

Tennessee Divorce Laws

TITLE 36 DOMESTIC RELATIONS

CHAPTER 3 MARRIAGE

PART 4 BREACH OF MARRIAGE CONTRACT

36-3-401. Proof of contract.

In all actions for damages for the breach of promise or contract of marriage which may hereafter be tried in the courts of this state, unless there is written evidence of such contract, signed by the party against whom the action is brought, the alleged contract must be proved by at least two (2) disinterested witnesses before any recovery may be allowed.

Part 5 Property Rights of Spouses.

36-3-501. Enforcement of antenuptial agreements.

Notwithstanding any other provision of law to the contrary, except as provided in § 36-3-502, any antenuptial or prenuptial agreement entered into by spouses concerning property owned by either spouse before the marriage which is the subject of such agreement shall be binding upon any court having jurisdiction over such spouses and/or such agreement if such agreement is determined, in the discretion of such court, to have been entered into by such spouses freely, knowledgeably and in good faith and without exertion of duress or undue influence upon either spouse. The terms of such agreement shall be enforceable by all remedies available for enforcement of contract terms.

36-3-502. Creditor's rights.

(a) No marriage settlement or other marriage contract shall be good against creditors, where a greater value is secured to the intended wife, and the children of the marriage, or either of them, than the portion actually received with the wife in marriage, and such estate as the husband at the time of the husband's marriage shall be possessed of, after deducting the just debts by the husband then due and owing.

(b) In case of any suit upon any such marriage contract, where any creditor is a party, the burden of proof lies upon the person claiming under such marriage contract.

(c) In such case, any legacy given to the wife in general words, and not in trust, or any distributive share in an estate during coverture, shall be taken as a part of the portion received with the wife, and secured to those claiming under the marriage contract, to make up any deficiency created by the claims of creditors on the property conveyed in the marriage contract.

36-3-503. Antenuptial debts of wife - Nonliability of husband.

No husband shall be liable for the debts, contracts or obligations of the wife incurred by the wife previous to marriage.

36-3-504. Disabilities of coverture removed from married women.

(a) Married women are fully emancipated from all disability on account of coverture, and the common law as to the disability of married women and its effects on the rights of property of the wife, is totally abrogated, except as set out in § 36-3-505, and marriage shall not impose any disability or incapacity on a woman as to the ownership, acquisition or disposition of property of any sort, or as to the wife's capacity to make contracts and to do all acts in reference to property which the wife could lawfully do, if the wife were not married, but every woman now married, or hereafter to be married, shall have the same capacity to acquire, hold, manage, control, use, enjoy and dispose of, all property, real and personal, in possession, and to make any contract in reference to it, and to bind herself personally, and to sue and be sued with all the rights and incidents thereof, as if the wife were not married.

(b) All of the statutes of limitation that apply in favor of or against a feme sole, and the feme sole's property, shall apply and operate in favor of or against married women and their property.

36-3-505. Tenancies by entirety unaffected.

Nothing in § 36-3-504 shall be construed as abolishing tenancies by the entirety.

CHAPTER 4 DIVORCE AND ANNULMENT

36-4-101. Grounds for divorce from bonds of matrimony.

The following are causes of divorce from the bonds of matrimony:

(1) Either party, at the time of the contract, was and still is naturally impotent and incapable of procreation;

(2) Either party has knowingly entered into a second marriage, in violation of a previous marriage, still subsisting;

(3) Either party has committed adultery;

(4) Willful or malicious desertion or absence of either party, without a reasonable cause, for one (1) whole year;

(5) Being convicted of any crime which, by the laws of the state, renders the party infamous;

(6) Being convicted of a crime which, by the laws of the state, is declared to be a felony, and sentenced to confinement in the penitentiary;

(7) Either party has attempted the life of the other, by poison or any other means showing malice;

(8) Refusal, on the part of a spouse, to remove with that person's spouse to this state, without a reasonable cause, and being willfully absent from the spouse residing in Tennessee for two (2) years;

(9) The woman was pregnant at the time of the marriage, by another person, without the knowledge of the husband;

(10) Habitual drunkenness or abuse of narcotic drugs of either party, when the spouse has contracted either such habit after marriage;

(11) The husband or wife is guilty of such cruel and inhuman treatment or conduct towards the spouse as renders cohabitation unsafe and improper which may also be referred to in pleadings as inappropriate marital conduct;

(12) The husband or wife has offered such indignities to the spouse's person as to render the spouse's position intolerable, and thereby forced the spouse to withdraw;

(13) The husband or wife has abandoned the spouse or turned the spouse out of doors for no just cause, and has refused or neglected to provide for the spouse while having the ability to so provide;

(14) Irreconcilable differences between the parties; and

(15) For a continuous period of two (2) or more years which commenced prior to or after April 18, 1985, both parties have lived in separate residences, have not cohabited as man and wife during such period, and there are no minor children of the parties.

36-4-102. Legal separation.

(a) A party who alleges grounds for divorce from the bonds of matrimony may, as an alternative to filing a complaint for divorce, file a complaint for legal separation. Such complaint shall set forth the grounds for legal separation in substantially the language of § 36-4-101 and pray only for legal separation or for such other and further relief to which complainant may think to be entitled. The other party may deny the existence of grounds for divorce but, unless the other party specifically objects to the granting of an order of legal separation, the court shall declare the parties to be legally separated.

(b) If the other party specifically objects to legal separation, the court may, after a hearing, grant an order of legal separation, notwithstanding such objections if grounds are established pursuant to § 36-4-101. The court also has the power to grant an absolute divorce to either party where there has been an order of legal separation for more than two (2) years upon a petition being filed by either party which sets forth the original order for legal separation and that the parties have not become reconciled. The court granting the divorce shall make a final and complete adjudication of

the support and property rights of the parties. However, nothing in this subsection shall preclude the court from granting an absolute divorce before the two-year period has expired.

(c) Legal separation shall not affect the bonds of matrimony but shall permit the parties to cease matrimonial cohabitation. The court may provide for matters such as child custody, visitation, support and property issues during legal separation upon motion by either party or by agreement of the parties.

(d) Notwithstanding this section, a party who can establish grounds for divorce from the bonds of matrimony pursuant to § 36-4-101 shall be entitled to an absolute divorce pursuant to the provisions of this chapter.

36-4-103. Irreconcilable differences - Procedure.

(a) (1) In all divorces sought because of irreconcilable differences between the parties, if the defendant is a nonresident, personal service may be effectuated by service upon the secretary of state pursuant to the provisions of § 20-2-215.

(2) In lieu of service of process, the defendant may enter into a written notarized marital dissolution agreement with plaintiff that makes specific reference to a pending divorce by a court and docket number, or states that the defendant is aware that one will be filed in this state and that the defendant waives further service and waives filing an answer to the complaint. Such waiver of service shall be valid for a period of one hundred eighty (180) days from the date the last party signs the agreement. The agreement may include the obligation and payment of alimony, in solido or in futuro, to either of the parties, any other provision of the law notwithstanding. The signing of such an agreement shall be in lieu of service of process for the period such waiver is valid and shall constitute a general appearance before the court and answer which shall give the court personal jurisdiction over the defendant, and constitute a default judgment for the purpose of granting a divorce on the grounds of irreconcilable differences.

(3) No divorce heretofore granted shall be invalid because the agreement was signed and notarized or acknowledged prior to filing under prior law before the action was filed.

(b) No divorce shall be granted on the ground of irreconcilable differences unless the court affirmatively finds in its decree that the parties have made adequate and sufficient provision by written agreement for the custody and maintenance of any children of that marriage and for the equitable settlement of any property rights between the parties. If the court does not affirmatively find that the agreement is sufficient or equitable, the cause shall be continued by the court to allow further disposition by the petitioner. If both parties are present at the hearing, they may, at that time, ratify any amendments the court may have to the agreement. The amended agreement shall then become a part of the decree. The agreement shall be incorporated in the decree or incorporated by reference, and such decree may be modified as other decrees for divorce.

