

South Dakota Divorce Laws

TITLE 25 DOMESTIC RELATIONS

CHAPTER 25-1 VALIDITY AND PERFORMANCE OF MARRIAGES

25-1-1. Marriage defined--Consent and solemnization required.

Marriage is a personal relation, between a man and a woman, arising out of a civil contract to which the consent of parties capable of making it is necessary. Consent alone does not constitute a marriage; it must be followed by a solemnization.

25-1-39. Marriage voidable if party physically incapable or consent obtained by fraud or force.

If either party to a marriage be incapable from physical causes of entering into the marriage state or if the consent of either be obtained by fraud or force, the marriage is voidable.

CHAPTER 25-3 ANNULMENT OF MARRIAGE

25-3-1. Former marriage as ground--Party bringing action--Time of action.

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

25-3-2. Unsound mind as ground--Party bringing action--Time of action.

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

25-3-3. Legitimacy of children after annulment for former marriage or mental illness.

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

25-3-4. Annulment of underage marriage--Party bringing action--Time of action.

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

25-3-5. Forced consent as ground--Party bringing action--Time of action.

A marriage may be annulled by an action in the circuit court to obtain a decree of nullity if, at the time of the marriage, the consent of either party was obtained by force, unless such party

afterwards freely cohabitated with the other as husband or wife. An action to obtain a decree of nullity of marriage for causes mentioned in this section must be commenced by the injured party, within four years after the marriage.

25-3-6. Fraud as ground--Party bringing action--Time of action.

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

25-3-8. Physical incapacity as ground for annulment--Party bringing action--Time of action.

A marriage may be annulled by an action in the circuit court to obtain a decree of nullity if either party was at the time of the marriage physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable. An action to obtain a decree of nullity of marriage for causes mentioned in this section must be commenced by the injured party, within four years after the marriage.

25-3-9. Parties bound by annulment.

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

25-3-10. Provision for maintenance--Vacation or modification.

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

25-3-11. Provisions for child custody and support--Vacation or modification.

In an action for annulment the court may, before or after judgment, give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may at any time vacate and modify the same.

25-3-12. Report to Department of Health on annulments.

The clerk of court in every county shall report information of each annulment of marriage filed in the office of the clerk of court, on forms prescribed and furnished by the Department of Health and approved by the state court administrator of the Unified Judicial System. The forms shall be mailed or delivered to the South Dakota Department of Health within forty days after the entry of the final order or decree of the circuit court.

CHAPTER 25-4 DIVORCE AND SEPARATE MAINTENANCE

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

Marriage is dissolved only:

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

25-4-2. Grounds for divorce.

Divorces may be granted for any of the following causes:

- (1) Adultery;

- (2) Extreme cruelty;
- (3) Willful desertion;
- (4) Willful neglect;
- (5) Habitual intemperance;
- (6) Conviction of felony;
- (7) Irreconcilable differences.

25-4-3. Adultery defined.

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

The effective date of this section is July 1, 1984.

25-4-4. Extreme cruelty defined.

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

25-4-5. Willful desertion defined--Special conditions applicable.

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

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

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

Persistent refusal to have reasonable matrimonial intercourse as husband and wife when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party when there is no just cause for such refusal, is desertion.

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

When one party is induced by the stratagem or fraud of the other party to leave the family dwelling place or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud and not by the other.

25-4-10. Desertion by cruelty or threats causing departure of spouse.

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

25-4-11. Separation by consent not desertion.

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

25-4-12. Intent to desert formed during proper absence.

Absence or separation proper in itself becomes a desertion whenever the intent to desert is fixed during such absence or separation.

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

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

25-4-14. Offer to return curing desertion--Refusal of offer as desertion.

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

25-4-15. Willful neglect defined.

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

25-4-16. Habitual intemperance defined.

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

25-4-17. Continuous period of desertion, neglect, or intemperance required.

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

25-4-17.1. Irreconcilable differences defined.

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

25-4-17.2. Dissolution of marriage--Legal separation--Continuance--Orders during continuance--Consent of parties.

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

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

25-4-17.3. Use of affidavits to establish jurisdiction and grounds for divorce.

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

25-4-17.4. Validation of divorce granted without personal appearance.

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

25-4-18. Chronic mental illness as discretionary ground.

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

25-4-19. Grounds for denial of divorce.

Divorces must be denied upon showing:

- (1) Connivance;
- (2) Collusion;
- (3) Condonation; or
- (4) Limitation and lapse of time.

25-4-20. Connivance defined.

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

25-4-21. Collusion defined.

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

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

Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

The following requirements are necessary to condonation:

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

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

Where the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from excessive acts of ill-treatment, which may aggregately constitute the offense, cohabitation, or passive endurance, or conjugal kindness shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

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

A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

25-4-25. Conjugal kindness as condition subsequent to condonation.

Condonation implies a condition subsequent that the forgiving party must be treated with conjugal kindness.

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

Condonation is revoked and the original cause of divorce revived:

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

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

A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of the offense set up as a ground of divorce. The presumption arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

There are no limitations of time for commencing actions for divorce, except such as contained in this section.

25-4-30. Residence requirements for divorce or separate maintenance.

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

25-4-30.1. Venue of action--Change by defendant.

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

25-4-33. No presumption as to same domicile of parties--Separate domiciles after separation.

In actions for divorce there is no presumption of law that the domicile of either party is the domicile of the other. After separation each party may have a separate domicile, depending for proof upon actual residence, and not upon legal presumption.

25-4-33.1. Automatic temporary restraining order upon service--Modification or revocation.

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

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

(2) Restraining both parties from molesting or disturbing the peace of the other party; and

(3) Restraining both parties from removing any minor child of the parties from the state without the written consent of the other party or an order of the court.

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

25-4-34. Waiting period before trial of divorce and separate maintenance actions--Temporary orders and preliminary proceedings during waiting period--Validity of proceedings commenced before 1964.

An action for divorce or separate maintenance shall not be heard, tried, or determined by the court until at least sixty days have elapsed from the completed service of the plaintiff's summons and complaint therein. During said waiting period the court may issue all orders required to effectuate the purposes expressed in §§ 25-4-38 and 25-4-45 or to protect any of the parties to the action during the pendency thereof.

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

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

25-4-34.1. Validation of prior decrees granted on sixtieth day--Deadline for contesting validity.

All divorce decrees granted on the sixtieth day after service of the summons and complaint, on or before December 12, 1979, are hereby legalized, cured, and validated as if they were granted on the sixty-first day following service of the summons and complaint.

Any person claiming that a divorce is not valid must have commenced action to adjudicate his or her claim on or before July 1, 1981. In case of his or her failure to do so by July 1, 1981, his or her right of action shall have expired and shall be barred.

25-4-35. Validity of proceedings on service by publication under prior law.

All actions or proceedings had before July 1, 1959, for divorce pursuant to chapter 179 of the Session Laws of 1957, and all actions or proceedings commenced pursuant thereto prior to said date, and completed thereafter by entry of judgment or decree therein, are hereby legalized, cured, and validated, notwithstanding that service of the summons therein was by publication or in any other manner provided by statute.

25-4-38. Alimony pending action.

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

25-4-39. Separate maintenance granted on denial of divorce.

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

25-4-40. Action for separate maintenance without divorce--Alimony and support.

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

25-4-41. Allowance for support when divorce granted.

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

25-4-42. Security for payments required of spouse--Receivership--Allowance withheld when recipient's estate sufficient.

