining whether a divorce should be granted, such insanity shall not constitute a defense to a petition for divorce. Where a decree of divorce has been entered and where it has been proven by competent medical testimony at the divorce hearing that the petitionee was incurably insane at the time the petition for divorce was filed, the decree shall in no way relieve a spouse from any obligation imposed by law as a result of marriage to support the incurably insane spouse.

458:13 Evidence of Marriage. –

Upon a hearing for divorce, the admission of the marriage by the party against whom the process is instituted, general repute, the fact of cohabitation, or any other circumstantial or presumptive evidence from which the marriage may be inferred, shall be competent evidence for the consideration of the court.

458:14 Revision of Orders, etc. –

Except as otherwise provided in RSA 458:19, I and VII, the court, upon proper application and notice to the adverse party, may revise and modify any order made by it, may make such new orders as may be necessary, and may award costs as justice may require.

458:15 Clerks' Returns. –

The clerks of the superior court shall, in their respective counties at which divorces are granted, make monthly returns to the registrar of vital records.

458:15-a Mediation of Cases Involving Children. –

- I. The general purpose of this section is to:
 - (a) Manage conflict and decrease acrimony between parties in a dispute over custodial issues involving minor children.
 - (b) To promote the best interest of children.
 - (c) Improve the parties' satisfaction with the outcome of child custody disputes.
 - (d) Increase the parties' participation in making decisions for themselves and their children.
 - (e) Increase compliance with court orders.
 - (f) Reduce the number and frequency of cases returning to court.
 - (g) Improve court efficiency.
- II. In this section:

(a) "Mediation" means a process in which a neutral third party facilitates settlement discussions between parties. Any settlement is entirely voluntary. In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

(b) "Mediator" means a marital mediator, certified pursuant to RSA 328-C, who has contracted with the court to participate in court-referred mediation under this section. The mediator has no authority to make a decision or impose a settlement upon the parties. The mediator attempts to focus the attention of the parties upon their needs and interests rather than upon their positions.

III. In all superior court cases filed on or after July 1, 2003, involving disputed legal or physical custody of children, physical custodial rights, or grandparents' visitation rights, including requests for modification of prior orders, the court may order the parties to participate in mediation. If the parties are ordered to participate in mediation under this section, all issues relevant to their case, including but not limited to property settlement, alimony, and child support, shall also be mediated unless the court orders otherwise.

IV. The court may choose not to order mediation if there is:

(a) A showing of undue hardship to a party.

(b) An agreement between the parties for alternate dispute resolution procedures.

(c) An allegation of abuse or neglect of the minor child.

(d) A finding of alcoholism, drug abuse, or domestic abuse as defined in RSA 173-B:1 unless all parties agree to mediation.

(e) An allegation of serious psychological or emotional abuse.

(f) Lack of an available, suitable mediator within a reasonable time period.

V. The court shall not order the mediation unless all parties consent.

VI. Either party may move to have the mediator replaced for good cause.

VII. Mediation proceedings shall be held in private, and all communications, oral or written, made during the proceedings, which relate to the issues being mediated, whether made by the mediator, or a party, or any other person present, shall be privileged and confidential and shall not be disclosed and shall not be admissible in court, except as provided in RSA 328-C:9.

VIII. Any mediated agreement reached by the parties on all or some of the disputed issues shall be reduced to writing, signed by each party, and filed with the court as soon as practicable.

IX. The parties shall participate at mediation in good faith. If the mediator determines that mediation is not helpful in resolving the dispute, the mediator shall report that fact to the court and return the matter to the court for adjudication of the underlying issues.

X. In the event both parties are indigent, the mediator shall be paid a set fee for his or her services. The amount of the fee shall be set annually by supreme court rule. The court may order each party to pay a proportional amount of said fee. The fee shall be paid from the special fund established pursuant to RSA 458:17-b and repaid by the parties in accordance with RSA 458:17-e.

XI. The supreme court shall establish rules and take such action as necessary to effectuate the purpose of this section.

458:15-b Financial Affidavits. –

I. Except as provided in paragraph III, all financial affidavits filed under this chapter shall be confidential and accessible only to the parties, their attorneys, the guardian ad litem, department of health and human services employees responsible for child support administration, and state and federal officials for the purpose of carrying out their official functions.

II. Any person who knowingly discloses a financial affidavit to any person not authorized to obtain the financial affidavit under this section shall be guilty of a misdemeanor. This paragraph shall not apply to documents released by a court pursuant to paragraph III.

III. Notwithstanding paragraph I, the court may grant access to a financial affidavit filed under this chapter to a person upon a showing by clear and convincing evidence that the public interest served by release of the information outweighs the private interest served by maintaining the privacy of the financial affidavit. For the purposes of this paragraph, the right of the public to access court records shall not, absent further cause, constitute sufficient evidence to overcome the presumption of privacy contained in paragraph I.

Alimony, Allowances, Custody, etc.

458:16 Temporary Relief and Permanent Restraining Orders. –

I. After the filing of a petition for divorce, annulment, separation or a decree of nullity, the superior court may issue orders with such conditions and limitations as the court deems just which

may, at the discretion of the court, be made on a temporary or permanent basis. Temporary orders may be issued ex parte. Said orders may be to the following effect:

(a) Directing any party to refrain from abusing or interfering in any way with the person or liberty of the other party.

(b) Enjoining any party from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result.

(c) Enjoining any party from contacting the other party at, or entering, the other party's place of employment or school.

(d) Enjoining any party from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residences, or the other party's household members in any way.

(e) Determining the temporary custody and maintenance of any minor children as shall be deemed expedient for the benefit of the children; provided, however, that no preference shall be given to either parent in awarding such custody because of the parent's sex.

(f) Ordering a temporary allowance to be paid for the support of the other.

(g) Enjoining any party from transferring, encumbering, hypothecating, concealing or in any way disposing of any property, real or personal, except in the usual course of business or for the necessities of life, and if such order is directed against a party, it may require such party to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures.

(h) Ordering the sale of the marital residence provided that both parties have previously filed a written stipulation with the clerk of the court explicitly agreeing to the sale of the property prior to the final hearing on the merits. If the parties have not so stipulated, the sale of the marital residence shall not be ordered prior to the final hearing as long as the court deems the party residing within the marital residence to have sufficient financial resources to pay the debts or obligations generated by the property, including mortgage payments, taxes, insurance, and ordinary maintenance, as those debts and obligations come due.

II. (a) Ex parte orders may be granted without written or oral notice to the adverse party only if the court finds from specific facts shown by affidavit or by the verified petition, that immediate and irreparable injury, loss, or damage will result to the applicant, the children, or property before the adverse party or attorney can be heard in opposition.

(b) No ex parte order shall be granted without:

(1) An affidavit from the moving party verifying the notice given to the other party or verifying the attempt to notify the other party.

(2) A determination by the court that such notice or attempt at notice was timely so as to afford the other party an opportunity to be present.

(c) If temporary orders are made ex parte, the party against whom the orders are issued may file a written request with the clerk of the superior court and request a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk for the county in which the petition for divorce, annulment, separation or decree of nullity is filed.

III. When a party violates a restraining order issued under this section by committing assault, criminal trespass, criminal mischief, stalking, or another criminal act, that party shall be guilty of a misdemeanor, and peace officers shall arrest the party, detain the party pursuant to RSA 594:19-a and refer the party for prosecution. Such arrests may be made within 12 hours after a violation without a warrant upon probable cause whether or not the violation is committed in the presence of a peace officer.

458:16-a Property Settlement. –

I. Property shall include all tangible and intangible property and assets, real or personal, belonging to either or both parties, whether title to the property is held in the name of either or both parties. Intangible property includes, but is not limited to, employment benefits, vested and non-vested pension or other retirement benefits, or savings plans. To the extent permitted by federal law, property shall include military retirement and veterans' disability benefits.