(c) (1) Bills for divorce on the ground of irreconcilable differences must have been on file for sixty (60) days before being heard if the parties have no unmarried child under eighteen (18) years of age, and must have been on file at least ninety (90) days before being heard if the parties have an unmarried child under eighteen (18) years of age. The sixty-day or ninety-day period bills for divorce which must be on file shall commence on the date the original bill was filed and not on the date the bill was amended to include the ground of irreconcilable differences.

(2) A divorce decree or order issued prior to March 22, 1996, in which the hearing for such divorce occurred before the specified time periods required by this subsection, shall remain valid and the parties shall remain divorced. Likewise, all other issues resolved in the divorce decree, order or agreement, such as distribution of marital property, alimony, child support and custody, shall remain valid and in full force and effect.

(d) (1) A bill of complaint for divorce where the respondent has been personally served or acknowledged as set out in subsection (a), which includes the ground of irreconcilable differences, may be taken as confessed and a final decree entered thereon, as in other cases and without corroborative proof or testimony, the provisions of §§ 36-4-107 and 36-4-114 to the contrary notwithstanding.

(2) For purposes of this section, "without corroborative proof or testimony" means that the petitioner shall not be required to testify as to the material facts constituting irreconcilable differences or any attempts to reconcile such differences.

(e) If there has been a contest or denial of the grounds of irreconcilable differences, no divorce shall be granted on the grounds of irreconcilable differences. However, a divorce may be granted on the grounds of irreconcilable differences where there has been a contest or denial, if a properly executed marital dissolution agreement is presented to the court.

(f) Irreconcilable differences may be asserted as a sole ground for divorce or as an alternate ground for divorce with any other cause for divorce set out in § 36-4-101 or § 36-4-102.

36-4-104. Residence requirements.

(a) A divorce may be granted for any of the aforementioned causes if the acts complained of were committed while the plaintiff was a bona fide resident of this state or if the acts complained of were committed out of this state and the plaintiff resided out of the state at the time, if the plaintiff or the defendant has resided in this state six (6) months next preceding the filing of the complaint.

(b) For the purposes of this section, any person in the armed services of the United States, or the spouse of any such person, who has been living in this state for a period of not less than one (1) year shall be presumed to be a resident of this state, and the presumption of residence shall be overcome only by clear and convincing evidence of a domicile elsewhere.

36-4-105. Venue.

(a) The bill or petition may be filed in the proper name of the complainant, in the chancery or circuit court or other court having divorce jurisdiction, in the county where the parties reside at the time of their separation, or in which the defendant resides, if a resident of the state; but if the defendant is a nonresident of the state or a convict, then in the county where the applicant resides.

(b) Any divorce granted prior to May 4, 1967, will not be deemed void solely on the ground that the parties to the divorce action were residents of a county or counties other than the county in which the divorce decree was entered.

36-4-106. Contents of petition for divorce and legal separation.

(a) (1) The complaint for divorce shall set forth the grounds for the divorce in substantially the language of § 36-4-101 or § 36-4-102, and pray only for a divorce from the defendant, or for a divorce and such other and further relief to which the complainant may think to be entitled. In cases wherein an answer is filed, the court shall, on motion of the defendant, require the complainant to file a bill of particulars, setting forth the facts relied on as grounds for the divorce, with reasonable certainty as to time and place.

(2) The complaint for legal separation shall set forth the grounds for legal separation in substantially the language of § 36-4-101, and pray for such further relief to which the complainant is entitled. In all cases where an answer is filed, the court shall, on motion of the defendant, require the complainant to file a bill of particulars, stating the facts relied on as a ground for legal separation, with reasonable certainty as to time and place.

(b) (1) The complainant shall also allege the full name of the husband, the full maiden name of the wife, their mailing addresses, dates and places of their birth, race or color of each spouse, number of previous marriages of each spouse, date and place of the marriage of the parties, the number of their children who are minors at the time of the filing of the complaint, the social security numbers of the parties and all children born of the marriage, and any other litigation concerning the custody of such children in this or any other state in which either party has participated, as specified in § 36-6-210 [repealed]. It shall be mandatory that every complaint filed under this chapter shall contain the foregoing, and the trial judges shall dismiss petitions and bills which do not contain the foregoing unless it can be shown to the satisfaction of the court that such information could not be obtained by the complainant or petitioner by exercising due diligence. In lieu of a mailing address, either party may designate an agent for the service of process throughout the proceedings and, except as provided in subdivision (b)(2), the name and address of such agent shall be the only address used for the designating party in all petitions, pleadings, motions and orders relating to such divorce action.

(2) If the complainant or the defendant shows to the satisfaction of the court in which the petition is filed that the residential address of the other party is relevant and necessary in order to prove the allegations contained in the complaint or to ascertain information necessary to determine value and/or ownership of property, or to ascertain other data necessary to evaluate and agree upon a property division or custody or defend against such allegations, the court may order either party to reveal such residential address to the other party.

(3) If the complainant elects to designate an agent for service of process in lieu of the mailing address as authorized by this subsection but does not designate a specific person, the complainant's attorney shall be deemed the complainant's agent for service of process.

(c) Notwithstanding any other provision of the law to the contrary, the plaintiff or other party shall not be required in those counties having a divorce proctor to file an affidavit swearing that the defendant is not in the military service where:

(1) The complaint states facts that would make the defendant ineligible for military service; or

(2) The residence address of the defendant is set forth in the complaint, and:

(A) The defendant has been personally served with service of process, or has been mailed a copy of the complaint by a divorce proctor;

(B) The defendant has actual notice of the commencement of the suit;

(C) Proof of mailing to the defendant of notice of the suit is exhibited to the court; or

(D) The defendant is represented by an attorney.

(d) Upon the filing of a petition for divorce or legal separation except on the sole ground of irreconcilable differences and upon personal service of the complaint and summons on the respondent or upon waiver and acceptance of service by the respondent, the following temporary injunctions shall be in effect against both parties until the final decree of divorce or order of legal separation is entered, the petition is dismissed, the parties reach agreement, or until the court modifies or dissolves the injunction, written notice of which shall be served with the complaint:

(1) (A) An injunction restraining and enjoining both parties from transferring, assigning, borrowing against, concealing or in any way dissipating or disposing, without the consent of the other party or an order of the court, of any marital property. Nothing herein is intended to preclude either of the parties from seeking broader injunctive relief from the court.

(B) Expenditures from current income to maintain the marital standard of living and the usual and ordinary costs of operating a business are not restricted by this injunction. Each party shall maintain records of all expenditures, copies of which shall be available to the other party upon request.

(2) An injunction restraining and enjoining both parties from voluntarily canceling, modifying, terminating, assigning, or allowing to lapse for nonpayment of premiums, any insurance policy, including, but not limited to, life, health, disability, homeowners, renters, and automobile, where such insurance policy provides coverage to either of the parties or the children, or that names either of the parties or the children as beneficiaries without the consent of the other party or an order of the court. "Modifying" includes any change in beneficiary status.

(3) An injunction restraining both parties from harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other to or in the presence of any children of the parties or to either party's employer.

(4) An injunction restraining both parties from relocating any children of the parties outside the state of Tennessee, or more than one hundred (100) miles from the marital home, without the permission of the other party or an order of the court, except in the case of a removal based upon a well-founded fear of physical abuse against either the fleeing parent or the child. In such cases, upon request of the nonrelocating parent, the court will conduct an expedited hearing, by phone conference if appropriate, to determine the reasonableness of the relocation and to make such other orders as appropriate.

(5) The provisions of these injunctions shall be attached to the summons and the complaint and shall be served with the complaint. The injunctions shall become an order of the court upon fulfillment of the requirements of this subsection (d). However, nothing in this subsection shall preclude either party from applying to the court for further temporary orders, an expanded temporary injunction, or modification or revocation of this temporary injunction.

(6) The temporary injunctions provided in this section shall only apply to the spousal parties named in the petition and shall not apply to any third party named in the petition; provided, however, that nothing in this subsection (d) shall preclude any party from applying to the court for an order of injunctive or extraordinary relief against any other party named in any petition as provided by law or rule.

36-4-107. Verification of petition - Effect of noncompliance.