The court may require a spouse to give reasonable security for providing maintenance, or making any payments required under the provisions of this chapter, and may enforce the same by the

appointment of a receiver, or by any other remedy applicable to the case. But when a spouse has a separate estate sufficient to give that spouse proper support, the court in its discretion may withhold any allowance to that spouse out of the separate property of the other spouse.

25-4-43. Support payments through clerk of courts--Payment to social services when assignment made to state--Back support--Accounting.

When a divorce is granted or a decree for separate maintenance entered or thereafter, and when the court has provided for the maintenance of the children of the marriage, all payments so required by the order of the court may by order of the court be paid to the clerk of courts in the amount and at the time specified in said order, and the clerk shall forthwith disburse the money so received to the party entitled thereto. Upon receipt of written notice of assignment of support obligations to the State of South Dakota the clerk of courts shall pay the support to the Department of Social Services rather than to a family as long as such assignment remains in existence. When the department has no authorization to receive the current support, the department shall notify the clerk to stop sending current support payments to the state. However, back support due and owing prior to termination of public assistance shall be paid to the state. Thereupon adequate accounting records showing receipts and disbursements shall be maintained by the clerk of courts, and the clerk of courts shall maintain a fact sheet in the original case file showing chronologically the date of receipts, dates of disbursements, and names of recipients.

25-4-44. Division of property between parties.

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

25-4-45. Child custody provisions--Modification--Preference of child.

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

25-4-45.1. Fault not considered in awarding property or child custody--Exceptions.

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

25-4-45.2. Intervention by attorney general or state's attorney when support assigned to state.

In all cases where child support has been assigned to the state, the attorney general or the state's attorney shall have the right to intervene pursuant to § 15-6-24(a) in ongoing divorce actions to obtain child support, or to petition the court to modify existing court orders for child support.

25-4-45.3. Adoption of fee schedule for home studies or investigations ordered by court in custody proceedings.

The secretary of social services may, pursuant to chapter 1-26, adopt a schedule of fees for home studies or investigations ordered by the court in custody proceedings. The fees may not exceed actual costs and shall be based on the ability of the parties involved to pay for the home studies or investigations. The fees so adopted shall apply only to custody issues relating to or resulting from

divorce or separate maintenance proceedings and shall not impose any fee or charges against the Unified Judicial System.

25-4-45.4. Counsel appointed for child in certain divorce or custody proceedings--Duty of counsel--Assistance--Costs.

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

25-4-45.5. Consideration of assault conviction in custody award.

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

25-4-45.6. Consideration of conviction for death of other parent in custody award.

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

25-4-46. Alimony, support, property, and child custody provisions subject to review on appeal.

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

25-4-47. Restoration of former name to wife--Validation of prior decrees.

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

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

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

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

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

25-4-51. Report of divorces to department of health.

The clerk of court in every county shall report information of each dissolution of marriage or divorce filed in the office of the clerk of court, on forms prescribed and furnished by the Department of Health and approved by the state court administrator of the Unified Judicial System. The forms shall be mailed or delivered to the South Dakota Department of Health within forty days after the entry of the final order or decree of the circuit court.

25-4-52. Visitation rights for grandparents--Enforcement by circuit court.

The circuit court may grant grandparents reasonable rights of visitation with their grandchild, with or without petition by the grandparents, if the visitation is in the best interests of the grandchild and:

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

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

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

25-4-54. Visitation rights of grandparents--Child placed for adoption.

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

25-4-55. Exclusion of child from custody proceedings.

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

25-4-56. Court authorized to order mediation or investigation--Allocation of costs.

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

25-4-57. Court appointment of mediator.

For any mediation ordered pursuant to § 25-4-56 the court shall appoint a mediator from a list of qualified mediators approved by the court.

25-4-58. Adoption of court rules establishing minimum qualifications of mediator.

The Supreme Court shall adopt rules establishing the minimum qualifications of a mediator. To be included on a list of qualified mediators approved by the court, a person must possess the minimum qualifications.

25-4-58.1. Minimum Qualifications for Family Court Mediators.

To be eligible as a court appointed mediator under § 25-4-56, a mediator must have the following minimum qualifications:

(1) A mediator must file an approved application on the prescribed form with the presiding judge for the circuit or circuits in which the mediator will conduct mediations. See prescribed form attached as Exhibit A.

(2) A mediator must have a minimum of forty (40) hours' training and consultation with an experienced mediator for at least three mediation sessions. In place of forty (40) hours' training and consultation, a person may, with court approval, qualify as a mediator if that person has had five year's experience in mediating custody and visitation issues with a minimum of twenty (20) mediations during that period. A mediator must have competence in the following areas:

(a) General knowledge of the South Dakota court system and its procedures in contested family matters;

(b) General knowledge of South Dakota family law, especially as applied to custody and visitation issues;

(c) Knowledge of child development and specifically the impact of divorce or separation on family members;

(d) Knowledge of resources available in the state to which the parties and the children can be referred for assistance;

(e) Knowledge of interviewing and mediation techniques applicable to the family setting.

(3) A mediator must be committed to and participate in continuing education courses.

EXHIBIT A

MEDIATOR APPLICATION FORM
UNIFIED JUDICIAL SYSTEM OF SOUTH DAKOTA
_____ CIRCUIT COURT

Name: _____

Address: _____

Day time Phone: _____

Instructions: Please complete the following questionnaire as specified under each section. If additional space is needed, attach a sheet for each area making sure to indicate the section of the questionnaire to which you are responding. This form must be filed with the Presiding Judge for each circuit in which you intend to participate in court appointed mediation.

1) Provide your professional background including degree(s), certificate(s), practice specialization(s), years of experience and special training:

2) Provide a full and complete disclosure of all professional employment experiences whether in the field of mediation or in any other field:

3) Provide complete information regarding any training, seminars, workshops, etc., you deem pertinent to mediation:

4) Provide the number of mediations in which you have been involved giving approximate dates of those mediations if available. Please indicate how many of the mediations were successful.

5) Describe methods of mediation you have used and time required to conduct a typical mediation:

6) Please describe how fees and costs are calculated for completion of a typical mediation:

7) Please describe the requirements for payment of fees:

I am aware of and agree to abide by the principles and guidelines set out in the Interim Standards for Mediators as promulgated by the Supreme Court of South Dakota.

Signature

Date

NOTE: This form must be updated as changes to the information occur or at least annually.

Approved:

Presiding Circuit Judge

25-4-58.2. Conduct of Family Court Mediators.

Mediators are expected to conduct themselves by the highest ethical standards. Mediators should conduct themselves and mediations according to the following general principles:

(1) A mediator should recognize that mediation is based on participation and self-determination by the parties. A mediator shall conduct the mediation process fairly, diligently, impartially and in a manner consistent with assisting the parties in reaching a voluntary, uncoerced agreement on the issues outstanding between them.

(2) A mediator shall fully disclose to all parties involved in the mediation any actual or potential conflicts of interest. A mediator shall not accept or shall withdraw from any mediation in which the mediator has reason to believe he or she cannot conduct the mediation in an impartial manner. After full disclosure of an actual or potential conflict of interest to the parties, the mediator shall withdraw from the mediation if requested by any party to do so.

(3) A mediator should maintain confidentiality at all times except as provided by law or court order. A mediator may otherwise disclose information regarding the mediation only with the expressed consent of the parties.

(4) A mediator shall fully disclose to the parties and explain the basis of compensation, fees, and other charges to the parties. This disclosure should occur at the first meeting of the mediator and the parties.

25-4-59. Privacy of mediation proceedings.

The mediator shall conduct the mediation proceedings in private. The mediator may exclude counsel from participation in the mediation proceedings.