II. When a dissolution of a marriage is decreed, the court may order an equitable division of property between the parties. The court shall presume that an equal division is an equitable distribution of property, unless the court establishes a trust fund under RSA 458:20 or unless the court decides that an equal division would not be appropriate or equitable after considering one or more of the following factors:

(a) The duration of the marriage.

(b) The age, health, social or economic status, occupation, vocational skills, employability, separate property, amount and sources of income, needs and liabilities of each party.

(c) The opportunity of each party for future acquisition of capital assets and income.

(d) The ability of the custodial parent, if any, to engage in gainful employment without substantially interfering with the interests of any minor children in the custody of said party.

(e) The need of the custodial parent, if any, to occupy or own the marital residence and to use or own its household effects.

(f) The actions of either party during the marriage which contributed to the growth or diminution in value of property owned by either or both of the parties.

(g) Significant disparity between the parties in relation to contributions to the marriage, including contributions to the care and education of the children and the care and management of the home.

(h) Any direct or indirect contribution made by one party to help educate or develop the career or employability of the other party and any interruption of either party's educational or personal career opportunities for the benefit of the other's career or for the benefit of the parties' marriage or children.

(i) The expectation of pension or retirement rights acquired prior to or during the marriage.

(j) The tax consequences for each party.

(k) The value of property that is allocated by a valid prenuptial contract made in good faith by the parties.

(l) The fault of either party as specified in RSA 458:7 if said fault caused the breakdown of the marriage and:

(1) Caused substantial physical or mental pain and suffering; or

(2) Resulted in substantial economic loss to the marital estate or the injured party.

(m) The value of any property acquired prior to the marriage and property acquired in exchange for property acquired prior to the marriage.

(n) The value of any property acquired by gift, devise, or descent.

(o) Any other factor that the court deems relevant.

III. If either or both parties retain an ownership interest in an education savings account held on behalf of a child of the marriage, including a qualified tuition program under 26 U.S.C. Section 529, the court may, in its discretion, preserve the account for its original purpose or may treat the account as property of the marriage subject to equitable division under this section.

IV. The court shall specify written reasons for the division of property which it orders.

458:16-b Restraining Orders Regarding Property. –

I. Upon the filing of an action under this chapter, the court shall issue an order restraining each party from selling, transferring, encumbering, hypothecating, concealing, or in any manner whatsoever disposing of any property, real or personal, belonging to either or both parties except:

(a) By written agreement of both parties;

(b) For reasonable and necessary expenses of living;

(c) In the ordinary and usual course of business;

(d) In the ordinary and usual course of investing; or

(e) By order of the court.

II. After the order is served, either party may file a written request with the clerk of the superior court for a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk for the county in which the petition for divorce, annulment or decree of nullity is filed.

458:17 Support and Custody of Children. –

I. In all cases where there shall be a decree of divorce or nullity, the court shall make such further decree in relation to the support, education, and custody of the children as shall be most conducive to their benefit and may order a reasonable provision for their support and education for the period of time specified in RSA 458:35-c. All such support orders shall provide for the assignment of the wages of the responsible parent pursuant to RSA 458-B, including the exceptions listed in RSA 458-B:2.

II. Except as provided in subparagraph (c), in the making of any order relative to such custody there shall be a presumption, affecting the burden of proof, that joint legal custody is in the best interest of minor children:

(a) Where the parents have agreed to an award of joint legal custody or so agree in open court at a hearing for the purpose of determining the custody of the minor children of the marriage. If the court declines to enter an order awarding joint legal custody, the court shall state in its decision the reasons for denial of an award of joint legal custody.

(b) Upon the application of either parent for joint legal custody, in which case it may be awarded in the discretion of the court. For the purpose of assisting the court in making a determination whether an award of joint legal custody is appropriate under this section, the court may appoint a guardian ad litem to represent the interests of the children according to the provisions of RSA 458:17-a. If the court declines to enter an order awarding joint legal custody, the court shall state in its decision the reasons for denial of an award of joint legal custody.

(c) Where the court finds that abuse as defined in RSA 173-B:1 has occurred, the court shall consider such abuse as harmful to children and as evidence in determining whether joint legal custody is appropriate. In such cases, the court shall make custody and visitation orders that best protect the children or the abused spouse or both. If joint legal custody is granted despite evidence of abuse, the court shall provide written findings to support the joint custody order.

III. For the purposes of RSA 458:17, II "joint legal custody" shall include all parental rights with the exception of physical custody which shall be awarded as the court deems most conducive to the benefit of the children.

IV. In those cases where joint legal custody is awarded to the parents and physical custody of the child or children is awarded to one of the parents, the other parent shall be awarded physical custodial rights during all periods of the time heretofore referred to as visitation, except that such other parent shall not be deemed to have a right of primary physical custody under RSA 633:4.

IV-a. Where the court finds that a parent seeking visitation has been convicted of sexual abuse or sexual assault against such parent's minor child or minor stepchild, the court may prohibit visitation between such parent and any sibling or step-sibling of the victim. The court shall make visitation orders that best protect the victim of the abuse and the siblings and step-siblings of such victim. In this paragraph, "sexual abuse" shall mean sexual abuse as defined in RSA 169-C:3, XXVII-a, and "sexual assault" shall mean sexual assault as provided in RSA 632-A:2, RSA 632-A:3, and RSA 632-A:4.

V. (a) The court may issue an order modifying a permanent custody order under any of the following circumstances:

(1) The parties agree to a modification;

(2) If the court finds repeated, intentional, and unwarranted interference by a parent who has permanent primary physical or permanent joint or shared physical custody with the visitation or custodial rights of the other parent, the court may order a change in physical custody without the necessity of showing harm to the child, if the court determines that such change would be in accordance with the best interests of the child;

(3) If the court finds by clear and convincing evidence that the child's present environment is detrimental to the child's physical, mental, or emotional health and that the advantage to the child of modifying a permanent custody order outweighs the harm likely to be caused by the change in environment;

(4) If the court finds that a minor child is of sufficient maturity to make a sound judgment about his or her proper custody, the court may give substantial weight to the preference of the mature minor child as to the parent with whom he or she wants to live. Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including, but not limited to, whether the minor child's preference was based on undesirable or improper influences; or

(5) If the parties have substantially equal periods of physical custody and each asserts that the original joint custody arrangement is not working, the court may order a change in physical custody based on a finding that the change in custody is in the best interests of the child.

(b) For the purposes of this paragraph, the burden of proof shall be on the moving party.

VI. In making any order relative to such custody, the court shall not give any preference to either parent of the children because of the parent's sex. The paramount and controlling consideration in deciding child custody is the overall welfare of the child, and there is no one formula for all cases, each case being determined by its particular facts. Considerable weight may be given to the stated preference of a mature minor, provided that preference was not unduly influenced. If the court determines that it is in the best interest and welfare of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 458:17-d. Nothing in this paragraph shall be

construed to prohibit or require an award of custody to a stepparent or grandparent if the court determines that such an award is in the best interest of the child.

VII. All support payments ordered or administered by the court under this chapter shall be deemed judgments when due and payable. Such judgments shall be given full faith and credit by all jurisdictions of this state.

VII-a. Liens shall arise by operation of law against real and personal property for child support arrearages owed by an obligor who resides or owns property in the state and shall incorporate any unpaid child support which may accrue in the future. Full faith and credit shall be given to such liens arising in another state when the state agency, a party, or other entity authorized to enforce an order of support and seeking to perfect the lien complies with the procedural rules relating to recording or serving liens. Notwithstanding any law to the contrary, such rules may not require judicial notice prior to perfecting the lien. Notices of such liens, and any discharges or releases thereof, shall be filed in the office of the secretary of state with respect to personal property and in the registry of deeds for the county in which any real property is located. No fees shall be charged for such filings and recordings.

VIII. No modification of a support order shall alter any arrearages due prior to the date of notice of the petition for modification as provided in RSA 458-C: 7.

IX. Each child support order shall include the court's determination and findings relative to health insurance and the payment of uninsured medical expenses for the children.