(a) The bill or petition, except those seeking a divorce from the bonds of matrimony on the grounds of irreconcilable differences, shall be verified by an affidavit, upon oath or affirmation, before a general sessions court judge, notary public or the judge or clerk of the court, or as provided in §§ 58-1-605 - 58-1-607, that the facts stated in the bill are true to the best of the complainant's knowledge and belief for the causes mentioned in the bill. The authority conferred in §§ 58-1-605 - 58-1-607 may be exercised beyond the continental limits of the United States.

(b) If the issue of whether the affidavit contains the complainant's verification that the complaint is not made out of levity or in collusion with the defendant is not raised at trial, each party waives the right to contest such issue on appeal.

(c) A divorce decree or order issued prior to March 22, 1996, in which the bill or petition for such divorce did not include the affidavit of verification required by this section shall remain valid and the parties shall remain divorced. Likewise, all other issues resolved in the divorce decree, order or agreement, such as distribution of marital property, alimony, child support and custody, shall remain valid and in full force and effect.

36-4-108. Security for costs - Service of process.

(a) The complainant, upon giving security for costs, or otherwise complying with the law, shall have the usual process to compel the defendant to appear and answer the bill, or it may be taken for confessed, as in other chancery cases.

(b) In actions for annulment of marriage, service on the defendant may be by subpoena or by publication as in divorce cases.

36-4-109. Time for hearing.

If the subpoena to answer has been served upon the defendant, or if publication has been completed as required by law, the cause may be set for hearing and tried at the first term of court thereafter.

36-4-110. Appearance and answer.

The defendant may appear according to the rules of the court and answer the bill upon oath or affirmation.

36-4-111. Failure to separate not a defense.

It is no impediment to a divorce that the offended spouse did not leave the marital domicile or separate from the offending spouse on account of the conduct of the offending spouse.

36-4-112. Defense when ground is adultery.

If the cause assigned for the divorce is adultery, it is a good defense and perpetual bar to the same if the defendant alleges and proves that:

- (1) The complainant has been guilty of like act or crime;
 - (2) The complainant has admitted the defendant into conjugal society and embraces after knowledge of the criminal act;
 - (3) The complainant, if the husband, allowed the wife's prostitutions and received hire for them;
- or
- (4) The husband exposed the wife to lewd company, whereby the wife became ensnared to the act or crime of adultery.

36-4-113. Issues - Trial by jury - New trial.

Issues may be made up at the request of either party upon matters of fact charged in the bill or petition and denied in the answer, and be tried by a jury in presence of the court, and a new trial may be granted of the issues, should the court deem it necessary.

36-4-114. Proof required.

If the defendant admits the facts charged in the bill or petition and relied upon as the ground for a divorce, or the bill is taken for confessed, the court shall, nevertheless, before decreeing a divorce, except a divorce on the ground of irreconcilable differences, hear proof of the facts alleged as aforementioned, and either dismiss the bill or petition or grant a divorce, as the justice of the case may require.

36-4-115. Form of proof.

Either party may take proof by depositions according to the rules or orders of the court, or have the witnesses examined in open court at pleasure.

36-4-116. Affidavits of proof not required - Sworn statements concerning financial matters required - Sworn statements as evidence.

(a) No judge or chancellor shall require the filing of affidavits of proof from witnesses, plaintiffs, defendants, or petitioners and respondents in support of any complaint for divorce, legal separation, separate maintenance or annulment.

(b) Any such judge or chancellor may, however, require a sworn statement from such persons relative or pertaining to the income of the parties, their expenses, any real or personal property in which the parties have an interest and the extent of such parties' interest therein, and such sworn statement shall be admissible as evidence of the truth of the contents.

36-4-117. Proof when ground is spouse's refusal to remove to this state.

If the divorce is sought by the complainant spouse on the ground of the defendant spouse's refusal to remove with the complainant spouse to this state, and of the defendant spouse's willful absence for two (2) years without reasonable cause, the complainant spouse shall prove endeavors to induce the defendant spouse to live with the complainant spouse after the separation, and that the complainant spouse did not remove from the state where the complainant spouse resided for the purpose of obtaining a divorce.

36-4-118. Proof when ground is conviction of crime.

The proof that the defendant is a convict, or is sentenced to the penitentiary, if that is the cause relied upon for the divorce, shall be by the record of the conviction and sentence.

36-4-119. Decree of court generally.

If, upon hearing the cause, the court is satisfied that the complainant is entitled to relief, it may be granted either by pronouncing the marriage void from the beginning, or by dissolving it forever and freeing each party from the obligations thereof, or by a separation for a limited time.

36-4-120. Decree of court in action brought under § 36-4-102.

(a) If the cause assigned for a divorce is that specified in § 36-4-101(11), the defendant may make defense by alleging and proving the ill conduct of the complainant as a justifiable cause for the conduct complained of, and on making out the defense to the satisfaction of the court, the bill may be dismissed with or without costs, in the discretion of the court.

(b) But if the court is of the opinion that the complainant is entitled to relief, it may be granted, according to the prayer of the bill, by annulling the marriage, or by ordering a separation, perpetual or temporary, or such other decree as the nature and circumstances of the case require.

36-4-121. Distribution of marital property.

(a) (1) In all actions for divorce or legal separation, the court having jurisdiction thereof may, upon request of either party, and prior to any determination as to whether it is appropriate to order the support and maintenance of one (1) party by the other, equitably divide, distribute or assign the marital property between the parties without regard to marital fault in proportions as the court deems just.

(2) In all actions for legal separation, the court, in its discretion, may equitably divide, distribute, or assign the marital property in whole or in part, or reserve the division or assignment of marital property until a later time. If the court makes a final distribution of marital property at the time of the decree of legal separation, any after-acquired property is separate property.

(3) To this end, the court shall be empowered to effectuate its decree by divesting and reinvesting title to such property and, where deemed necessary, to order a sale of such property and to order the proceeds divided between the parties.

(A) Any auction sale of property ordered pursuant to this section shall be conducted in accordance with the provisions of title 35, chapter 5.

(B) The court may order the provisions of title 35, chapter 5, to apply to any sale ordered by the court pursuant to this section.

(C) The court, in its discretion, may impose any additional conditions or procedures upon the sale of property in divorce cases as are reasonably designed to ensure that such property is sold for its fair market value.

(b) For purposes of this chapter:

(1) (A) "Marital property" means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date. In the case of a complaint for legal separation, the court may make a final disposition of the marital property either at the time of entering an order of legal separation or at the time of entering a final divorce decree, if any. If the marital property is divided as part of the order of legal separation, any property acquired by a spouse thereafter is deemed separate property of that spouse. All marital property shall be valued as of a date as near as possible to the date of entry of the order finally dividing the marital property.

(B) "Marital property" includes income from, and any increase in value during the marriage of, property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation, and the value of vested and unvested pension, vested and unvested stock option rights, retirement or other fringe benefit rights relating to employment that accrued during the period of the marriage.

(C) "Marital property" includes recovery in personal injury, workers' compensation, social security disability actions, and other similar actions for the following: wages lost during the marriage, reimbursement for medical bills incurred and paid with marital property, and property damage to marital property.

(D) As used in this subsection, "substantial contribution" may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine.

(E) Property shall be considered marital property as defined by this subsection for the sole purpose of dividing assets upon divorce or legal separation and for no other purpose; and assets distributed as marital property will not be considered as income for child support or alimony purposes, except to the extent the asset will create additional income after the division.

(2) "Separate property" means:

(A) All real and personal property owned by a spouse before marriage, including, but not limited to, assets held in individual retirement accounts (IRAs) as that term is defined in the Internal Revenue Code of 1986, as amended;

(B) Property acquired in exchange for property acquired before the marriage;

(C) Income from and appreciation of property owned by a spouse before marriage except when characterized as marital property under subdivision (b)(1);

(D) Property acquired by a spouse at any time by gift, bequest, devise or descent;

(E) Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages; and

(F) Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.

(c) In making equitable division of marital property, the court shall consider all relevant factors including:

(1) The duration of the marriage;

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

- (6) The value of the separate property of each party;
- (7) The estate of each party at the time of the marriage;
- (8) The economic circumstances of each party at the time the division of property is to become effective;
- (9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;
- (10) The amount of social security benefits available to each spouse; and

(11) Such other factors as are necessary to consider the equities between the parties.