25-4-60. Confidentiality of mediation communications and mediator's work product.

Any communication, oral or written, in a mediation proceeding pursuant to § 25-4-56 is confidential and inadmissible as evidence in any proceeding. A mediator appointed pursuant to § 25-4-56 may not be a witness, and the notes and work product of the mediator are not subject to discovery or subpoena in the proceeding in which the contested child custody or visitation is at issue.

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

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

25-4-62. Recommendation by mediator to court upon parties' failure to agree.

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

CHAPTER 25-4A CUSTODY AND VISITATION RIGHTS

25-4A-1. Custody or visitation rights enforceable by contempt proceedings.

After notice and hearing, any decree or order of the court relating to custody of or visitation with a child may be enforced by contempt.

25-4A-2. Written request for order to show cause for violation of visitation or custody decree--Hearing date.

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

25-4A-3. Affirmative inquiry into contempt--Contemnor's rights.

At the hearing, the court shall affirmatively inquire into the matters of visitation and custody and enter any orders the court deems appropriate. The alleged contemnor has the right to remain silent and the right to counsel.

25-4A-4. Affirmative defense by contemnor.

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

25-4A-5. Violation of custody or visitation decree--Punishment.

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

25-4A-6. Probation for contemnor.

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

25-4A-7. Motion to revoke probation of contemnor.

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

25-4A-8. Application of section 23A-38-2 to proceedings for custody or visitation decree violations.

The provisions of § 23A-38-2 do not apply to §§ 25-4A-1 to 25-4A-7, inclusive.

25-4A-9. "Standard guidelines" defined.

For the purposes of §§ 25-4A-9 to 25-4A-16, inclusive, the term, standard guidelines, means the child visitation guidelines established by court rules promulgated by the South Dakota Supreme Court pursuant to § 25-4A-10.

25-4A-10. Supreme Court to promulgate child visitation guidelines.

The South Dakota Supreme Court shall promulgate court rules establishing standard guidelines to be used statewide for child visitation in divorce or separate maintenance actions or any other custody action or proceeding. The standard guidelines shall provide a framework for child visitation including frequency and time for child visitation; hours or days of visitation; definitions for weekends, holidays, birthdays, and other special occasions; and time periods for summer visitations. In establishing the standard guidelines, the court may consider varying ages and circumstances of children and treat varying ages and circumstances differently.

25-4A-11. Plaintiff in custody action to file and serve guidelines--Guidelines as court order-- Custody of minors.

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

25-4A-12. Visitation agreement other than standard guidelines--Requirements.

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

25-4A-13. Objections to custody or visitation order--Hearing--Temporary order.

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

25-4A-14. Standard guidelines subject to certain court orders.

The standard guidelines are subject to any provision established by a South Dakota state court in the following: a temporary or permanent domestic protection order, an order arising out of an abuse or neglect proceeding, a bond condition arising out of a criminal case, and an order in any other proceeding affecting child custody or support.

25-4A-15. Attorney fees and costs.

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

25-4A-16. Parents responsible for child support.

The parents are responsible for payment of child support in accordance with § 25-7-6.1.

25-4A-17. Notice required before relocating child not living with both legal parents-- Exceptions.

If an existing custody order or other enforceable agreement does not expressly govern the relocation of the principal residence of a child, a parent who intends to change his or her principal residence shall, provide reasonable written notice by certified mail or admission of service to the other legal parent of the child. Reasonable notice is notice that is given at least forty-five days before relocation or a shorter period if reasonable under the specific facts giving rise to the relocation. Proof of the notice shall be filed with the court of record unless notice is waived by the court.

No notice need be provided pursuant to this section if:

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

25-4A-18. Contents of notice of relocation.

The notice required in § 25-4A-17 shall contain the following:

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

25-4A-19. Request for hearing on relocation--Presumption of consent.

At the request of the nonrelocating parent, made within thirty days of the notice of relocation, the court shall hold a hearing on the relocation. If no request for hearing is made within thirty days of notice, the relocation is presumed to be consented to by the nonrelocating parent.

CHAPTER 25-7 SUPPORT OBLIGATIONS

25-7-6.1. Obligation of parents to support child--Liability of absent parent--"Continued absence from the home".

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

25-7-6.2. Support obligation schedule.

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

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

Monthly Net Income One Child						
Two Children						
Three Children						
Four Children						
Five Children						
Six Children						
0-800	100	150	180	200	220	240
850	125	175	205	225	245	265
900	150	200	230	250	270	290
950	175	225	255	275	295	315
1,000	200	250	280	300	320	340
1,050	225	275	305	325	345	365
1,100	250	300	330	350	370	390
1,150	275	325	355	375	395	415
1,200	291	350	380	400	420	440
1,250	302	375	405	425	445	465
1,300	313	400	430	450	470	490
1,350	324	425	455	475	495	515
1,400	336	450	480	500	520	540
1,450	347	475	505	525	545	565
1,500	358	500	530	550	570	590

1,550	369	525	555	575	595	615
1,600	380	550	580	600	620	640
1,650	391	566	605	625	645	665
1,700	402	582	630	650	670	690
1,750	413	598	655	675	695	715
1,800	424	615	680	700	720	740
1,850	436	631	705	725	745	765
1,900	447	647	730	750	770	790
1,950	458	663	755	775	795	815
2,000	469	679	780	800	820	840
2,050	480	695	805	825	845	865
2,100	491	710	830	850	870	890
2,150	499	722	849	875	895	915
2,200	508	734	864	900	920	940
2,250	516	747	879	925	945	965
2,300	524	759	893	950	970	990
2,350	533	771	908	975	995	1,015
2,400	541	784	923	1,000	1,020	1,040
2,450	550	796	937	1,025	1,045	1,065
2,500	558	808	952	1,050	1,070	1,090
2,550	566	820	966	1,068	1,095	1,115
2,600	571	827	973	1,075	1,120	1,140
2,650	576	833	980	1,083	1,145	1,165
2,700	580	840	988	1,091	1,170	1,190
2,750	585	846	995	1,099	1,191	1,215
2,800	590	852	1,002	1,107	1,200	1,240
2,850	594	859	1,009	1,115	1,209	1,265
2,900	599	865	1,016	1,123	1,217	1,290
2,950	604	872	1,023	1,131	1,226	1,312
3,000	609	878	1,030	1,139	1,234	1,321
3,050	615	888	1,041	1,150	1,247	1,334
3,100	622	898	1,053	1,163	1,261	1,349
3,150	630	908	1,064	1,176	1,275	1,364
3,200	637	918	1,076	1,189	1,288	1,379
3,250	644	928	1,087	1,201	1,302	1,393
3,300	651	938	1,099	1,214	1,316	1,408
3,350	658	948	1,110	1,227	1,330	1,423
3,400	665	958	1,122	1,239	1,343	1,438
3,450	673	968	1,133	1,252	1,357	1,452
3,500	679	977	1,144	1,265	1,371	1,467
3,550	686	987	1,155	1,277	1,384	1,481
3,600	692	996	1,166	1,289	1,397	1,495
3,650	698	1,005	1,177	1,301	1,410	1,509
3,700	705	1,014	1,188	1,313	1,423	1,523
3,750	711	1,024	1,199	1,325	1,437	1,537
3,800	717	1,033	1,210	1,337	1,450	1,551
3,850	723	1,042	1,221	1,350	1,463	1,565
3,900	730	1,051	1,232	1,362	1,476	1,579
3,950	737	1,061	1,244	1,374	1,490	1,594
4,000	744	1,072	1,256	1,388	1,505	1,610
4,050	752	1,082	1,268	1,401	1,519	1,626
4,100	759	1,093	1,281	1,415	1,534	1,641
4,150	767	1,104	1,293	1,429	1,549	1,657
4,200	774	1,114	1,305	1,442	1,563	1,673
4,250	782	1,125	1,317	1,456	1,578	1,688
4,300	789	1,136	1,330	1,469	1,593	1,704
4,350	797	1,146	1,342	1,483	1,607	1,720
4,400	804	1,157	1,354	1,496	1,622	1,735
4,450	811	1,166	1,365	1,508	1,635	1,749
4,500	817	1,176	1,376	1,520	1,648	1,763