X. If both the custodial and non-custodial parents have coverage which provides medical insurance benefits for the child, the insurance of the person who is obligated by court order to provide medical insurance shall be the primary coverage for the child. This paragraph shall not affect the obligation of the insurance carrier of the parent who is not obligated to provide medical insurance for the child to provide medical insurance benefits for any claim under a policy held by such parent.

XI. In any proceeding concerning the support of children:

(a) The parties shall certify in the initial pleading filed with the court whether or not public assistance is or was paid for the benefit of the children pursuant to RSA 167 and whether or not medical assistance is being provided for the benefit of the children pursuant to RSA 167. If public assistance is or was being provided or if medical assistance is being provided, the initiating party shall provide the department of health and human services, office of child support enforcement services, with copies of any and all pleadings related to medical and child support.

(b) If, during the pendency of the action, the children become the beneficiaries of public or medical assistance, both parties shall notify the court of the public or medical assistance status of the children and shall provide the department of health and human services with copies of all pleadings related to medical and child support.

(c) When notified that public or medical assistance is being provided for the benefit of the children, the court shall provide the office of child support with a copy of any hearing notice pertaining to any medical or child support proceeding.

(d) The department shall be granted leave to reopen any case to modify, clarify, or vacate any order that was entered against its interest when an assignment of rights pursuant to RSA 161 or RSA 167 is or was in effect and the department was not given notice of the proceeding.

XI-a. No child support order shall require a parent to contribute to an adult child's college expenses or other educational expenses beyond the completion of high school.

XII. All support orders issued or modified in cases that are payable through the department shall contain a provision requiring the obligor to keep the department informed of the name and address of the obligor's employer and whether the obligor has access to health insurance, and, if so, the health insurance policy information as requested by the department.

XIII. [Repealed.]

XIV. In any proceeding to enforce the payment of child support, the posting of bail shall be for the purpose of securing the appearance of the child support obligor and to guarantee the child support judgment owed by the child support obligor. If a child support obligor defaults for failure to appear or owes a child support arrearage, any bail money posted by the obligor, or any other surety, which is on deposit with the court shall be forfeited and paid to the obligee or the agency enforcing the order for child support in satisfaction of the child support judgment.

XV. (a) An order of support, for which there is in effect an assignment to the department of health and human services pursuant to RSA 161-C:22, shall be suspended and shall not accrue, and no public assistance debt shall be incurred, during such time as the responsible parent receives benefits pursuant to Title XVI of the Social Security Act under the supplemental security income program or public assistance pursuant to RSA 167 under any of the following programs:

- (1) Aid to the permanently and totally disabled.
- (2) Aid to the needy blind.
- (3) Aid to families with dependent children.
- (4) Old age assistance.

(b) The department shall not enforce any order of support against the responsible parent while that parent receives public assistance through any of the programs listed in RSA 458:17, XV(a), whether or not an assignment of support rights to the department exists.

XVI. Any motion for contempt of a court order regarding physical custody or visitation or nonpayment of child support, if filed by a parent who has custodial or visitation rights pursuant to the court order, shall be reviewed by the court within 30 days.

458:17-a Guardian ad Litem. –

I. In all proceedings for divorce, nullity, or legal separation, the court may appoint a guardian ad litem, to represent the interests of the children of the marriage, upon its own motion or motion of any party. The court may, in its order of appointment, after considering the nature of the issues raised in the case pending before it, specify the concerns to be addressed by the guardian ad litem, and otherwise limit the scope of the appointment. The guardian ad litem may be appointed to continue to serve after the final decree of divorce has been granted.

II. Persons accepting appointment as guardians ad litem agree to serve as officers of the court and have such standing in the proceedings as the court deems appropriate and may, upon approval of the court, utilize the service of others found necessary by the court to represent the child's best interest. Guardians ad litem shall respect communications between themselves and the child and shall disclose such information only in accordance with applicable rules and, as required by the court, in rendering a report with the guardian ad litem's recommendations or in an ex parte proceeding to enable the court to make an informed decision. When the child's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or some other reason, the guardian ad litem shall be the holder of the privilege, and have authority to waive the privilege, but only so long as the guardian ad litem reasonably believes that the child cannot adequately act in the child's own interest.

II-a. The fees for services for the guardian ad litem and others utilized by the guardian and approved by the court shall be a charge against the parties in a proportional amount as the court may determine. Where the parties are indigent, compensation for guardians ad litem and others utilized by the guardian and approved by the court shall be based upon the applicable fee schedule established by the supreme court for indigent defense counsel.

III. For good cause shown, the court may waive the requirements of paragraph I. Good cause shall not include the lack of ability to pay by either party.

IV. The supreme court shall provide the following relative to guardians ad litem appointed pursuant to this section:

- (a) Standards and requirements for registration as a guardian ad litem.
- (b) Standards for practice, including but not limited to ethical rules.
- (c) Disciplinary procedures for violating ethical rules and requirements established under this paragraph.
- (d) Penalties for violation of ethical rules and requirements, including, as the court may deem necessary, fines or disciplinary action, or both.

458:17-b Special Fund Established. – The supreme court shall establish a separate fund in which to deposit a percentage of the entry fee paid to each clerk of superior court in each petition in marital cases for the compensation of mediators, appointed pursuant to RSA 458:15-a, and guardians ad litem, appointed pursuant to RSA 458:17-a, when the parents are indigent. The supreme court shall determine by rule the percentage amount of the entry fee for each petition to be deposited into the fund, but at no time shall the percentage amount exceed 50 percent of the entry fee for each petition. Payments for services provided shall be paid by the judicial council.

458:17-c Authorization for Emergency Treatment When Custodial Parent Incapacitated. –

I. In cases where the parent of custody has become incapacitated and is unable to make necessary decisions concerning the emergency medical treatment of the child, such parent's spouse shall be authorized to make such decisions subject to the following conditions:

- (a) The child is in the care of a medical facility whose policy requires that all decisions regarding treatment of the type necessary under the circumstances be made by the custodial parent; and

(b) There is no other parent of custody; or, if there is another parent of custody, that parent cannot be located, and in the opinion of the treating physician, circumstances make it necessary to make a decision regarding treatment immediately.

II. The right to authorize treatment granted under this section shall under no circumstances last longer than 30 days, and otherwise shall terminate upon the recovery of the custodial parent to normal capacity, or upon the establishment of contact with the other custodial parent, whichever occurs first.

458:17-d Grandparents' Visitation Rights. –

I. Grandparents, whether adoptive or natural, may petition the court for reasonable rights of visitation with the minor child as provided in paragraph III. The provisions of this section shall not apply in cases where access by the grandparent or grandparents to the minor child has been restricted for any reason prior to or contemporaneous with the divorce, death, relinquishment or termination of parental rights, or other cause of the absence of a nuclear family.

II. The court shall consider the following criteria in making an order relative to a grandparent's visitation rights to the minor child:

(a) Whether such visitation would be in the best interest of the child.

(b) Whether such visitation would interfere with any parent-child relationship or with a parent's authority over the child.

(c) The nature of the relationship between the grandparent and the minor child, including but not limited to, the frequency of contact, and whether the child has lived with the grandparent and length of time of such residence, and when there is no reasonable cause to believe that the child's physical and emotional health would be endangered by such visitation or lack of it.

(d) The nature of the relationship between the grandparent and the parent of the minor child, including friction between the grandparent and the parent, and the effect such friction would have on the child.

(e) The circumstances which resulted in the absence of a nuclear family, whether divorce, death, relinquishment or termination of parental rights, or other cause.

(f) The recommendation regarding visitation made by any guardian ad litem appointed for the child pursuant to RSA 458:17-a.

(g) Any preference or wishes expressed by the child.

(h) Any such other factors as the court may find appropriate or relevant to the petition for visitation.

III. The petition for visitation shall be entered in the superior court which has jurisdiction over the divorce, legal separation or other proceeding brought under RSA 458; in the case of death of a parent, stepparent adoption, or unwed parents, subject to paragraph IV, the petition shall be entered in the superior court located in the county where the child resides.