(d) The court may award the family home and household effects, or the right to live therein and use the household effects for a reasonable period, to either party, but shall give special consideration to a spouse having physical custody of a child or children of the marriage.

(e) (1) The court may impose a lien upon the marital real property assigned to a party, or upon such party's separate real property, or both, as security for the payment of child support.

(2) The court may impose a lien upon the marital real property assigned to a party as security for the payment of spouse support or payment pursuant to property division.

(f) (1) If, in making equitable distribution of marital property, the court determines that the distribution of an interest in a business, corporation or profession would be contrary to law, the court may make a distributive award of money or other property in order to achieve equity between the parties. The court, in its discretion, may also make a distributive award of money or other property to supplement, facilitate or effectuate a distribution of marital property.

(2) The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(g) (1) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties regarding the division of property.

(2) Nothing in this section shall affect validity of an antenuptial agreement which is enforceable under § 36-3-501.

36-4-122. Costs.

The court may decree costs against either party, and may award execution for the same, or, in case any estate is sequestered, or in the power of the court, or in the hands of a receiver, it may order the costs to be paid out of such property.

36-4-123. Appeals.

Appeals in divorce cases shall be governed by the Tennessee Rules of Appellate Procedure. Pending appeal, orders and decrees of the trial court shall have the effect prescribed by the Tennessee Rules of Civil Procedure.

36-4-124. Right to remarry.

When a marriage is absolutely annulled, or dissolved, the parties shall severally be at liberty to marry again.

36-4-125. Legitimacy of children unaffected by divorce or annulment.

The annulment or dissolution of the marriage shall not in any way affect the legitimacy of the children of the same.

36-4-126. Suspension of proceedings to attempt reconciliation - Revocation.

(a) During the pendency of any suit for absolute divorce, limited divorce or separate maintenance, the court having jurisdiction of the matter may, upon the written stipulation of both the husband and wife that they desire to attempt a reconciliation, enter an order suspending any and all orders and proceedings for such time as the court, in its discretion, may determine advisable under the circumstances, so as to permit the parties to attempt such reconciliation without prejudice to their respective rights. During the period of such suspension, the parties may resume living together as husband and wife and their acts and conduct in so doing shall not be determined a condonation of any prior misconduct.

(b) Such suspension may be revoked upon motion of either party by order of the court.

36-4-127. Expungement of divorce records upon reconciliation of parties.

Parties to any divorce proceeding, who have reconciled and dismissed their cause of action, may thereafter file an agreed sworn petition signed by both parties and notarized, requesting expungement of their divorce records. Upon the filing of such petition, the judge shall issue an order directing the clerk to expunge all records pertaining to such divorce proceedings, once all court costs have been paid. The clerk shall receive a fee of fifty dollars (\$50.00) for performing such clerk's duties under this section.

36-4-128. Remarriage after spouse's two-year absence - Effect of spouse's return.

(a) If, upon a false rumor, apparently well founded, of the death of one (1) of the parties, who has been absent two (2) whole years, the other party marries again, the party remaining single may, upon returning, insist upon a restoration of conjugal rights or upon a dissolution of the marriage, and the court shall decree accordingly, to wit: that the first marriage shall stand and the second be dissolved, or vice versa.

(b) Such bill or petition shall be filed within one (1) year after the return.

36-4-129. Stipulated grounds and/or defenses - Grant of divorce.

(a) In all actions for divorce from the bonds of matrimony or legal separation the parties may stipulate as to grounds and/or defenses.

(b) The court may, upon stipulation to or proof of any ground for divorce pursuant to § 36-4-101, grant a divorce to the party who was less at fault or, if either or both parties are entitled to a divorce, declare the parties to be divorced, rather than awarding a divorce to either party alone.

36-4-130. Mediation - Confidentiality of information and documents.

(a) When the parties to a divorce action choose to mediate the dispute, the mediator shall not divulge information disclosed to the mediator by the parties or by others in the course of mediation. All records, reports, and other documents developed for the mediation are confidential and privileged.

(b) Communications made during a mediation may be disclosed only:

(1) When all parties to the mediation agree, in writing, to waive the confidentiality of the written information;

(2) In a subsequent action between the mediator and a party to the mediation for damages arising out of the mediation;

(3) When statements, memoranda, materials and other tangible evidence are otherwise subject to discovery and were not prepared specifically for use in and actually used in the mediation;

(4) When the parties to the mediation are engaged in litigation with a third party and the court determines that fairness to the third party requires that the fact or substance of an agreement resulting from mediation be disclosed; or

(5) When the disclosure reveals abuse or neglect of a child by one (1) of the parties.

(c) The mediator shall not be compelled to testify in any proceeding, unless all parties to the mediation and the mediator agree in writing.

36-4-131. Mediation in cases involving domestic abuse.

In any proceeding for divorce or separate support and maintenance, if an order of protection issued in or recognized by this state is in effect or there is a court finding of domestic abuse or any criminal conviction involving domestic abuse within the marriage which is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer either party to mediation only if:

(1) Mediation is agreed to by the victim of the alleged domestic or family violence;

(2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(3) The victim is permitted to have in attendance at mediation a supporting person of the victim's choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation.

36-4-132. Appointment of guardian ad litem.

(a) In an action for dissolution of marriage involving minor children, upon its own motion or upon the motion of either party, the court may appoint a guardian ad litem for any minor child of the marriage.

(b) The reasonable fees or costs of the guardian ad litem shall be borne by the parties and may be assessed by the court as it deems equitable. Such fees or costs may be waived upon motion for an indigent person.

(c) Any guardian ad litem appointed by the court pursuant to this section shall be presumed to be acting in good faith and in so doing shall be immune from any liability that might otherwise be incurred while acting within the scope of such appointment. Such immunity shall apply in all proceedings in which such guardian ad litem may act.

CHAPTER 5 ALIMONY AND CHILD SUPPORT

Part 1 General Provisions.

36-5-101. Decree for support of spouse and children - Modification - Delinquencies - Standing to petition - Court costs and attorneys fees - Means of collection - Scientific parentage tests [Amended effective January 1, 2005. See the Compiler's Notes].

(a) (1) (A) Whether the marriage is dissolved absolutely, or a perpetual or temporary separation is decreed, the court may make an order and decree for the suitable support and maintenance of either spouse by the other spouse, or out of either spouse's property, and of the children, or any of them, by either spouse or out of such spouse's property, according to the nature of the case and the circumstances of the parties, the order or decree to remain in the court's control; and, on application of either party for spousal support, the court may decree an increase or decrease of such allowance only upon a showing of a substantial and material change of circumstances. In cases involving child support, upon application of either party, the court shall decree an increase or decrease of such allowance when there is found to be a significant variance, as defined in the child support guidelines established by subsection (e), between the guidelines and the amount of support currently ordered unless the variance has resulted from a previously court-ordered deviation from the guidelines and the circumstances which caused the deviation have not changed. The necessity to provide for the child's health care needs shall also be a basis for modification of the amount of the order, regardless of whether a modification in the amount of child support is necessary. In no event shall eligibility for or receipt of Medicaid or TennCare-Medicaid by the custodial parent be considered to meet the need to provide for the child's health care needs in the order. The court shall not refuse to consider a modification of a prior order and decree as it relates to future payments of child support because the party is in arrears under that order and decree, unless the arrearage is a result of intentional action by the party. The court shall set a specific amount which is due in each month to be paid in one (1) or more payments as the court directs. Unless the court finds otherwise, each order made under this section shall contain the current address of the parties. When an order provides for the support of two (2) or more children in a case which is subject to enforcement under Title IV-D, and at least one (1) child is a public charge based upon receipt of temporary assistance pursuant to title 71, chapter 3, part 1, TennCare-Medicaid, or foster care or other custodial services from the state of Tennessee, the child support order shall be prorated by the department for purposes of distribution of the child support to the appropriate person or agency providing care or support for the child without the need for modification of the child support order by the court.