4,550	824	1,185	1,387	1,533	1,661	1,778
4,600	830	1,194	1,398	1,545	1,674	1,792
4,650	837	1,204	1,409	1,557	1,688	1,806
4,700	843	1,213	1,420	1,569	1,701	1,820
4,750	850	1,222	1,431	1,581	1,714	1,834
4,800	856	1,232	1,442	1,593	1,727	1,848
4,850	863	1,241	1,453	1,606	1,740	1,862
4,900	869	1,251	1,464	1,618	1,754	1,876
4,950	876	1,260	1,475	1,630	1,767	1,891
5,000	882	1,269	1,486	1,642	1,780	1,905
5,050	889	1,279	1,497	1,654	1,793	1,919
5,100	895	1,288	1,508	1,666	1,806	1,932
5,150	900	1,295	1,517	1,676	1,817	1,944
5,200	905	1,303	1,526	1,686	1,828	1,956
5,250	910	1,310	1,535	1,696	1,839	1,968
5,300	915	1,318	1,544	1,706	1,850	1,979
5,350	920	1,325	1,553	1,717	1,861	1,991
5,400	925	1,332	1,563	1,727	1,872	2,003
5,450	930	1,340	1,572	1,737	1,883	2,014
5,500	934	1,347	1,581	1,747	1,894	2,026
5,550	939	1,355	1,590	1,757	1,905	2,038
5,600	944	1,362	1,599	1,767	1,916	2,050
5,650	949	1,370	1,608	1,777	1,927	2,061
5,700	954	1,377	1,618	1,787	1,938	2,073
5,750	959	1,384	1,627	1,797	1,948	2,085
5,800	964	1,392	1,636	1,808	1,959	2,097
5,850	969	1,399	1,645	1,818	1,970	2,108
5,900	974	1,407	1,654	1,828	1,981	2,120
5,950	979	1,414	1,663	1,838	1,992	2,132
6,000	984	1,422	1,672	1,848	2,003	2,143
6,050	990	1,430	1,683	1,860	2,016	2,157
6,100	996	1,440	1,694	1,872	2,029	2,171
6,150	1,002	1,449	1,705	1,884	2,042	2,185
6,200	1,009	1,458	1,716	1,896	2,055	2,199
6,250	1,015	1,468	1,727	1,908	2,068	2,213
6,300	1,022	1,477	1,738	1,920	2,081	2,227
6,350	1,028	1,486	1,749	1,932	2,094	2,241
6,400	1,034	1,495	1,760	1,944	2,108	2,255
6,450	1,041	1,505	1,770	1,956	2,121	2,269
6,500	1,047	1,514	1,781	1,968	2,134	2,283
6,550	1,054	1,523	1,792	1,981	2,147	2,297
6,600	1,060	1,532	1,803	1,993	2,160	2,311
6,650	1,066	1,542	1,814	2,005	2,173	2,325
6,700	1,073	1,551	1,825	2,017	2,186	2,339
6,750	1,079	1,560	1,836	2,029	2,199	2,353
6,800	1,086	1,569	1,847	2,041	2,212	2,367
6,850	1,092	1,579	1,858	2,053	2,226	2,381
6,900	1,098	1,588	1,869	2,065	2,239	2,395
6,950	1,105	1,597	1,880	2,077	2,252	2,410
7,000	1,111	1,607	1,891	2,089	2,265	2,424
7,050	1,118	1,616	1,902	2,102	2,278	2,438
7,100	1,124	1,625	1,913	2,114	2,291	2,452
7,150	1,130	1,634	1,924	2,126	2,304	2,466
7,200	1,137	1,644	1,935	2,138	2,317	2,480
7,250	1,143	1,653	1,946	2,150	2,331	2,494
7,300	1,150	1,662	1,957	2,162	2,344	2,508
7,350	1,156	1,671	1,968	2,174	2,357	2,522
7,400	1,162	1,681	1,979	2,186	2,370	2,536
7,450	1,169	1,690	1,989	2,198	2,383	2,550
7,500	1,175	1,699	2,000	2,210	2,396	2,564

7,550	1,182	1,709	2,011	2,223	2,409	2,578
7,600	1,188	1,718	2,022	2,235	2,422	2,592
7,650	1,194	1,727	2,033	2,247	2,435	2,606
7,700	1,201	1,736	2,044	2,259	2,449	2,620
7,750	1,207	1,746	2,055	2,271	2,462	2,634
7,800	1,214	1,755	2,066	2,283	2,475	2,648
7,850	1,220	1,764	2,077	2,295	2,488	2,662
7,900	1,226	1,772	2,087	2,306	2,500	2,675
7,950	1,231	1,780	2,096	2,316	2,511	2,687
8,000	1,237	1,788	2,105	2,327	2,522	2,699
8,050	1,242	1,796	2,115	2,337	2,533	2,710
8,100	1,247	1,804	2,124	2,347	2,544	2,722
8,150	1,253	1,812	2,133	2,357	2,555	2,734
8,200	1,258	1,820	2,143	2,368	2,567	2,746
8,250	1,263	1,827	2,152	2,378	2,578	2,758
8,300	1,269	1,835	2,161	2,388	2,589	2,770
8,350	1,274	1,843	2,171	2,398	2,600	2,782
8,400	1,280	1,851	2,180	2,409	2,611	2,794
8,450	1,285	1,859	2,189	2,419	2,622	2,806
8,500	1,290	1,867	2,198	2,429	2,633	2,818
8,550	1,296	1,874	2,208	2,440	2,644	2,830
8,600	1,301	1,882	2,217	2,450	2,656	2,842
8,650	1,307	1,890	2,226	2,460	2,667	2,853
8,700	1,312	1,898	2,236	2,470	2,678	2,865
8,750	1,317	1,906	2,245	2,481	2,689	2,877
8,800	1,323	1,914	2,254	2,491	2,700	2,889
8,850	1,328	1,922	2,263	2,501	2,711	2,901
8,900	1,333	1,929	2,273	2,511	2,722	2,913
8,950	1,339	1,937	2,282	2,522	2,734	2,925
9,000	1,344	1,945	2,291	2,532	2,745	2,937
9,050	1,350	1,953	2,301	2,542	2,756	2,949
9,100	1,355	1,961	2,310	2,552	2,767	2,961
9,150	1,360	1,969	2,319	2,563	2,778	2,973
9,200	1,366	1,977	2,329	2,573	2,789	2,984
9,250	1,371	1,984	2,338	2,583	2,800	2,996
9,300	1,377	1,992	2,347	2,594	2,812	3,008
9,350	1,382	2,000	2,356	2,604	2,823	3,020
9,400	1,387	2,008	2,366	2,614	2,834	3,032
9,450	1,393	2,016	2,375	2,624	2,845	3,044
9,500	1,398	2,024	2,384	2,635	2,856	3,056
9,550	1,403	2,031	2,394	2,645	2,867	3,068
9,600	1,409	2,039	2,403	2,655	2,878	3,080
9,650	1,414	2,047	2,412	2,665	2,889	3,092
9,700	1,420	2,055	2,422	2,676	2,901	3,104
9,750	1,425	2,063	2,431	2,686	2,912	3,116
9,800	1,430	2,071	2,440	2,696	2,923	3,127
9,850	1,436	2,079	2,449	2,707	2,934	3,139
9,900	1,441	2,086	2,459	2,717	2,945	3,151
9,950	1,447	2,094	2,468	2,727	2,956	3,163
10,000	1,452	2,102	2,477	2,737	2,967	3,175

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

25-7-6.3. Determination of parents' monthly net income--Sources of income.