IV. If the parent of the minor child is unwed, then any grandparent filing a petition under this section shall attach with the petition proof of legitimation by the parent pursuant to RSA 460:29 or establishment of paternity pursuant to RSA 168-A.

V. Upon the motion of any original party, the court may modify or terminate any order made pursuant to this section to reflect changed circumstances of the parties involved.

VI. Nothing contained in this section shall be construed to affect the rights of a child or birth parent or guardian under RSA 463 or adoptive parent under RSA 170-B:25.

458:17-e Repayment. –

I. In any case where a mediator has been appointed pursuant to RSA 458:15-a or a guardian ad litem has been appointed pursuant to RSA 458:17-a and the responsible party's proportional share of the expense is ordered to be paid by the judicial council from the special fund established pursuant to RSA 458:17-b, the party shall be ordered by the court to repay the state through the unit of cost containment, office of administrative services, the fees and expenses paid on the party's behalf as the court may order consistent with the party's ability to pay, such ability to be determined by the unit of cost containment.

II. The court's order of appointment of a mediator or a guardian ad litem under the provisions of paragraph I shall indicate the initial proportional share or shares of fees and expenses and shall contain an order that the party or parties communicate with the unit of cost containment so that it may determine the obligor's ability to reimburse the state and establish the terms and conditions of reimbursement. A copy of each order shall be sent to the unit of cost containment, office of the commissioner of administrative services, at the time it is made. Any party subject to an order under this section may petition the court having jurisdiction over the case for relief of the

obligation imposed by this section, which shall be granted only upon a finding that the party is unable to comply with the terms of the court's order or any modification of the order by the court or the terms of reimbursement established by the unit of cost containment. In any such appeal the burden of persuasion shall be upon the party to show why the determinations of the unit of cost containment should not be enforced.

III. Any party subject to orders for repayment shall be required to notify the clerk of the court and the unit of cost containment of each change of mailing address and actual street address. Whenever notice to the party is required, notice to the last known mailing address on file shall be deemed notice to and binding on the party.

458:18 Orders for Support. –

I. Whenever the court, acting under RSA 458:16 or 458:17, shall award the custody of a child to the commissioner of the department of health and human services, the court shall make a further order requiring the county in which the child resides at the time the order is made to bear the expense for the maintenance and care of said child, and the county shall have a right of action for such expense against whoever is legally chargeable for the child's support. The court may make orders or reimbursements to the county of residence as may be reasonable and just.

II. The status of all children for whom custody has been granted to the department of health and human services shall be reviewed at least once every year following the initial award of custody, but more frequently upon the request of the department of health and human services.

458:18-a Group Insurance Plans. – Upon a decree of nullity or divorce, if one spouse is a member of a group health insurance plan and the employer or any other sponsor is responsible for the payment of the premium required by the insurer as the consideration for providing coverage to an ex-spouse, such premium shall be paid either by the health insurance plan member, the ex-spouse of the member, or by both the member and the ex-spouse as they shall agree or as shall be ordered in the decree of divorce by the court. The provisions of this section shall apply to dental coverage provided by such group health insurance plan and shall apply whether or not the ex-spouse is receiving child support payments.

458:19 Alimony. –

I. Upon motion of either party for alimony payments, the court shall make orders for the payment of alimony to the party in need of alimony, either temporary or permanent, for a definite or indefinite period of time, if the motion for alimony payments is made within 5 years of the decree of nullity or divorce and the court finds that:

(a) The party in need lacks sufficient income, property, or both, including property apportioned in accordance with RSA 458:16-a, to provide for such party's reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage; and

(b) The party from whom alimony is sought is able to meet reasonable needs while meeting those of the party seeking alimony, taking into account the style of living to which the parties have become accustomed during the marriage; and

(c) The party in need is unable to be self-supporting through appropriate employment at a standard of living that meets reasonable needs or is the custodian of a child of the parties whose condition or circumstances make it appropriate that the custodian not seek employment outside the home.

II. Upon motion of either party, the court may make orders for the payment of an alimony allowance when such orders would be just and equitable.

III. Upon a decree of nullity or divorce, or upon the renewal, modification, or extension of a prior order for alimony, the court may order alimony to be paid for such length of time as the parties may agree or the court orders.

IV. (a) The court may make orders for alimony in a lump sum, periodic payments, or both.

(b) In determining the amount of alimony, the court shall consider the length of the marriage; the age, health, social or economic status, occupation, amount and sources of income, the property awarded under RSA 458:16-a, vocational skills, employability, estate, liabilities, and needs of each of the parties; the opportunity of each for future acquisition of capital assets and income; the fault of either party as defined in RSA 458:16-a, II(I); and the federal tax consequences of the order.

(c) In determining amount and sources of income, the court shall not consider a minor child's social security benefit payments or a second or subsequent spouse's income. The court may

consider veterans' disability benefits collected by either or both parties to the extent permitted by federal law.

(d) The court may also consider the contribution of each of the parties in the acquisition, preservation, or appreciation in value of their respective estates and the noneconomic contribution of each of the parties to the family unit.

(e) In any proceeding for modification of an existing alimony order, the earned or unearned income and social security disability payments of a spouse of the obligor party shall not be considered a source of income to that obligor party for the purpose of modification, unless the obligor party resigns from or refuses employment or is voluntarily unemployed or underemployed, in which case the income of a subsequent spouse may be imputed to the obligor party only to the extent that such obligor party could have earned income in his or her usual employment. In such actions, the court may consider the veteran's disability benefits of a spouse of the obligor party to the extent permitted by federal law.

V. The unanticipated consequences of changes in federal tax legislation or regulations may be grounds to modify any alimony order or agreement.

VI. The court shall specify written reasons for the granting or denial of any motion for an alimony allowance.

VII. In cases where the court issues an order for permanent alimony for a definite period of time, such order may be renewed, upon the petition of either party, provided that such petition is made within 5 years of the termination date of the permanent alimony order. Nothing in this paragraph shall be construed to change or alter in any way the terms of the original alimony order.

458:19-a Divorce in Another Jurisdiction. –

The superior court shall have a jurisdiction to make such orders or temporary orders of alimony to a divorced wife or divorced husband, or of support to the children of divorced parents as justice shall require in cases where the decree of divorce was not granted in this jurisdiction, even though said divorce decree makes provision for alimony and support, subject to the provisions of RSA 546-B.

458:20 Trust Fund. –

In a proceeding under this chapter, the court may set aside a portion of the property of the parties in a separate fund or trust for the support, maintenance, education and general welfare of either party or of any minor, dependent, or incompetent child of the parties. A separate fund or trust may also be established under this section for an incompetent child of the parties who is 18 years of age or older.

458:21 Security. –

In all cases where alimony or an allowance shall be decreed for a spouse or children the court may require security to be given for the payment thereof.

458:23 Legitimacy of Offspring. –

No decree of divorce shall affect the legitimacy of a child born or begotten in lawful matrimony, unless it shall be so expressed in the decree, and children born of a marriage entered into in good faith by the parties thereto shall be regarded as legitimate children and their legitimacy shall not be affected by a decree of nullity, unless it shall be so expressed in the decree.

458:23-a Relocation of the Principal Residence of a Child. –

I. This section shall apply to relocation of the principal residence of a child if the existing custody order or other enforceable agreement between the parties does not expressly govern the relocation issue. This section shall not apply if the relocation results in the child moving closer to the non-custodial parent or to any location within the child's current school district.

II. The custodial parent, prior to relocating, shall provide reasonable notice to the non-custodial parent. For purposes of this section, 60 days notice shall be presumed to be reasonable unless other factors are found to be present.

III. At the request of either the custodial or non-custodial parent, the court shall hold a hearing on the relocation issue.

IV. The custodial parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that:

- (a) The relocation is for a legitimate purpose; and
- (b) The proposed location is reasonable in light of that purpose.

V. If the burden of proof established in paragraph IV is met, the burden shifts to the non-custodial parent to prove, by a preponderance of the evidence, that the proposed relocation is not in the best interest of the child.