(B) (i) Notwithstanding the provisions of subdivision (a)(1)(B)(ii) and § 36-5-103(f), for the purposes of this chapter, the birth or adoption of another child for whom an obligor is legally responsible to support and is supporting shall constitute a substantial and material change of circumstances for seeking a review of the existing order to determine if the addition of such child, and any credits applicable for the addition of such child under the department's child support guidelines, would result in a significant variance under such guidelines. If the significant variance is

demonstrated by the review, the amount of an existing child support order may be modified by the court.

(ii) For purposes of this chapter, the significant variance established by the department of human services pursuant to the child support guidelines shall provide a lower threshold for modification of child support orders for persons whose adjusted gross incomes are within low income categories established by the department's child support guidelines. The significant variance involving low income persons shall be established by rule of the department at no more than seven-and-one-half percent (7 1/2%) of the difference between the current child support order and the amount of the proposed child support order.

(2) (A) Courts having jurisdiction of the subject matter and of the parties are hereby expressly authorized to provide for the future support of a spouse and of the children, in proper cases, by fixing some definite amount or amounts to be paid in monthly, semimonthly, or weekly installments, or otherwise, as circumstances may warrant, and such awards, if not paid, may be enforced by any appropriate process of the court having jurisdiction thereof, including levy of execution.

(B) In all cases where a person is receiving alimony in futuro or alimony the amount of which is not calculable on the date the decree was entered, and that person dies or remarries, the alimony in futuro or alimony the amount of which is not calculable on the date the decree was entered, will terminate automatically and unconditionally upon the death or remarriage of the recipient. The recipient shall notify the obligor of the remarriage timely upon remarriage. Failure of the recipient to timely give notice of the remarriage will allow the obligor to recover all amounts paid as alimony in futuro or alimony the amount of which is not calculable on the date the decree was entered, to the recipient after the recipient's marriage.

(3) In all cases where a person is receiving alimony in futuro and the alimony recipient lives with a third person, a rebuttable presumption is thereby raised that:

(A) The third person is contributing to the support of the alimony recipient and the alimony recipient therefore does not need the amount of support previously awarded, and the court therefore should suspend all or part of the alimony obligation of the former spouse; or

(B) The third person is receiving support from the alimony recipient and the alimony recipient therefore does not need the amount of alimony previously awarded and the court therefore should suspend all or part of the alimony obligation of the former spouse.

This subdivision (a)(3) shall in no way be construed to create any common-law marriage obligation as to third parties.

(4) (A) The order or decree of the court may provide that the payments for the support of such child or children or spouse shall be paid either to the clerk of the court or directly to the spouse, or other person awarded the custody of the child or children; provided, however:

(i) That the court shall order that all child or spousal support payments based upon an income assignment issued by the clerk be paid to the clerk of the court, except, as set forth in subdivision (4)(A)(ii), for child or spousal support cases that are subject to the provisions for central collection and disbursement pursuant to § 36-5-116; and

(ii) That in all Title IV-D child or spousal support cases in which payment of child or spousal support is to be made by income assignment, or otherwise, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases but must be made to the central collection and disbursement unit as provided by § 36-5-116, and, except as may otherwise be allowed by § 36-5-501(a)(2)(B), the court shall only order that the support payments be made to the central collection and disbursement unit pursuant to § 36-5-116. No agreement by the parties in a parenting plan, either temporary or permanent, entered pursuant to the provisions of title 36, chapter 6, part 4, or any other agreement of the parties or order of the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall alter the requirements for payment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, except as may otherwise be allowed by § 36-5-501(a)(2)(B), whether or not approved by the court, shall be void and of no effect. No credit shall be given by the court, the court clerk or the department of human services for child or spousal support payments required by the support order that are made in contravention of such requirements; provided, however, the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(B) (i) When the court enters an order in which the paternity of a child is determined or support is ordered, enforced or modified for a child, each individual who is a party to any action pursuant to

this part shall be immediately required to file with the court and, if the case is a Title IV-D child support case, shall immediately file with the local Title IV-D child support office, for entry into the state registry of support cases, and shall update, as appropriate, the parties' and, for subdivisions (a)(4)(B)(i)(a)-(B)(i)(c), the child's or children's:

- (a) Full name and any change in name;
- (b) Social security number and date and place of birth;
- (c) Residential and mailing addresses;
- (d) Home telephone numbers;
- (e) Driver license number;
- (f) The name, address, and telephone number of the person's employer;
- (g) The availability and cost of health insurance for the child; and
- (h) Gross annual income.

The requirements of this subdivision may be included in the court's order.

(ii) Each individual who is a party must update changes in circumstances of the individual for the information required by subdivision (a)(4)(B)(i) within ten (10) days of the date of such change. At the time of the entry of the first order pertaining to child support after July 1, 1997, clear written notice shall be given to each party of the requirements of this subsection, procedures for complying with the subsection and a description of the effect or failure to comply. Such requirement may be noted in the order of the court.

(iii) In any subsequent child support enforcement action, the delivery of written notice as required by Tennessee Rule of Civil Procedure 5 to the most recent residential or employer address shown in the court's records or the Title IV-D agency's records as required in subdivision (a)(4)(B)(i) shall be deemed to satisfy due process requirements for notice and service of process with respect to that party if there is a sufficient showing and the court is satisfied that a diligent effort has been made to ascertain the location and whereabouts of the party.

(iv) Upon motion of either party, upon a showing of domestic violence or the threat of such violence, the court may enter an order to withhold from public access the address, telephone number, and location of the alleged victims or victims or threatened victims of such circumstances. The clerk of the court shall withhold such information based upon the court's specific order but may not be held liable for release of such information.

(C) (i) All support payments which have been paid to the clerk of the court shall be distributed by the clerk as provided in the order of the court within ten (10) days; provided, that the payments made to the clerk of the court in Title IV-D child support cases shall be distributed and deposited pursuant to the operating agreements under subdivision (a)(4)(C)(iii) and the provisions of subdivision (a)(4)(D) after implementation of the statewide Title IV-D child support computer system in the clerk's county, and after the appropriate notice to the clerk by the department under these subdivisions.

(ii) If the clerk receives child support payments on behalf of an individual who has assigned rights to child support to the department under the aid to families with dependent children (AFDC) program prior to the implementation of the statewide Title IV-D child support computer system pursuant to the provisions of subdivision (a)(4)(C)(iii), the clerk shall send any support payment received on behalf of such individual, along with the first and last names of the parties, docket number, IV-D number (if any), IV-A number (if any), and date and amount of payment, to the department or its designee within ten (10) working days of receipt thereof. Further, in every such IV-D case, if unable to provide the information concerning an order through a computer information transfer, the clerk shall send a copy of any new order or modification of such order, prior to or along with the first payment received pursuant to such order to the department or its designee within the time limit stated above. In the event the department or its designee provides the clerk with a certificate specifying the amount of support due the state as a result of assistance payments made to or on behalf of such individual, the clerk shall distribute the payments to such individual and to the department in accordance with such certificate.

(iii) All clerks of courts with responsibilities for the collection and distribution of child support obligations shall elect whether to participate in the operation of the statewide Title IV-D child support computer system within thirty (30) days of notification by the department requesting a decision. The election shall be accomplished by the signing of a letter of agreement with the department which shall set forth the obligations of the department and the clerk relative to the operation of the system. Clerks electing to participate shall be bound by the terms of the agreement and the laws, regulations, and the policies and procedures of the Title IV-D child support program for the term of the agreement, unless the agreement is cancelled by the

department after notice to the clerk and an opportunity to correct any deficiencies caused by failure of the clerk to comply with federal or state regulations or procedures for operation of the system within thirty (30) days of such notice. While participating in the system, the clerks shall be entitled to receive the statutory fee for the collection and handling of child support obligations under the Title IV-D program. If a clerk declines to participate in the system, payments of child support to the clerk and the statutory collection fee shall continue until the clerk is notified by the department that the system is operative in the clerk's county. If the agreement is subsequently cancelled, or when the department notifies the clerk who does not elect to participate that the system is operative in the clerk's county, the payment of the child support obligations and the statutory fee for collection of Title IV-D child support payments in Title IV-D cases shall be immediately payable to the department or its designee by the obligor without the necessity of a change to the court order upon notice by the department to the obligor and to the employer if the obligor is under an income assignment. Any Title IV-D child support payment which the clerk who is not participating in the system receives after the date on which the clerk is notified of the effective date of the operation of the system in the clerk's county, or after notice by the department or its contractor that Title IV-D services are now being provided on a child support case, or after the cancellation of the operating agreement, shall be sent immediately by the clerk to the department or its designee, without the necessity of a court order.