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

(1) Compensation paid to an employee for personal services, whether salary, wages, commissions, bonus, or otherwise designated;

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

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

25-7-6.4. Rebuttable presumption of employment at minimum wage.

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

25-7-6.5. Assets considered when income insufficient.

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

25-7-6.6. Profits or losses shown on federal income tax schedules as gross income--Court allowance of deduction.

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

25-7-6.7. Allowable deductions from monthly gross income.

Deductions from monthly gross income shall be allowed as follows:

- (1) Income taxes payable based on the applicable tax rate for a single taxpayer with one withholding allowance and a monthly payroll period rather than the actual tax rate;
- (2) Social security and medicare taxes based on the applicable tax rate for an employee or a self-employed taxpayer;
- (3) Contributions to an IRS qualified retirement plan not exceeding ten percent of gross income;
- (4) Actual business expenses of an employee, incurred for the benefit of his employer, not reimbursed;
- (5) Payments made on other support and maintenance orders.

25-7-6.8. Schedule used for child support obligations--Sex of obligor disregarded.

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

25-7-6.9. Income above the schedule--Child support adjusted to appropriate level.

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

25-7-6.10. Factors considered for deviation from schedule.

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

(1) The income of a subsequent spouse or contribution of a third party to the income or expenses of that parent but only if the application of the schedule works a financial hardship on either parent;

(2) Any financial condition of either parent which would make application of the schedule inequitable. If the total amount of the child support obligation, including any adjustments for health insurance and child care costs, exceeds fifty percent of the obligor's monthly net income, it shall be presumed that the amount of the obligation imposes a financial hardship on the obligor. This presumption may be rebutted based upon other factors set forth in this section;

(3) Any necessary education or health care special needs of the child;

(4) The effect of agreements between the parents regarding extra forms of support for the direct benefit of the child;

(5) The obligation of either parent to provide for subsequent natural children or stepchildren. However, an existing support order may not be modified solely for this reason; or

(6) The voluntary act of either parent which reduces that parent's income.

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

25-7-6.12. Review and amendment of schedule.

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

25-7-6.13. Modification of prior orders of support.

All orders for support entered and in effect prior to July 1, 2005, may be modified in accordance with this chapter without requiring a showing of a change in circumstances from the entry of the order.

25-7-6.14. Abatement of portion of child support--Shared responsibility cross credit.

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

(1) A child spends ten or more days in a month with the obligor; and

(2) The days of visitation and the abatement amount are specified in the court order.

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

As used in this section, shared responsibility means a parenting plan whereby each parent provides a suitable home for the child of the parties, the court order allows the child to spend at least one hundred twenty days in a calendar year in each home, and the parents have agreed in writing to share the duties, responsibilities, and expenses of parenting, including expenses for the child's education, recreation, and entertainment activities. In a shared responsibility situation, unless the parties otherwise agree and the agreement is approved by the court, the court may, if deemed appropriate under the circumstances, order a shared responsibility cross credit. The cross

credit shall be calculated by multiplying the combined child support obligation using both parents' monthly net incomes by 1.5 to arrive at a shared custody child support obligation. The shared custody child support obligation shall be apportioned to each parent according to his or her net income. A child support obligation is computed for each parent by multiplying that parent's portion of the shared custody child support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are offset, with the parent owing more child support paying the difference between the two amounts. It shall be presumed that the shared responsibility parenting plan is exercised. If the parenting plan exercised substantially deviates from the parenting plan ordered, either party may file a petition for modification without showing any other change in circumstances.

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

25-7-6.15. Allocation of travel costs by court.

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

25-7-6.16. Insurance--Computation of costs--Apportioned between parents.

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

25-7-6.17. Large adjustment in support phased in.

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

25-7-6.18. Order allocating child care expenses.

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

25-7-6.19. Credit for child support arrearages for parent with primary physical custody during period of custody.

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

25-7-6.20. Lien on payment or installment of support under an order of support--Notice.

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

In order to preserve such lien, any Title IV-D agency may perfect and enforce a lien authorized by this section in the same manner as liens are perfected for the specific type of real and personal property upon which the lien is claimed. The priority of the lien shall be established as of its date of filing. The register of deeds office is not entitled to any fee for registering or filing any lien under this section.

However, no lien is attached to any real or personal property which the obligor has transferred to another person who has purchased the property in good faith, for value, prior to the time that the Title IV-D agency's lien on the property has been perfected in the manner provided by law.

25-7-6.21. Credit on monthly support obligation for social security or veteran's dependent benefits.

If the child receives social security or veteran's dependent benefits as a result of the obligor's disability, or social security retirement benefits from the obligor, the obligor is entitled to a credit to the amount of the monthly support obligation.

25-7-6.22. Presumption second job income not to be considered in establishing support obligation--Rebuttal of presumption.

If a parent is employed full-time at a rate of pay that equals or exceeds the state's minimum wage, it shall be presumed that a parent's second job income is not to be considered in establishing a support obligation. This presumption may be rebutted by evidence that the income source was available to pay expenses related to the child when the family was intact or if the family had formed, by evidence that exclusion of the income would result in a financial hardship upon the other parent, or that exclusion of the second job income will have a substantial negative effect upon the child's standard of living.

25-7-6.23. Offset of support obligation when each parent has primary physical custody of at least one child--Computation--Assistance from department.

If the parents have two or more children between them and each parent has primary physical custody of at least one child, the child support obligation shall be determined by computing the amount of each parent's respective support obligation for the children in the other parent's physical custody, and the support obligations shall be offset in determining a monthly support obligation. If one or more of the children are receiving assistance from the department as provided in § 28-7A-7, and in lieu of the offset, each parent shall be obligated to pay the respective support obligation amount to the other parent.

25-7-6.24. Change of physical custody of child without court approval--Order to pay child support.

If the parents of a child have agreed to a change in the physical custody of the child without the court's approval, the parent who relinquished physical custody may be ordered to pay child support to the parent who gained physical custody of the child even though the custody order has not been modified to reflect the change in custody.

25-7-6.25. Form to request reimbursement of medical or health care costs from parent--Small claims procedure.

The department shall create and distribute a standardized form to allow a parent, guardian, or other custodian to request reimbursement of any medical or health care costs from the responsible parent. A parent, guardian, or custodian shall also be entitled to use the small claims procedure of chapter 15-39 as a means to collect unreimbursed medical or health care costs from the responsible parent.

25-7-7.1. Continuation of duty to support.

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

25-7-7.2. Expenses incurred on child's behalf--Fee schedule.

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

25-7-7.3. Past due support payments not subject to modification--Exception.

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

25-7-7.4. Unpaid payment or installment of support as judgment.

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

25-7-7.5. Filing of sworn statement or certificate of unpaid support due--Effective date of judgment.