VI. If the court has issued a temporary order authorizing temporary relocation, the court shall not give undue weight to that temporary relocation as a factor in reaching its final decision.

VII. The court, in reaching its final decision, shall not consider whether the custodial parent seeking to relocate has declared that he or she will not relocate if relocation of the child is denied.

Change of Name

458:24 Decree. –

In any proceeding under this chapter, except an action for legal separation, the court may, when a decree of divorce or nullity is made, restore a former name of the spouse, regardless of whether a request therefor had been included in the petition.

458:25 Return of List. –

The clerk of the superior court for each county, at the end of each term of court, shall return to the registrar of vital records a full and correct list of all changes of names that have been decreed hereunder by the court since the last return.

Limited Divorces

458:26 Legal Separation. –

I. In any case in which a divorce might be decreed, the superior court, on petition of either party, may decree a legal separation of the parties, which separation shall have in all respects the effect of a divorce, except that the parties shall not thereby be made free to marry any third person and except as hereinafter provided.

II. A person concerning whom a legal separation has been decreed may file a motion to amend the decree to one of divorce. The court may then consider whether justice requires that such a change be made, and, upon such consideration, the court may, in its discretion, grant such a motion.

458:27 Procedure, etc. –

Upon such petition the procedure shall be the same as upon petitions for divorce, and the court shall have the same power in all matters relating to restraining orders and decrees, allowances, alimony, custody of children and division or apportionment of the property of the parties, as in cases of divorce. The name of the wife shall not be changed.

458:28 Resumption of Relations. –

The parties to such a petition may at any time resume marital relations, upon filing with the clerk of the superior court for the county in which the separation was decreed their written declaration of such resumption, signed, acknowledged and witnessed. Such declaration shall be entered upon the docket, under the entries relating to such petition.

458:29 Effect. –

Such resumption of marital relations shall terminate and annul all restraining orders, and all decrees relating to alimony or the custody of children, but shall not affect any decree relating to the division or apportionment of property.

458:30 Returns. –

The clerk of the superior court shall make return of all such decrees of separation and declarations of the resumption of marital relations to the registrar of vital records in the manner provided for the return of divorces.

Orders for Support, etc.

458:31 Orders for Support of Spouse. –

If either spouse is living apart from the other without justifiable cause or willingly absents himself or herself from the other, the superior court, upon his or her petition, or if insane by his or her guardian or next friend, may issue orders which may at the discretion of the court be ex parte and

which may grant such relief as provided for in RSA 458:16. The domicile requirements of RSA 458:4, 5, and 6 shall not apply to this section; and the court may grant relief hereunder to a nonresident plaintiff if the defendant is a resident of this state.

458:32 Modification. –

Upon motion and notice to the adverse party in the proceeding, or upon a new petition by either party and like procedure thereon, the court may modify or revise its orders and decrees.

458:34 Enforcement. –

Upon such petition an attachment of either spouse's property may be made as in case of a petition for divorce; and the court may make interlocutory orders therein as in divorce cases, and its orders and decrees shall be enforced in like manner.

458:35 Support of Children. –

In cases where husband and wife are living apart, the court, upon petition of either party, may make such order as to the custody and maintenance of the children as justice may require; and all appropriate provisions of this chapter and of RSA 458-B shall apply to such proceedings. All such orders shall provide for the withholding of the wages of the obligor parent if arrearage occurs in the payment of maintenance for the children.

458:35-c Duration of Child Support. –

The amount of a child support obligation stated in the order for support shall remain as stated in the order until all dependent children for whom support is provided in the order shall terminate their high school education or reach the age of 18 years, whichever is later, or become married, or become a member of the armed services, at which time the child support obligation, including all educational support obligations, terminates without further legal action. This amount shall remain as specified unless a legal order expressly allocates the payments on a per child basis. If the order involves a disabled child, the court shall specify the duration of the order, which may be beyond the time when the child reaches the age of 18.

458:36 Social Security Numbers to be Supplied to Department of Health and Human Services. –

In all cases for divorce, nullity or separation in which the court makes a temporary or final order or decree for payment of support or alimony through the department of health and human services, the order or decree shall require the parties to furnish their social security numbers to the department.

Miscellaneous Provisions

458:51 Attorneys' Fees in Contempt Cases. –

In any proceeding under this chapter in which a party alleges, and the court finds, that the other party has failed without just cause to obey a prior order or decree, the court shall award reasonable costs and attorneys' fees to the prevailing party.

458:52 Limitation. –

Nothing in this chapter shall abrogate the common law doctrines of recrimination or condonation, or the rights of persons to enter into binding and enforceable prenuptial contracts concerning their respective property rights.

CHAPTER 458-B INCOME ASSIGNMENT

458-B:1 Definitions. –

When used in this chapter, unless the specific context indicates otherwise:

I. "Arrearage" means the total amount of unpaid support which has accrued since the effective date of a legal order which stipulates a periodic support amount due, and shall include any amount of unreimbursed assistance accumulated prior to the issuance of the legal order of support.

I-a. "Department" means the department of health and human services.

II. "Dependent child" means any natural, adoptive, or stepchild who has not reached the age of 18 and is not self-supporting, married, or a member of the armed services.

III. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld or required by the employer to be withheld as a condition of employment.

IV. [Repealed.]

V. "Employer" means any person, firm, corporation, or association, or any political subdivision or department of the state or federal government, which employs a person or pays income or any other compensation.

VI. "Legal order of support" means any valid judgment or order for the support of spouses, dependent children, or both, issued by any court or administrative body of the state of New Hampshire or any other state, including an order in a final decree of divorce.

VII. "Obligee" means the person found to be legally entitled to receive child support, spousal support, or combination child and spousal support.

VIII. "Obligor" means the person found to be legally liable for child support, spousal support, or combination child and spousal support.

IX. "Income" means compensation paid or payable for personal services, whether denominated as income, salary, commission, bonus, or otherwise, and specifically includes periodic payments pursuant to pension or retirement programs, disability plans, and workers' compensation payments.

X. "IV-D services" means the services provided by the state under the state plan for the collection of support and establishment of paternity adopted pursuant to title IV-D of the Social Security Act.

XI. "Payable through the department" means that a legal order of support is enforced or administered by the department.

458-B:2 Assignment of Income. –

I. Child support, spousal support or combination child and spousal support orders issued or modified after January 1, 1994, whether payable through the department or directly to an obligee, shall include a provision assigning a portion of the obligor's income, salaries, commissions, earnings, or other periodic income from whatever source, except as expressly limited by law and as otherwise provided in this section. If the state is paying public assistance for the benefit of the minor children, the assignment shall be required and shall take effect immediately. In all other cases, where the state is not paying public assistance, the assignment shall be suspended by the court:

(a) Where there is a written agreement between the obligor and obligee and such agreement is approved by the court or administrative body; provided that the court may require the establishment of a dedicated checking account.

(b) Where there is a written agreement between the obligor and obligee, approved by the court, that establishes a "direct deposit" dedicated checking account for the purpose of receiving regularly scheduled payments. All basic service fees of the dedicated account remain the responsibility of the obligor. The obligee shall maintain a record of all monthly bank statements for the duration of the agreement. The statements shall be presented to the court upon request. If the obligee is unwilling to agree to the use of a direct deposit dedicated checking account, the court shall inquire as to the reason for the obligee's objection. Unless a substantive reason is given to the judge as to why a direct deposit checking account cannot be used, the judge may order that a 30-day trial direct deposit checking account be used for payment of child support. The direct deposit procedure shall be revoked when a delinquency equal to the support obligation for one month is incurred. An income assignment shall then be initiated without requiring an amendment to the support order or further action by the court or administrative body that issued the order.

(c) When the court or administrative body finds that there is good cause not to require immediate income assignment. For purposes of this paragraph, any finding that there is good cause not to require assignment must be based on at least:

(1) A written determination and explanation by the court or administrative body as to why implementing immediate assignment would not be in the best interests of the child; and

(2) Proof of the obligor's timely payment of any previously ordered support.