(iv) The clerks of all courts involved in the collection of any child support shall cooperate with and provide any reasonable and necessary assistance to the department or its contractors in the transfer of data concerning child support to the statewide Title IV-D child support computer system.

(v) Whenever the clerk has ceased handling Title IV-D child support payments under the provisions of subdivision (a)(4)(C)(iii), and only where the context requires, all provisions in this chapter relating to the duties or actions involving the clerk shall be interpreted to substitute the department or its contractor.

(D) In all cases which are being served by the department or any of its contractors under the Title IV-D child support program, the clerks shall, upon notice by the department, deposit all receipts of Title IV-D child support payments on a daily basis to a bank account from which the state of Tennessee will electronically debit those payments for the purpose of obtaining funds to distribute the child support obligations to the obligee. The clerk, by written agreement with the department, may disburse child support receipts directly to the obligee.

(E) In all Title IV-D child support cases, child support payments shall be made by the obligor to the clerk of the court, or the department if the clerk is not participating in the statewide Title IV-D child support computer system under subdivision (a)(4)(C)(iii). In Title IV-D child support cases, where the obligor has been ordered to make child support payments to the clerk, or the department if the clerk is not participating in the statewide Title IV-D child support computer system under subdivision (a)(4)(C)(iii), no credit shall be given to an obligor for any payments made by the obligor or by another person on behalf of the obligor, directly to an obligee or the obligor's child or children unless the obligee remits the payment to the department or the participating clerk. In the event that a Title IV-D case is instituted subsequent to the establishment of an order of child support, the department will notify the obligor and obligee and the appropriate clerk of this fact, and all payments of child support in Title IV-D cases shall be made by the obligor to the department or the clerk, as appropriate under subdivision (a)(4)(E), without further order of the court.

(5) Any order for child support shall be a judgment entitled to be enforced as any other judgment of a court of this state and shall be entitled to full faith and credit in this state and in any other state. Such judgment shall not be subject to modification as to any time period or any amounts due prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties. If the full amount of child support is not paid by the date upon which the ordered support is due, the unpaid amount is in arrears and shall become a judgment for the unpaid amounts and shall accrue interest from the date of the arrearage at the rate of twelve percent (12%) per annum. All interest which accumulates on arrearages shall be considered child support. Computation of interest shall not be the responsibility of the clerk.

(6) (A) [Effective January 1, 2005. See the Compiler's Notes] In Title IV-D child support cases the department of human services is enforcing, the department shall provide a child support obligor notice ninety (90) days prior to the eighteenth birthday of a child or children for whom the obligor is paying child support, as such birthday is indicated by the department's records.

(B) If the following conditions are met, then the obligor may seek termination of the order of support and may also request that the department, as required by federal law, assist in seeking termination of the order:

(i) The department's records demonstrate that the child for whom an order of support in a Title IV-D child support case has been entered has reached eighteen (18) years of age and has graduated from high school, or that the class of which the child is a member when the child reached eighteen (18) years of age has graduated from high school, the obligor has otherwise provided the department with written documentation of such facts, or the obligor has provided the department with written documentation that a child for whom the obligor is required to pay support has died or has married;

(ii) No other special circumstances exist including, but not limited to, the circumstances provided for in subsection (p) regarding disabled children, that require the obligation to continue;

(iii) The obligor does not owe arrearages to the obligee parent, any guardian or custodian of the child, the department of human services, any other agency of the state of Tennessee, or any other Title IV-D agency of any state;

(iv) The costs of court have been paid; and

(v) There are no other children for whom the obligor is required to pay child support.

(C) (i) If the conditions of subdivisions (a)(6)(B)(i)-(v) exist in the Title IV-D case as shown by the department's records, or such conditions exist based upon the written documentation provided by the obligor and verified by the department, then the department shall immediately suspend the order of support temporarily for the child who has reached majority. If the existing court order was the result of a deviation from the child support guidelines, the department immediately shall seek from the court termination of the support order for such child, and shall provide the obligee with notice of the filing of the petition to terminate such order.

(ii) If the existing order was not the result of a deviation from the child support guidelines, the department shall give notice to the obligee and to the other obligor of the temporary suspension of the order based upon verification of the status of the case pursuant to subdivision (a)(6)(B), of its intent to permanently terminate the support order by an administrative order, which the department may issue for such purpose, and of the opportunity for a hearing upon the issue of permanent termination of the order.

(iii) If the obligee contests the temporary suspension of the order of support under the circumstances of subdivisions (a)(6)(B)(i)-(v) and prevails following entry of the court or administrative order, the obligor shall pay the support amounts and any other arrearages or court costs not paid as a result of the temporary suspension of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(D) (i) If the conditions of subdivisions (a)(6)(B)(i)-(iv) are met in the Title IV-D case, but there are other children for whom the obligor is still obligated to support, the department shall immediately conduct a review of the support order and shall seek its adjustment if appropriate under the child support guidelines for such children. The obligor shall continue to make child support payments in accordance with the existing order until the court or department modifies the order pursuant to this subdivision (a)(6)(D).

(ii) If the existing court order was the result of a deviation from the child support guidelines, the department shall seek modification of the support order from the court, and shall provide the obligee and the obligor with notice of the filing of the petition to modify such order.

(iii) If the existing order was not the result of a deviation from the child support guidelines, and the department reviews the order and determines that the order should be modified pursuant to such guidelines, then the department shall notify the parties of its intent to modify the support order by an administrative order, which the department may issue for such purpose, and shall notify the parties of the opportunity for a hearing upon the issue of modification of the order.

(iv) The support order shall be modified as established by order of the court or the department as required pursuant to the child support guidelines. If the modified payment amount is lower than the payment amount required prior to the modification, then the obligor shall be given credit for such amount against future payments of support for the remaining children under the order. If the modified payment amount is higher than the payment amount required prior to the modification, then the obligor shall pay the higher ordered amount from the date of entry of the order. The administrative order shall be filed with the clerk of the court having jurisdiction of the case.

(E) The department's review and adjustment process and the administrative hearing process outlined in this subdivision (a)(6) shall comply with any other due process requirements for notice to the obligor and obligee as may otherwise be required by this chapter.

(b) In addition to the remedies provided in part 5 of this chapter, but not as an alternative to those provisions, if a parent is more than thirty (30) days in arrears, the clerk of the court may, upon written application of the obligee parent, a guardian or custodian of the children, or the department of human services or its contractors in Title IV-D support cases, issue a summons or, in the discretion of the court, an attachment for such parent, setting a bond of not less than two hundred fifty dollars (\$250) or, in the discretion of the court, up to the amount of the arrears, for such other proceedings as may be held in the matter. In addition, the court may at any time require an obligor parent to give security by bond with sufficient sureties approved by the court, or alternatively, in the absence of the judge from the court, approved by the clerk of the court, for payment of past, present, and future support due under the order of support. If the obligor parent thereafter fails to appear or fails without good cause to comply with the order of support, such bonds may be forfeited and the proceeds therefrom paid to the court clerk and applied to the order of support.

(c) In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with the provisions of parts 30 and 31 of this chapter.

(d) (1) (A) Spouses have traditionally strengthened the family unit through private arrangements whereby one (1) spouse focuses on nurturing the personal side of the marriage, including the care and nurturing of the children, while the other spouse focuses primarily on building the economic strength of the family unit. This arrangement often results in economic detriment to the spouse who subordinated such spouse's own personal career for the benefit of the marriage. It is the public policy of this state to encourage and support marriage, and to encourage family arrangements that provide for the rearing of healthy and productive children who will become healthy and productive citizens of our state.