In order to preserve such judgment against subsequent mortgages, purchasers, or judgment creditors for value and without actual notice of the lien on any property situated in a county, the support obligee or the secretary of the Department of Social Services may give notice of the judgment by filing in the office of the clerk of courts of the county in which the order for support is filed, or in any county in which a transcript of the order is filed and docketed, a sworn statement or certificate showing the amount of unpaid support due under the order. The clerk of courts shall file and docket the statement or certificate with the order for support or transcript thereof, as evidence of the amount of the judgment for support, as provided in chapter 15-16. The judgment shall be effective from the date and time of docketing the statement or certificate in the office of the clerk of courts.

25-7-7.6. Court may order payment of arrearages.

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

CHAPTER 25-7A COLLECTION OF CHILD SUPPORT

25-7A-1. Definition of terms.

Terms used in this chapter mean:

- (1) "Administrative order," a judgment or order of an agency of the executive branch of state government, or an agency of comparable jurisdiction of another state, ordering payment of a set or determinable amount of support money, or ordering withholding of income;
- (2) "Arrearage," the total amount of unpaid support obligations;
- (3) "Assistance," money payments made by the Department of Social Services which are paid to, or for the benefit of, any dependent child, including payments made so that food, shelter, medical care, clothing, transportation, education, or other necessary goods, services, or items may be provided, and payments made to compensate for the provision of those necessities;

(4) "Court order," a judgment or order of a circuit court of this state or a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support money;

(5) "Delinquency," any payment under an order for support which becomes due and remains unpaid;

(6) "Department," the Department of Social Services;

(7) "Dependent child," a needy child under the age of eighteen or under the age of nineteen and a full-time student in a secondary school if, before he attains the age of nineteen, it is determined that he may reasonably be expected to complete the program at the secondary school, who has been deprived of support or care by a natural parent, an adoptive parent, or a stepparent, by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or who is a child of an unemployed parent and who is living with a person in a place of residence maintained by such person as his home;

(8) "Income," any form of payment to a person, regardless of source, including wages, salary, commission, bonuses, compensation as an independent contractor, workers' compensation, unemployment compensation, disability, annuity and retirement benefits, gift or inheritance, all gain derived from capital or labor, profit gained through the sale or conversion of capital assets, and any other payments, including personal property, money and credits on deposit with or in the possession of, or made by any person, private entity, federal or state government, any unit of local government, school district or any entity created by public act. However, for the purposes of income withholding, income excludes:

(a) Any amount required by law or as a condition of employment to be withheld, other than creditor claims, including federal, state, and local taxes, social security and other retirement contributions;

(b) Any amount exempted by federal law; and

(c) Public assistance payments;

(9) "Need," the necessary costs of food, clothing, shelter, education, and medical care for the support of a dependent child;

(10) "Obligee," any person or entity to whom a duty of support is owed;

(11) "Obligor," any person who owes a duty to make payments under an order for support;

(12) "Order for support," a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, which provides for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include costs and fees, interest and penalties, income withholding, attorney's fees, and other relief;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(27) "Newly hired employee" or "new hire," any person hired to provide services for an employer and required to provide an Internal Revenue Service W-4 form to the employer, including a person who is rehired, reemployed, or reinstated following thirty consecutive days of termination or layoff even if the person does not provide a new or revised W-4 form to the employer;

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

25-7A-2. Public assistance to dependent child deemed debt of person responsible for support- -Establishment of amount of debt--Public assistance recipient does not incur debt.

Any payment of public assistance made to or for the benefit of any dependent child creates a debt due to the state, by the person or persons who are responsible for support of the children, in an amount equal to the amount of public assistance money paid. If there is a court order, administrative order, or final decree of divorce, the debt is limited to the amount of the order or decree including the full amount of all payments in arrears under the order or decree. The secretary of social services may, if the debt is not established by order, limit the debt to an amount consistent with the debtor's ability to pay, both as to amounts accrued and accruing during any period in which public assistance payments are made. The Department of Social Services may petition the appropriate court for modification of a court order on the same grounds as either party to the cause. A person receiving public assistance for the benefit of a dependent child does not incur a debt under this chapter for the period the person received assistance.

25-7A-3. Subrogation right of department.

The Department of Social Services is a party in interest and is subrogated to the right of any dependent child or spouse to prosecute or maintain any support action or execute any administrative remedy existing under the laws of this state to obtain reimbursement of public money expended for or on behalf of the child. If a court order, administrative order, or final decree of divorce enters judgment for an amount of support to be paid by a parent or other responsible person, the department is subrogated to the debt created by such order, and any money judgment shall be in favor of the department.

25-7A-3.1. Designation of Department of Social Services as state child support case registry-- Duties.

Beginning October 1, 1998, the Department of Social Services is designated as the state child support case registry, and shall collect, maintain, update, and monitor child support enforcement records by use of an automated system, for all child support orders being enforced by the department and all support orders entered or modified in the state on or after October 1, 1998.

The state case registry shall extract, share, compare, and receive child support information from other data bases, and furnish and exchange information with the federal case registry of child support orders, the federal parent locator service, other state agencies, and other states to facilitate the establishment or enforcement of child support orders.

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

25-7A-3.2. Designation of Department of Social Services as state child disbursement unit-- Collection and disbursement procedures.

Beginning October 1, 1998, the Department of Social Services is designated as the state child support disbursement unit. The department shall use automated procedures for the collection and disbursement of child support payments for all support orders being enforced by the department; all support orders subject to withholding of income; and, all other support orders as directed by a court of competent jurisdiction.

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

25-7A-3.3. State directory of new hires--Reporting requirements--Multistate employers--Use of information by department.

By October 1, 1997, the Department of Social Services shall establish a state directory of new hires. The department may enter into cooperative agreements with other state agencies to satisfy the provisions of this section. Effective October 1, 1997, every employer within the state shall furnish to the directory of new hires a report of any newly hired employee which includes the name, address, and social security number of the employee, and the employer's name, address, and identification number as assigned by the Internal Revenue Service.

The report shall be transmitted by the employer to the state directory of new hires no later than twenty days after the date the employer hires the employee, or if the employer transmits the report magnetically or electronically, by two monthly transmissions, not less than twelve days nor more than sixteen days apart. Each report shall be made on a W-4 form or an equivalent form, and may be transmitted by first class mail, magnetically, or electronically. No report may be filed with respect to any employee of a state or local agency performing intelligence or counterintelligence functions, if the head of the agency has determined that filing of the report could endanger the safety of the employee or compromise an ongoing investigation or mission.

Multistate employers which have employees who are employed in two or more states and which transmit reports magnetically or electronically may comply with the requirements of this section by designating one state in which the employer will transmit the required report. Any multistate employer who elects to report in this manner shall notify the secretary of the Department of Health and Human Services in writing as to which state the employer will transmit the report.

The department shall use all information received from employers to locate any person for purposes of establishing paternity; establishing, modifying, or enforcing child support obligations; furnishing information to the national directory of new hires; verifying eligibility for the department's programs; and, shall provide state agencies operating employment security and workers' compensation programs with access to any information reported by employers. Any employer who intentionally fails to comply with any duties imposed by this section commits a petty offense. The Department of Social Services or the Department of Labor, or both, may adopt rules pursuant to chapter 1-26 to implement the provisions of this section.

25-7A-4. Statement required of certain parents.

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

25-7A-5. Notice of support debt--Service on parent--Contents of notice.