II. (a) In the event that an assignment is suspended in the first instance, it shall take effect at the request of the obligor; upon a court finding that the obligor is in violation or contempt of an order of support; or after notice and an opportunity to contest pursuant to RSA 458-B:5 and RSA 458-B:7, when the state has commenced payment of public assistance for the benefit of a child, or when an arrearage amounting to the support owing for a one-month period has accrued.

(b) In the event an assignment is suspended in the first instance because there has been a written agreement approved by the court or a determination of good cause, an obligee may seek the initiation of the assignment upon a court finding that the obligor is in violation or contempt of an order of support.

III. Child support or combination child and spousal support orders issued or modified before January 1, 1994, which are payable through the department are subject to an income assignment as follows:

(a) Orders in effect prior to October 1, 1985, shall be subject to the initiation of an income assignment when an arrearage amounting to the support owing for a one-month period has accrued.

(b) Child support or combination child and spousal support orders issued or modified between October 1, 1985, and July 14, 1989, shall contain an income assignment provision whereby assignment shall be initiated when a delinquency equal to the support obligation for one month is incurred.

(c) Child support or combination child and spousal support orders issued or modified between July 14, 1989, and January 1, 1994, shall contain an income assignment provision whereby they are subject to immediate income assignment except:

(1) Where there is a written agreement between the obligor and obligee and such agreement is approved by the court or administrative body.

(2) When the court or administrative body finds that there is good cause not to require immediate income assignment. For purposes of this paragraph, any finding that there is good cause not to require immediate assignment must be based on at least a written determination and explanation by the court or administrative body as to why implementing immediate assignment would not be in the best interests of the child, and proof of the obligor's timely payment of any previously ordered support.

(d) In the case of orders not subject to immediate income assignment under subparagraphs III(a), (b) and (c) of this section, income assignment may be initiated upon a court finding that the obligor is in violation or contempt of an order of support or, after notice and an opportunity to contest pursuant to RSA 458-B:5 and RSA 458-B:7, when the state has commenced payment of public assistance for the benefit of a child or when an arrearage amounting to the support owing for a one-month period has accrued.

IV. Child support, spousal support or combination child and spousal support orders issued or modified before January 1, 1994, which are not payable through the department are subject to an income assignment as follows:

(a) Orders in effect prior to October 1, 1985, may be enforced through an income assignment by the obligee by petition to the court to make support payable to the obligee by income assignment.

(b) Orders issued or modified between October 1, 1985, and January 1, 1994, shall contain an income assignment provision whereby assignment shall be invoked when a delinquency equal to the support obligation for one month is incurred.

458-B:3 Department of Health and Human Services as Responsible Agency. –

I. The department shall be the agency responsible for the administration of this chapter for child support orders, and combination child support and spousal support orders when an application for services under Title IV-D of the Social Security Act has been filed with the department. The department does not administer orders providing only for spousal support.

II. Upon receipt of appropriate application for IV-D services, together with such fees, if any, as have been established by the commissioner, the department shall be authorized to take legal action on behalf of said applicant and shall institute income withholding under this chapter or administrative procedures under RSA 161-C.

III. Collection and disbursement of all support orders initially issued in the state on or after January 1, 1994, which are not being enforced by the department, shall be enforced through the state disbursement unit where the obligor is subject to income withholding pursuant to 458-B, whether or not the obligee has applied for IV-D services. In such cases, the department's role is limited to monitoring, collecting, and disbursing moneys under this section.

IV. [Repealed.]

V. [Repealed.]

VI. [Repealed.]

VII. When the arrearage on support obligations payable through the department accumulates to an amount equal to the support obligation for one month, an income assignment shall be initiated

without requiring the department to amend the support order or seek further action by the court or administrative body that issued the order.

458-B:5 Notice to Obligor. –

I. When support is payable through the department if income is not subject to immediate assignment under this chapter, including cases subject to a finding of good cause or to a written agreement, before notice of the income assignment may be given to an employer by the department, the obligor shall be given at least 15 days' prior notice of the commencement of income withholding procedures under this chapter. The notice to the obligor shall include:

- (a) The amount to be withheld.
- (b) A statement that the withholding applies to any current or subsequent employment.
- (c) The procedures for contesting withholding and that the only basis for contesting withholding is a mistake of fact.
- (d) The period within which the obligor must contact the department in order to contest the assignment and that failure to notify the department within the specified time limit will result in the commencement of assignment procedures.

II. For orders issued or modified on or after October 1, 1985, when support is not payable through the department and income is not subject to immediate assignment under this chapter, including cases subject to a finding of good cause or to a written agreement, before an individual or a legal representative seeks to establish an income assignment payable directly to an obligee, notice must be given to the obligor at least 15 days prior to commencement of income assignment procedures under this chapter. The notice to the obligor shall include the notice provisions under subparagraphs (a), (b), and (c) of paragraph I and a notice of the period within which the obligor must give written notice to the obligee in order to contest the assignment.

III. The notice provisions under this section shall also apply in all cases when income assignment is to be increased to address arrearages, when the income assignment to be initiated includes current support and payment on arrears, and when amounts are to be withheld by the department from unemployment compensation.

458-B:6 Notice to Employer. –

Before the commencement of withholding procedures, the obligor's employer shall be given notice of the following:

- I. The amount to be withheld and that it cannot exceed the limits set under RSA 458-B:4, IV.
- II. That the employer must implement withholding no later than the first pay period that occurs after 14 days after the notice was mailed.
- III. That the withholding is binding upon the employer until further notice.
- IV. That the employer must send the withheld amount to the state or other payee at the same time the obligor is paid.
- V. That the employer is liable for the accumulated amount it should have withheld if it fails to withhold in accordance with the provisions of the notice.
- VI. That the withholding under this section shall have priority over any other legal process under state law against the same income.
- VII. That in addition to the amount withheld for support and arrearage, the employer may deduct a fee of \$1.00 for each withholding for the administrative cost incurred as a result of the withholding procedures.
- VIII. That the employer shall be guilty of a misdemeanor and subject to a fine of up to \$1,000 for discharging, refusing to employ, or taking any disciplinary action against an obligor because of the withholding procedures.
- IX. That the employer shall notify the state or other payee within 15 days of the obligor's termination of employment, and shall provide the obligor's last known address and the name and address of the present employer, if known.
- X. That the employer shall be guilty of a misdemeanor and subject to a fine of up to \$1,000 for failure to comply with the provisions of paragraphs I-V.
- XI. That the employer shall be liable for an administrative fine of \$100 per pay period for each employee who has an income assignment obligations with that employer payable directly to the department with respect to whom the employer has willfully failed to comply with the provisions of paragraphs II and IV. Prior to assessing such fine against the employer, the department shall notify the employer of its intent to assess the fine, the amount of the fine, the date by which the fine is payable, and shall provide the employer with the opportunity to contest the imposition of the fine.

The only basis for contesting the imposition of such fine is a mistake of fact or that the employer did not knowingly fail to comply with the provisions of paragraphs II and IV.

458-B:7 Opportunity to Contest Assignment. –

I. (a) In cases in which support is payable through the department, within 45 days from the date of the notice to the obligor required by RSA 458-B:5, the department shall:

- (1) Provide to the obligor an opportunity to present his case to the department;
- (2) Determine if the withholding will occur based on an evaluation of the facts; and
- (3) Provide notice to the obligor of whether or not the withholding will occur, and if it is to occur, include in the notice the time when the withholding will begin and the information given to the employer in the notice required under RSA 458-B:6.

(b) If the obligor contests the withholding as provided in this section, the notice to the employer required under RSA 458-B:6 shall not be sent until a decision is made under subparagraph I(a)(2).

II. In cases not subject to immediate assignment under RSA 458-B:2, I and in which support is not payable through the department, and where an obligee is seeking to establish or implement an income assignment under this chapter, if an obligor contests assignment, a judicial determination must be made prior to initiating the income assignment.