(B) The general assembly finds that the contributions to the marriage as homemaker or parent are of equal dignity and importance as economic contributions to the marriage. Further, where one (1) spouse suffers economic detriment for the benefit of the marriage, the general assembly finds that the economically disadvantaged spouse's standard of living after the divorce should be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(C) It is the intent of the general assembly that a spouse who is economically disadvantaged relative to the other spouse, be rehabilitated whenever possible by the granting of an order for payment of rehabilitative, temporary support and maintenance. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties. Where there is relative economic disadvantage and rehabilitation is not feasible in consideration of all relevant factors, including those set out in this subsection (d), the court may grant an order for payment of support and maintenance on a long-term basis or until the death or remarriage of the recipient except as otherwise provided in subdivision (a)(3). An award of periodic alimony may be made either in addition to a rehabilitation award, where a spouse may be partially rehabilitated as defined in this subdivision (d)(1)(C), or instead of a rehabilitation award, where rehabilitation is not feasible. When appropriate, the court may also award transitional alimony as provided in subdivision (d)(1)(D).

Rehabilitative support and maintenance is a separate class of spousal support as distinguished from alimony in solido, periodic alimony, and transitional alimony. An award of rehabilitative, temporary support and maintenance shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of a substantial and material change in circumstances. Rehabilitative support and maintenance shall terminate upon the death of the recipient. Such support and maintenance shall also terminate upon the death of the payor unless otherwise specifically stated. The recipient of the support and maintenance shall have the burden of proving that all reasonable efforts at rehabilitation have been made and have been unsuccessful.

(D) Transitional alimony means a sum of money payable by one (1) party to, or on behalf of, the other party for a determinate period of time. Transitional alimony shall terminate upon the death of the recipient and as provided in subdivision (a)(3) which provision shall apply to transitional alimony. Such support and maintenance shall also terminate upon the death of the payor unless otherwise specifically stated. The court may at the time of entry of the order to pay transitional alimony, order that it may terminate upon the occurrence of other conditions such as, but not

limited to, the remarriage of the party receiving transitional alimony. Transitional alimony shall be nonmodifiable unless the parties otherwise agree in an agreement incorporated into the initial order of divorce, legal separation or order of protection or the court otherwise orders in the initial order of divorce, legal separation or order of protection. Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded, such as a petition for an order of protection.

(E) In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

- (i) The relative earning capacity, obligations, needs, and financial resources of each party including income from pension, profit sharing or retirement plans and all other sources;
- (ii) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earning capacity to a reasonable level;
- (iii) The duration of the marriage;
- (iv) The age and mental condition of each party;
- (v) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (vi) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be custodian of a minor child of the marriage;
- (vii) The separate assets of each party, both real and personal, tangible and intangible;
- (viii) The provisions made with regard to the marital property as defined in § 36-4-121;
- (ix) The standard of living of the parties established during the marriage;
- (x) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (xi) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and
- (xii) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

(2) An award of rehabilitative, temporary support and maintenance shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of substantial and material change in circumstances. Rehabilitative support and maintenance shall terminate upon the death of the recipient. Such support and maintenance shall also terminate upon the death of the payor unless otherwise specifically stated. The recipient of the support and maintenance shall have the burden of proving that all reasonable efforts at rehabilitation have been made and have been unsuccessful.

(e) (1) (A) In making its determination concerning the amount of support of any minor child or children of the parties, the court shall apply as a rebuttable presumption the child support guidelines as provided in this subsection. If the court finds that evidence is sufficient to rebut this presumption, the court shall make a written finding that the application of the child support guidelines would be unjust or inappropriate in that particular case, in order to provide for the best interest of the child(ren) or the equity between the parties. Findings that the application of the guidelines would be unjust or inappropriate shall state the amount of support that would have been ordered under the child support guidelines and a justification for the variance from the guidelines.

(B) Notwithstanding any provision of this section or any other law or rule to the contrary, if the net income of the obligor exceeds ten thousand dollars (\$10,000) per month, then the custodial parent must prove by a preponderance of the evidence that child support in excess of the amount, [calculated by multiplying the appropriate percentage set forth in the child support guidelines by a net income of ten thousand dollars (\$10,000) per month], is reasonably necessary to provide for the needs of the minor child or children of the parties. In making its determination, the court shall consider all available income of the obligor, as required by this chapter, and shall make a written finding that child support in excess of the amount so calculated is or is not reasonably necessary to provide for the needs of the minor child or children of the parties.

(C) When making retroactive support awards pursuant to the child support guidelines established pursuant to this subsection (e), in cases where the parents of the minor child are separated or divorced, but where the court has not entered an order of child support, the court shall consider the following factors as a basis for deviation from the presumption in the child support guidelines

that child and medical support for the benefit of the child shall be awarded retroactively to the date of the parents' separation or divorce:

(i) Whether the remaining spouse knew or could have known of the location of the child or children who had been removed from the marital home by the abandoning spouse; or

(ii) Whether the abandoning spouse, or other caretaker of the child, intentionally, and without good cause, failed or refused to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse; and

(iii) The attempts, if any, by the abandoning spouse, or other caretaker of the child, to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse.

(D) In cases in which the presumption of the application of the guidelines is rebutted by clear and convincing evidence, the court shall deviate from the child support guidelines to reduce, in whole or in part, any retroactive support. The court must make a written finding that application of the guidelines would be unjust or inappropriate in order to provide for the best interests of the child or the equity between the parties.

(E) Deviations shall not be granted in circumstances where, based upon clear and convincing evidence:

(i) The remaining spouse has a demonstrated history of violence or domestic violence toward the abandoning spouse, the child's caretaker or the child;

(ii) The child is the product of rape or incest of the mother by the father of the child;

(iii) The abandoning spouse has a reasonable apprehension of harm from the remaining spouse or those acting on the remaining spouse's behalf toward the abandoning spouse or the child; or

(iv) The remaining spouse, or those acting on the remaining spouse's behalf, has abused or neglected the child.

(F) In making any deviations from awarding child and medical support retroactively to the separation or divorce of the parties, the court shall make written findings of fact and conclusions of law to support the basis for the deviation, and shall include in the order the total amount of retroactive child and medical support that would have been paid retroactively to the separation or divorce of the parties, had a deviation not been made by the court.

(G) Nothing in this subdivision (e)(1) shall limit the right of the state of Tennessee to recover from the father or the remaining spouse expenditures made by the state for the benefit of the child, or the right, or obligation, of the Title IV-D child support agency to pursue retroactive support for the custodial parent or caretaker of the child where appropriate.

(H) Any amounts of retroactive support ordered that have been assigned to the state of Tennessee pursuant to § 71-3-124 shall be subject to the child support distribution requirements of 42 U.S.C. § 657. In such cases, the court order shall contain any language necessary to allow the state to recover the assigned support amounts.

(2) Beginning October 13, 1989, the child support guidelines promulgated by the department pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall be the guidelines that courts shall apply as a rebuttable presumption in child support cases.

(3) Child support guidelines shall be reviewed at least every four (4) years from the date of promulgation and revised, if necessary, to ensure that the application of the guidelines results in the determination of appropriate child support award amounts.

(4) (A) In addition to any other subtractions, calculations of net income under the guidelines shall take into consideration the support of any other children the obligor is legally responsible to provide. The court shall consider children of the obligor who are not included in a decree of child support, but for whom the obligor is legally responsible to provide support and is supporting for the purposes of reducing the obligor's net income, in calculating the guideline amount, or as a reason for deviation from the guidelines.

(B) In calculating amounts of support for children under the guidelines, the court shall allocate an obligor's financial child support responsibility from the obligor's income among all children of the obligor for whom the obligor is legally responsible to provide support and is supporting, in a manner that gives equitable consideration as defined by the department's child support guidelines, to the children for whom support is being set in the case before the court and to any other children for whom the obligor is legally responsible and is supporting. The court shall require that payments made out of that allocation for all children of the obligor for whom the obligor is legally responsible and is supporting, be made upon such consideration. Guidelines promulgated by the department shall be consistent with the provisions of this subdivision (e)(4).

(f) (1) The court may direct the acquisition or maintenance of health insurance covering each child of the marriage and may order either party to pay all, or each party to pay a pro rata share of, the health care costs not paid by insurance proceeds. The court may also direct a party to pay the premiums for insurance insuring the health care costs of the other party.