The secretary of social services may initiate an action for support by issuing a notice of a support debt, which shall be served without summons or other pleadings on the alleged responsible parent in the manner provided for service of a summons in a civil action or by certified mail, return receipt requested. The notice, whether based on subrogation power of attorney, assignment of a support obligation established by a court, administrative order or judgment or based on the furnishing of assistance by the Department of Social Services for any dependent child or spouse, or based on the

obligation fixed by chapter 25-7, or support due to an obligee or another state who has applied for support enforcement services, shall contain the following statements:

- (1) The name of the dependent child or spouse for whom support is owed;
- (2) The monthly support for which the parent is responsible, including a statement of the debt accrued and accruing, and the monthly payment to be made on the state debt accrued, or due to an obligee or another state who has applied for support enforcement services, as established by:
 - (a) Subrogation to or assignment of a court or administrative order, judgment or decree establishing a set or determinable amount of child or spousal support; or
 - (b) Payment of assistance by the department for a dependent child or spouse where there is no court or administrative order, judgment or decree;
- (3) A statement that if the parent does not request a hearing within ten days from the day of service, the secretary:
 - (a) Will request the court enter an order establishing the amount of child support, accrued and accruing, which the parent is responsible for and the amount of the total monthly payment due on the accrued debt to the state, or to an obligee or another state who has applied for support enforcement services, and on the monthly support obligation;
 - (b) May request that the court enter an order for health insurance coverage;
 - (c) May request that the court enter an order for genetic testing costs; and
 - (d) May request that the court enter an order adjudicating paternity and custody of the child;
- (4) A statement that the parent served with a notice of support debt may, within ten days of the day of service of the notice of support debt, submit a written response to the notice objecting to all or any part of the notice and requesting a hearing;
- (5) A statement that an order entered under subdivision (3) of this section, establishing the payment obligation of the parent is subject to collection action, including an order for income withholding under this chapter, levy and execution under the laws of this state or any other collection actions authorized by law;
- (6) A reference to this chapter;
- (7) A statement that an order for support entered under this chapter is filed with the appropriate clerk of courts and is a lien as provided by law;
- (8) A statement that if the parent has any questions he may telephone or visit the nearest department office or consult an attorney;
- (9) A statement that the parent has an obligation to report any change of address or employment to the department; and
- (10) Any other information the secretary finds appropriate.

25-7A-6. Hearing requested by parent--Hearing before referee--Referee's report--Filing objections to report--Hearing on report--Order of court--Service of order by mail--Objection to modification without hearing.

If a parent served with a notice of support debt under § 25-7A-5 makes a timely request for a hearing, the secretary of social services shall file the notice of support debt, proof of service thereof, and response thereto in the office of the clerk of the circuit court in the county of residence of that parent. The matter shall be set for hearing before a referee who is a member in good standing of the State Bar Association and is appointed by the court, pursuant to statute, and after due notice to all parties by first class mail. The referee shall make a report to the court, recommending the amount of the debt due to the state, if any, and the monthly support obligation of the parent and the arrearage debt due to the obligee or another state who has applied for support enforcement services, or for health insurance coverage or genetic testing costs.

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

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

25-7A-7. Support order filed by secretary--Order entered by court--Service.

If a parent is served with a notice of support debt under § 25-7A-5 and does not request a hearing within ten days, the secretary of social services shall file, in the office of the appropriate clerk of the circuit court, the notice of support debt, proof of service thereof, and an application for an order for support. The court shall enter an order for support in accordance with the child support guidelines set by statute, establishing the amount of child support, accrued and accruing, for which the parent is responsible and the amount of the total monthly payment due on the accrued debt to the state, or to an obligee or another state who has applied for support enforcement services, and on the monthly support obligation. The court may also enter an order for health insurance coverage, genetic testing costs, adjudicating the paternity of the child, or establishing custody of the child. The secretary shall serve the parent an order by certified mail, return receipt requested, at the parent's last known address, and shall file proof of service.

25-7A-8. Circuit court action to contest paternity or custody.

If a person served with a notice of support debt under § 25-7A-5 contests paternity or custody of the child, and the person is presumed to be the parent of the child in accordance with the provisions of chapter 25-8, the secretary shall inform the responding party that an action must be commenced in circuit court in accordance with chapter 25-8 in order to establish that the person is not the father of the child or to establish custody. The notice of support debt, proof of service, and the response shall be filed for the purpose of establishing the support obligation as provided in § 25-7A-6. The establishment and enforcement of the obligation may not be stayed pending the action for paternity or custody determination commenced by the respondent.

25-7A-10.1. Filing of action involving previous support order.

If the proceedings for enforcement of child support involve amendment of a previous support order as fixed by a decree of divorce, judgment in a paternity action or prior enforcement proceedings which have been held in any court in this state, the action shall be filed in the office of the clerk of the circuit court for the county in which such previous order was entered.

25-7A-14. Interest on support debt or judgment.

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

25-7A-15. Payor holding amount in excess of debt--Release of excess to obligor.

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

25-7A-16. Grounds for release of lien.

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

25-7A-17. Agreement between parents relieving duty of support--Rights of department or support obligee not terminated.

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

25-7A-20. Enforcement of spousal support obligation.

The department shall enforce the support obligation due to a spouse or former spouse who is living with his child, but only if a support obligation has been established for the spouse and the child support obligation is being enforced.

25-7A-21. Judgment for arrearage due obligee in absence of court order.

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

25-7A-21.1. Order establishment case--Limitation on prior-period support obligations or arrearages.

In any order establishment case, the obligee is limited to a prior-period support obligation or arrearage not exceeding three years before either the date of application with any Title IV-D agency, the date of filing with a court of competent jurisdiction, or the date of a written demand served personally or by registered or certified mail, return receipt requested, upon the father at his last known address, whichever occurs earlier.

25-7A-22. Modification of child support--Hearing before referee--Referee's report--Objections--Service of court order--Objection to modification without hearing.

If the support order was entered in this state and this state maintains continuing exclusive jurisdiction over the support order in accordance with chapter 25-9B, or if the support order was registered in this state and the requirements of § 25-9B-611 or 25-9B-613 are satisfied, an obligor, an obligee, or the assignee may file a petition, on forms prescribed by the department, to increase or decrease child support. For any support order entered or modified after July 1, 1997:

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

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

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

The referee shall file the report with the court and cause copies thereof to be served by mailing to the parties and the secretary. Any party shall have ten days from the date of service of the report in which to file objections to the report. If a party files an objection, the other party shall have an additional five days from the date of service of the objections to file additional objections. If no objection is filed, the circuit court may thereafter, and without further notice, enter its order. If an objection is filed, the circuit court shall fix a date for hearing on the report, the hearing to be solely on the record established before the referee. The circuit court may thereafter adopt the referee's report, or may modify it, or may reject and remand it with instructions or for further

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

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

25-7A-23. Order for withholding of income or property--Written agreement in lieu of order.

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

25-7A-24. Order for withholding of income served upon obligor where delinquent or support arrearage owed.

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

25-7A-26. Petition to stay service of order for withholding--Grounds.

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

- (1) A dispute concerning the existence or amount of the order for support or delinquency or arrearage; or
- (2) The proper identity of the obligor.

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

25-7A-30. Service of order for withholding.

The department shall enter and serve the order for withholding on the payor, its superintendent, manager, or other agent, by certified mail, first class mail, or personal delivery. A copy of the order shall be mailed to the obligor at the obligor's last known post office address. The order for withholding shall be entered whether or not the order for support contains a provision for withholding of income or property.

25-7A-31. Order for withholding--Contents.

The order for withholding shall direct any payor to withhold:

- (1) An amount equal to the order for support; and
- (2) An additional amount not less than ten percent of the order for support, until payment in full of any delinquency.

25-7A-32. Amount withheld for support and arrearage.