III. Assignment may not be contested on the basis that a one-month arrearage does not exist at the time of a judicial or administrative hearing if such an arrearage existed at the time when the notice to the obligor was mailed or any time thereafter.

458-B:8 Withholding at Request of Obligor. –

Upon the request of the obligor, the department may establish income withholding under this chapter. Where an obligor has requested income withholding, no accrual of arrearage is necessary prior to the commencement of income withholding.

458-B:9 Judicial Income Assignment. –

Nothing in this chapter precludes a judge upon petition of a party or sua sponte from ordering an immediate income assignment without accrual of arrearages, when it is deemed to be in the best interest of the child, obligee, or obligor to do so. A judicial order under the terms of this chapter will satisfy all due process required by this chapter.

458-B:10 Termination of Income Assignment. –

The department shall provide for the termination of assignment in cases payable through the department where the support obligation has terminated and arrears, if any, have been paid or the whereabouts of the child and custodial parent are unknown.

458-B:11 Rulemaking. –

The commissioner of the department of health and human services shall adopt rules, under RSA 541-A, as may be necessary for the purposes of this chapter.

CHAPTER 458-C CHILD SUPPORT GUIDELINES

458-C:1 Purpose. –

The purpose of this chapter is to establish a uniform system to be used in the determination of the amount of child support, to minimize the economic consequences to children, and to comply with applicable federal law by using specific guidelines based on the following principles:

I. The custodial parent shall share responsibility for economic support of the children, irrespective of any non-custodial parent's child support order.

II. The children in an obligor's initial family are entitled to a standard of living equal to that of the obligor's subsequent families.

III. The percentage of net income paid for child support should vary according to the number of children and, with limited exemptions, not according to income level.

458-C:2 Definitions. –

In this chapter:

I. "Adjusted gross income" means gross income, less:

(a) Court-ordered or administratively ordered support actually paid to others, for adults or children.

- (b) Fifty percent of actual self-employment tax paid.
- (c) Mandatory, not discretionary, retirement contributions.
- (d) Actual state income taxes paid.
- (e) Amounts actually paid by the obligor for allowable child care expenses or medical insurance coverage for the minor children to whom the child support order applies.

I-a. "Allowable child care expenses" means actual work-related child care expenses for the children to whom the order applies, up to no more than an annual total of \$5,000 for one child, \$9,000 for 2 children, and \$12,000 for 3 or more children.

II. "Child support obligation" means the proportion of total support obligation which the obligor parent is ordered to pay in money to the obligee parent as child support.

III. "Court" means issuing authority, including the office of fair hearings, department of health and human services, having jurisdiction to issue a child support order.

IV. "Gross income" means all income from any source, whether earned or unearned, including, but not limited to, wages, salary, commissions, tips, annuities, social security benefits, trust income, lottery or gambling winnings, interest, dividends, investment income, net rental income, self-employment income, alimony, business profits, pensions, bonuses, and payments from other government programs (except public assistance programs, including aid to families with dependent children, aid to the permanently and totally disabled, supplemental security income, food stamps, and general assistance received from a county or town), including, but not limited to, workers' compensation, veterans' benefits, unemployment benefits, and disability benefits; provided, however, that no income earned at an hourly rate for hours worked, on an occasional or seasonal basis, in excess of 40 hours in any week shall be considered as income for the purpose of determining gross income; and provided further that such hourly rate income is earned for actual overtime labor performed by an employee who earns wages at an hourly rate in a trade or industry which traditionally or commonly pays overtime wages, thus excluding professionals, business owners, business partners, self-employed individuals and others who may exercise sufficient control over their income so as to recharacterize payment to themselves to include overtime wages in addition to a salary. In addition, the following shall apply:

(a) The court, in its discretion, may consider as gross income the difference between the amount a parent is earning and the amount a parent has earned in cases where the parent voluntarily becomes unemployed or underemployed, unless the parent is physically or mentally incapacitated.

(b) The income of either parent's current spouse shall not be considered as gross income to the parent unless the parent resigns from or refuses employment or is voluntarily unemployed or underemployed, in which case the income of the spouse shall be imputed to the parent to the extent that the parent had earned income in his or her usual employment.

(c) The court, in its discretion, may order that child support based on one-time or irregular income be paid when the income is received, rather than be included in the weekly, bi-weekly, or monthly child support calculation. Such support shall be based on the applicable percentage of net income.

V. "Minimum support order" means an order of support equal to \$50 per month.

VI. "Net income" means the parents' combined adjusted gross income less standard deductions published on an annual basis by the department of health and human services and based on federal Internal Revenue Service withholding table amounts for federal income tax, F.I.C.A., and Medicare, which an employer withholds from the monthly income of a single person who has claimed a withholding allowance for 2 people.

(a) Federal income tax;

(b) F.I.C.A.

VII. "Obligor" means the parent responsible for the payment of child support under the terms of a child support order.

VIII. "Obligee" means the parent or person who receives the payment of child support under the terms of the child support order.

IX. "Percentage" means the numerical figure that is applied to net income to determine the amount of child support.

X. "Self-support reserve" means the poverty level standard of need as established by the department of health and human services for a single individual living alone.

XI. "Total support obligation" means net income multiplied by the appropriate percentage derived from RSA 458-C:3.

I. Number of Children	Percentage of Net
1	25 percent
2	33 percent
3	40 percent
4 or more	45 percent

II. (a) The total support obligation shall be determined by multiplying the parents' total net income, as defined in RSA 458-C:2, VI, by the appropriate percentage derived from this section.

(b) The total child support obligation shall be divided between the parents in proportion to their respective incomes as adjusted by this section, except when there are incurred by the obligee child care expenses or for the actual amount paid for medical insurance coverage for the minor children to whom the child support order applies.

(c) For those cases involving allowable child care expenses or medical insurance expenses incurred by the obligee, the same methodology described in subparagraphs (a) and (b) shall be used, except that as part of the determination of each parent's share of the child support obligation, the obligee's allowable child care expenses or medical insurance expenses shall be deducted from the adjusted gross income of the obligee.

(d) All child support obligations calculated pursuant to this chapter shall be rounded to the nearest whole dollar.

III. The number of children in the same household for which child support is paid is the determining factor in the percentage applied against net income.

IV. Self-support reserve and minimum child support obligation.

(a) If the obligor parent's gross income is less than the self-support reserve and the court has determined that the obligor is not voluntarily unemployed or underemployed, the court shall order the child support obligation in the amount of a minimum support order.

(b) If the obligor parent's gross income is greater than the self-support reserve but payment of the order as calculated under this chapter would reduce the obligor parent's income below the self-support reserve, the obligor parent's share of the total support obligation shall be presumed to be the difference between the self-support reserve and that parent's adjusted gross income, but in any event shall be no less than the amount of a minimum support order.

458-C:4 Application of Guidelines. –

I. Subject to the provisions of RSA 458-C:5, guidelines provided under this chapter shall be applied in all child support cases, including temporary orders, and in any order modifying a support order.

II. There shall be a rebuttable presumption in any proceeding for the award of child support that the amount of the award which would result from the application of guidelines provided under this chapter is the correct amount of child support. A written finding or a specific finding by the presiding officer on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by using the criteria set forth in RSA 458-C:5, shall be sufficient to rebut the presumption in such case.

III. When considering a request for an original support order or modification of a support order under this chapter, the court shall take into account any stepchildren for which either party may be responsible.

IV. When arrangements for child support are delineated in an agreement between the parties, and not made according to guidelines provided under this chapter, the presiding officer shall determine whether the application of the guidelines would be inappropriate or unjust in such particular case, using the criteria set forth in RSA 458-C:5, and in certifying the agreement shall enter a written finding or a specific finding on the record that the application of the guidelines would be inappropriate or unjust and state the facts supporting such finding.