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

25-7A-33. Order for withholding not conclusive on issue of arrearage.

The failure of an order for withholding to state an arrearage is not conclusive of the issue of whether an arrearage is owing.

25-7A-56. Prohibition against issuance or renewal of professional license, registration, certification, or permit of applicant in child support arrearage--Adoption of rules by state agencies.

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

The term professional license, registration, certification, or permit as specified by this section includes appraisers as specified in chapter 36-21B; abstractors as specified in chapter 36-13; accountants as specified in chapter 36-20A; barbers as specified in chapter 36-14; chiropractors as specified in chapter 36-5; cosmetologists as specified in chapter 36-15; counselors as specified in chapter 36-32; dentists and dental hygienists as specified in chapter 36-6A; electricians as specified in chapter 36-16; engineers, architects, and surveyors as specified in chapter 36-18; embalmers and funeral directors as specified in chapter 36-19; nurses as specified in chapter 36-9; nurse practitioners and nurse mid-wives as specified in chapter 36-9A; physical therapists as specified in chapter 36-10; medical assistants as specified in chapter 36-9B; hearing aid dispensers as specified in chapter 36-24; physicians and surgeons as specified in chapter 36-4; physician's assistants as specified in chapter 36-4A; advanced life support personnel as specified in chapter 36-4B; nursing facility administrators as specified in chapter 36-28; optometrists as specified in chapter 36-7; pharmacists as specified in chapter 36-11; plumbers as specified in chapter 36-25; podiatrists as specified in chapter 36-8; psychologists as specified in chapter 36-27A; real estate brokers and salesmen as specified in chapter 36-21A; social workers as specified in chapter 36-26; veterinarians as specified in chapter 36-12; insurance brokers, agents, and solicitors as specified in chapter 58-30; teachers and administrators as specified in chapters 13-42 and 13-43; attorneys as specified in chapter 16-16; securities agents, securities brokers, investment advisers, or investment adviser representatives as specified in chapter 47-31B; pilots as specified in chapter 50-11; day care providers as specified in chapter 26-6; gaming employees as specified in chapter 42-7B; and law enforcement officers as specified in chapter 23-3. The state agencies or boards which govern the professions, recreational licenses, and occupations listed in this paragraph may adopt rules pursuant to chapter 1-26 to implement the provisions of this section for their particular profession or occupation.

25-7A-56.1. Revocation, suspension, or restriction of licenses of child support obligors.

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

25-7A-56.2. Recordation of social security number of child support obligors.

To facilitate the collection of child support and to facilitate locating child support obligors, the following information shall be recorded in the following manners:

(1) The social security number of any applicant for a professional license, drivers license, occupational license, recreational license, sporting license, or marriage license shall be recorded on the application. If an agency allows the use of a number, other than the social security number as the license number, the agency shall advise the applicant;

(2) The social security number of any person who is subject to a divorce decree, support order, paternity adjudication, or paternity acknowledgment shall be recorded on the document relating to the matter;

(3) The social security number of any person who has died shall be placed in the death records and recorded on the death certificate;

(4) The social security number, drivers license number, or identification number of the owners shall be recorded in the records maintained by the Division of Motor Vehicles upon the issuance of the title or renewal of a registration.

25-7A-56.9. Reporting requirements of child support obligor's financial institution.

The department shall enter into agreements with any financial institution conducting business within the state whereby the financial institution shall, on a quarterly basis, provide to the department the name, record address, social security number, or other taxpayer identification number, and other identifying information requested by the department for each obligor who owes past-due child support, and who maintains an account at the financial institution. Every financial institution shall also comply with any lien, levy, or order for withholding of income issued by the department against any account.

A financial institution is not liable to any person or entity for release or disclosure of any information required herein, and is not liable for encumbering or surrendering to the department any assets held by the financial institution and owned by the obligor. A financial institution is not liable to any person or entity for any other action taken in good faith by the institution to comply with the requirements of this section. Any information obtained by any Title IV-D agency pursuant to this section is confidential in nature and may be disclosed only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation.

As used in this section, financial institution includes any financial institution as defined in subdivision 10-43-1(4), any institution regulated by chapter 47-31B, and any other depository institution, credit union, benefit association, insurance company, safe deposit company, bond fund, money market mutual fund, and any mutual fund of any kind or character. The term, account, as used in this section includes any demand deposit account, checking account, negotiable withdrawal order account, savings account, time deposit account, money market or any type of mutual fund account, and intangible property as defined in subdivision 43-41B-1(10).

25-7A-56.10. Garnishment of unemployment benefits.

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

25-7A-57. Award of attorney fees and costs in child support modification hearings.

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

25-7A-58. Health insurance for dependent child.

If an order for support requires a parent of a dependent child to provide health insurance coverage for that child, any insurer subject to chapter 58-33 and who is engaged in the business of health

insurance as well as any employer or union who provides family health insurance coverage to its employees or members, upon receiving written notice of such order and an application from either the noncustodial parent, custodial parent, or the department, or upon receiving a national medical support notice from any Title IV-D agency, is required to allow enrollment of such dependent child without regard to any applicable enrollment season restrictions and without being subject to underwriting restrictions or exclusionary riders. The insurer or plan administrator shall also complete the applicable sections of the national medical support notice within forty business days of the date of the notice and forward the notice to any person or entity specified in the notice. No insurer, employer, or union providing family health insurance benefit plans as set out in this section may eliminate or cancel the ordered medical support coverage for the dependent child unless it is provided evidence that:

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

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

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

25-7A-59. Withholding employee's compensation for dependent child's medical support-- Required filing time--Limitation on amount--Penalty.

In any case where there is in effect an order for support requiring an obligor to provide medical support for a dependent child, the employer of the obligor, upon receiving a national medical support notice from any Title IV-D agency is required to complete the applicable sections and forward the notice to the persons or entities specified in the notice within twenty business days of the date of the notice. Upon receiving notice of successful enrollment, the employer shall withhold from the employee's compensation the employee's share of premiums, if any, for health coverage required for the medical support of the dependent child. Any employer withholding compensation from an employee for the purposes set forth in this section is required to pay, upon the premium due date, the employee's share of the premium to the insurer providing the health coverage for the dependent child. The total amount withheld for support and health insurance premiums may not exceed the amount specified in § 25-7A-32, giving priority to the payment of current and past-due support.

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

25-7A-60. Garnishment of wages for expenditure made by state for dependent child under the medical assistance program.

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

25-7A-61. Promulgation of rules to notify insurers and employers of child support orders that include medical support.

The Department of Social Services may promulgate rules pursuant to chapter 1-26 to establish procedures to notify insurers and employers of child support orders that include medical support, to establish procedures for the enrollment of children under private health insurance policies pursuant to orders for medical support, to establish procedures for the submission of claims to private insurers for medical services rendered to children covered by medical support orders, and for oversight and administrative functions.

25-7A-62. Notice to obligor of national medical support notice--Procedure and grounds for contesting enrollment. The department shall notify the obligor of its issuance of a national medical support notice and further advise the obligor of the procedures to contest the enrollment and withholding of premiums. An obligor may contest the enrollment and withholding of premiums by filing a written request for administrative review with the department within ten days after service of the notice. The grounds for contesting shall be based upon a mistake of fact and limited to the proper identity of the obligor, or a dispute concerning the responsibility of the obligor to provide health insurance coverage for the dependent child pursuant to an order for support. The employer shall continue to withhold premiums until it receives notice that the contest is resolved and the obligor is not responsible for the child's health insurance coverage. The employer shall also provide the department written notification of termination of employment within five days of the obligor's termination date.

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