458-C:5 Adjustments to the Application of Guidelines Under Special Circumstances. –

I. Special circumstances, including, but not limited to, the following, if raised by any party to the action or by the court, shall be considered and may result in adjustments in the application of support guidelines provided under this chapter. The court shall make written findings relative to the applicability of the following:

(a) Ongoing extraordinary medical, dental or education expenses, including expenses related to the special needs of a child, incurred on behalf of the involved children;

(b) Significantly high or low income of the obligee or obligor;

(c) The economic consequences of the presence of stepparents, step-children or natural or adopted children;

(d) Reasonable expenses incurred by the obligor parent in exercising visitation or physical custodial rights, or expenses incurred by such parent in extended visitation or physical custodial rights, provided that the reasonable expenses incurred by the obligee parent for the minor children can be met regardless of such adjustment;

(e) The economic consequences to either party of the disposition of a marital home made for the benefit of the child;

(f) The opportunity to optimize both parties' after-tax income by taking into account federal tax consequences of an order of support;

(g) State tax obligations;

(h) Split or shared custody arrangements;

(i) The economic consequences to either party of providing for the voluntary or court-ordered postsecondary educational expenses of a natural or adopted child;

(j) Other special circumstances found by the court to avoid an unreasonably low or confiscatory support order, taking all relevant circumstances into consideration.

II. The party relying on the provisions of this section shall demonstrate special circumstances by a preponderance of the evidence.

458-C:6 Review of Guidelines. –

The department of health and human services shall review the guidelines provided under this chapter in order to determine whether application of such guidelines results in the determination of appropriate child support award amounts.

458-C:7 Modification of Order. –

I. The obligor or obligee may apply to the court or, when the department of health and human services has issued a legal order of support pursuant to RSA 161-C, to the department, whichever issued the existing order, for modification of such order 3 years after the entry of the last order for support, without the need to show a substantial change of circumstances. This section shall not prohibit the obligor or obligee from applying at any time for a modification based on substantial change of circumstances.

II. Any child support modification shall not be effective prior to the date that notice of the petition for modification has been given to the respondent. "Notice" means:

(a) Service as specified in civil actions; or

(b) Acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following said acceptance, and as long as the petitioner provides proof of acceptance by a certified mail receipt. Nothing in this subparagraph shall be construed to affect service as required by law.

CHAPTER 458-D CHILD CUSTODY AND SUPPORT IMPACT SEMINARS

458-D:1 Purpose. –

The purpose of this chapter is to establish a program which would provide a 4-hour mandatory session for married or unmarried parents of minor children who are involved in custody and other issues which involve the children so that the adverse impact on the children of the litigation process and the family's separation will be minimized.

458-D:2 Seminar Required; Court Referral. –

In the event of any action before the superior court where the parties are involved with child custody and support issues, and upon the establishment of the program described in this chapter, the clerk of the superior court shall, no later than the defendant's or respondent's filing of an appearance, require the parties to attend a 4-hour information session. This session shall be a seminar on how to help the children deal with the issues surrounding divorce, separation, and custody.

458-D:3 Seminar. –

I. The seminar shall consist of the following:

(a) The seminar shall be conducted by a certified family therapist or other persons certified by the superior court, to inform the parents of the best way to address problems which the children face as the result of the divorce or separation. Presenters shall be a male and a female.

(b) Up to 1/2 hour of the session may be a segment on divorce options such as arbitration, mediation, and litigation.

II. The session shall be tailored to those issues concerning the children which may be of particular concern during the divorce or separation process including, but not limited to:

(a) Understanding the process of divorce or separation: interaction between parent and child, areas of adjustment, and areas of concern.

(b) Understanding how children react to the divorce or separation, how to spot problems, what to tell them about divorce or separation, how to keep communication open, and answering questions and concerns they may have about the process.

(c) How parents can help their children during the divorce or separation: specific strategies, ideas, tools, and resources for assistance.

(d) How parents can help children after the divorce or separation: new family structures, and how to deal with different sets of rules.

(e) Making clear that the general goal of cooperation between parents may sometimes be inappropriate, particularly in cases of domestic violence.

458-D:4 Seminar Schedule. –

The court shall encourage the presenters to schedule courses so that the seminar is available twice monthly in each county unless the county's population warrants otherwise. One parent need not attend the same seminar as the other parent. In the case of domestic violence, parents shall attend separate sessions. The seminar shall be completed within 45 days of service of the original complaint upon the original defendant.

458-D:5 Disciplinary Action. –

Upon a party's failure to complete the seminar pursuant to this chapter, the assigned judge may take appropriate action including, but not limited to, actions for contempt.

458-D:6 Attendance. –

I. An alphabetical list of all parties eligible for the seminar shall be provided to the presenters prior to each seminar. The list may be utilized by the presenters and the court. As parties report to the seminar selected by them, they will provide the presenters with identification, and they will be recorded as present.

II. Each person completing the seminar will be given a certificate of attendance to present to the judge at the time of that person's court appearance.

458-D:7 Costs. –

I. Persons attending the seminar shall pay a seminar fee to the presenter. Fees charged by the presenter shall be fair and reasonable as directed by the chief justice of the superior court.

II. Presenters shall accept recipients of need-based assistance programs at reduced or no cost and, upon request of the court, shall produce evidence of having done so.

III. On the commencement of any custody or support proceeding for which a fee is required, including petitions for divorce with minor children, the court shall charge and collect an additional fee of \$2 from the petitioner. These fees shall be in addition to any other fee required by law. These fees shall be deposited into the general fund.

458-D:8 Waiver. –

In order to be exempted from attending a seminar, parties may fill out an exception affidavit in which they shall indicate that they meet one of the exceptions below. The affidavit may be obtained from the clerk of court and may be submitted at any time. Attendance at the seminar shall be waived under the following circumstances:

I. A party is incarcerated.

II. A party has previously attended the seminar.

III. The office of child support enforcement services has brought an action to enforce or modify an existing order.

IV. The court finds good cause to grant a waiver on any basis it deems appropriate, including, but not limited to, domestic violence, transportation or child care. Time extensions may be granted.

458-D:9 Rulemaking. –

I. The chief justice of the superior court, subject to approval by the supreme court, shall designate the counties for the pilot programs and may establish such rules and orders of practice as are appropriate to effectuate this chapter and administer this program including, but not limited to:

(a) Beginning the program statewide on April 1, 1997, after pilot sessions, which shall be conducted in 2 or more counties beginning January 1, 1994, and in Grafton and Rockingham counties beginning July 1, 1996, and shall continue indefinitely to test operation, curriculum, and format. At least one of the pilot programs shall be conducted in a rural county, and one of the pilot programs shall be conducted in an urban county.

(b) Certifying public or nonprofit providers to lead the seminar.

(c) The form and content of presentation security.

(d) Any additional factors deemed necessary.

II. The chief justice shall utilize such in-state services as the university of New Hampshire cooperative extension, Child and Family Services of New Hampshire, and other agencies or individuals necessary to effectuate the program.

458-D:10 Report. –

The chief justice shall submit a report on or before January 15, 1995, detailing his findings and any recommendations for changing or repealing this chapter, to the speaker of the house, the senate president, and the governor.

CHAPTER 459 UNIFORM DIVORCE RECOGNITION LAW

459:1 Divorce Obtained in Another Jurisdiction. –

A divorce obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced.

459:2 Evidence. –

Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this state within 12 months prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his departure therefrom, or (b) at all times after his departure from this state and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.

459:3 Interpretation. –

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

459:4 Citation. –

This chapter may be cited as the Uniform Divorce Recognition Law.

CHAPTER 460 HUSBAND AND WIFE

Property Rights and Liabilities

460:2-a Antenuptial Agreements. –

A man and woman in contemplation of marriage may enter into a written interspousal contract and the courts of this state shall give the same effect to such contracts entered in other jurisdictions as would the courts of that other jurisdiction. However, no contract otherwise enforceable under this section may contain any term which attempts to abrogate the statutory or common law rights of minor children of the contemplated marriage.

460:3 Antenuptial Debts. –

Marriage shall not render the husband liable for the debts contracted by his wife prior to their marriage.