(2) In any case in which the court enters an order of support in a case enforced under Title IV-D of the Social Security Act, the court shall enter an order providing for health care coverage to be provided for the child or children.

(3) The provisions of § 36-5-501(a)(3) shall apply with respect to enrollment of a child in the noncustodial parent's employer-based health care plan.

(g) The court may direct either or both parties to designate the other party and the children of the marriage as beneficiaries under any existing policies insuring the life of either party and maintenance of existing policies insuring the life of either party, or the purchase and maintenance of life insurance and designation of beneficiaries.

(h) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties as to support and maintenance of a party or as to child support. In any such agreement, the parties must affirmatively acknowledge that no action by the parties will be effective to reduce child support after the due date of each payment, and that they understand that court approval must be obtained before child support can be reduced, unless such payments are automatically reduced or terminated under the terms of the agreement.

(i) The court may, in its discretion, at any time pending the suit, upon motion and after notice and hearing, make any order that may be proper to compel a spouse to pay any sums necessary for the support and maintenance of the other spouse and to enable such spouse to prosecute or defend the suit and to provide for the custody and support of the minor children of the parties during the pendency of the suit, and to make other orders as it deems appropriate. Spousal support may include expenses of job training and education. In making any order under this subsection, the court shall consider the financial needs of each spouse and the children, and the financial ability of each spouse to meet those needs and to prosecute or defend the suit.

(j) In making any decree or order pursuant to this section, the court shall consider the provisions of § 34-11-102(b) [transferred to § 34-1-102(b)].

(k) Absent a court order to the contrary, if an arrearage for child support or fees due as court costs exist at the time an order for child support would otherwise terminate, the order of support or any then existing income withholding arrangement and all amounts ordered for payment of current support or arrears, including any arrears due for court costs, shall continue in effect in an amount equal to the then existing support order or income withholding arrangement until the arrearage and costs due are satisfied and the court may enforce all orders for such arrearages by contempt.

(l) As used in this chapter, "order," where the context requires, includes an order concerning child or medical support issued pursuant to an administrative proceeding in any other state.

(m) In establishing or enforcing any duty of support under this chapter, the court shall give full faith and credit to all paternity determinations of any other state or territory made pursuant to a voluntary acknowledgement or pursuant to any administrative or judicial process.

(n) (1) A voluntary acknowledgement of paternity which is completed under the provisions of § 68-3-203(g), § 68-3-302, or § 68-3-305(b) or under similar provisions of another state or government, when certified by the state registrar or other governmental or institutional entity maintaining the record of the acknowledgement, shall be a basis for establishing a support order without requiring any further proceedings to establish paternity.

(2) The state of Tennessee, its officers, employees, agents or contractors, any counties, county officials, the clerks of any court, or any Title IV-D child support enforcement agency shall not be liable in any case to compensate any person for repayment of child support paid or for any other costs as a result of the rescission pursuant to § 24-7-113 of any voluntary acknowledgment or the rescission of any orders of legitimation, paternity, or support.

(o) (1) In enforcing any provision of child support, if an obligee, or the department or its contractor in Title IV-D cases, specifically prays for revocation of a license because an obligor is alleged to be in noncompliance with an order of support, or if the court determines on its own motion or on motion of a party that any individual party has failed to comply with a subpoena or a warrant in connection with the establishment or enforcement of an order of support, the court may find specifically in its order that the obligor is not in compliance with an order of support as defined by part 7 of this chapter, or it may find that an individual party has failed to comply with a subpoena or warrant in connection with the establishment or enforcement of an order of support,

and may direct that any or all of the obligor's or individual party's licenses be subject to revocation, denial or suspension by the appropriate licensing authority pursuant to part 7 of this chapter. The court shall direct the clerk to send a copy of that order to the department of human services to be sent by the department to each licensing authority specified in the order for processing and suspension, denial or revocation pursuant to § 36-5-706 and any other applicable provisions of part 7 of this chapter. Costs related to such order shall be taxed to the obligor or individual party.

(2) If the obligor whose license has been subject to the provisions of subdivision (o)(1) complies with the order of support, or if the individual party complies with the subpoena or warrant, the court shall enter an order making such a finding and the clerk shall send an order immediately to the department of human services to be transmitted to each licensing authority specified in the order which shall then immediately issue, renew or reinstate the obligor's or individual party's license in accordance with the provisions of § 36-5-707. Costs related to such order shall be taxed to the obligor or individual party as the case may be and shall be paid by the obligor or the individual party prior to sending the order to the department for transmission to the licensing authority.

(3) The department shall provide available information to the obligee or party or the court in actions under this subsection concerning the name and address of the licensing authority or authorities of the obligor or individual party in order to enable the enforcement of the provisions of this subsection. The obligee or individual party, as the case may be, seeking such information shall pay a fee as established by the department for the provision of such service. These fees may be taxed as costs to the obligor whose license has been revoked pursuant to this subsection or to the individual party who has failed to comply with the warrant or subpoena.

(4) If the licensing authority fails to take appropriate action pursuant to the orders of the court under this subsection, the party may seek a further order from the court to direct the licensing authority to take such action and the party may seek any appropriate court sanctions against the licensing authority.

(5) For purposes of this subsection, "individual party" means a party to the support action who is a person, but does not include a governmental agency or the contractor or agent of such governmental agency which is enforcing an order of support. "Party" may include, where the context requires, an individual person or it may include a governmental agency or contractor or agent of such governmental agency.

(p) (1) Except as provided in subdivision (p)(2), the court may continue child support beyond a child's minority for the benefit of a child who is handicapped or disabled, as defined by the Americans with Disabilities Act, until such child reaches twenty-one (21) years of age.

(2) Provided, that such age limitation shall not apply if such child is severely disabled and living under the care and supervision of a parent and the court determines that it is in the child's best interest to remain under such care and supervision and the obligor is financially able to continue to pay child support. In such cases, the court may require the obligor to continue to pay child support for such period as it deems in the best interest of the child.

(3) In so doing, the court may use the child support guidelines.

(q) (1) Notwithstanding any other provision of law to the contrary, neither the department of human services, nor any Title IV-D child support contractor of the department, nor any recipient of public assistance in this or any other state or territory, nor any applicant for either public assistance in this or any other state or territory or for Title IV-D child support services from the department or any other Title IV-D agency in this or any other state or territory, shall be required to demonstrate to a court or administrative tribunal that the caretaker of the child for whom child support is sought is vested with any more than physical custody of the subject child or children in order to have standing to petition for child support from the legal parent of the child or children for whom support is sought, or to seek enforcement or modification of any existing orders involving such child or children.

(2) Legal custody of a child to whom a child support obligation is owed shall not be a prerequisite to the initiation of any support action or to the enforcement or modification of any support obligation in such cases, whether or not the obligation has been assigned to this state or any other state or territory by operation of law.

(r) In any Title IV-D case, if the court grants relief, whether in whole or in part, to the department of human services or to the department's Title IV-D contractor or to any applicant for Title IV-D child support services, the court shall not tax any court costs against the department, the Title IV-D contractor or against any applicant for child support services. The court shall not award attorneys fees against the department, the Title IV-D contractor or against any applicant for child support services unless there is a clearly established violation of Rule 11 of the Tennessee Rules of Civil

Procedure or for other contemptuous or other sanctionable conduct. This provision is not intended to limit the discretion of the courts to tax costs to the individual parties on non-Title IV-D issues such as custody or visitation.

(s) The order of any court or administrative tribunal directing that an obligor pay a sum certain to reduce any support arrearage shall not preclude the use by the department of human services or its contractors in the Title IV-D child support program of any other administrative means of collecting the remaining balance of the outstanding arrearage including, but not limited to, income tax refund intercepts, financial institution collections, enforcement of liens, or any other method authorized by law. The use of any additional administrative means of collection by the department or its contractors in the Title IV-D child support program is expressly authorized to reduce any portion, or all, of the outstanding balance of support as shown by the department's records, and any order of the court or administrative tribunal to the contrary is without any effect whatsoever, except for such appeal as may lie from the implementation of the administrative procedure which is used to reduce the arrearage.

(t) No provision, finding of fact or conclusion of law in a final decree of divorce or annulment or other declaration of invalidity of a marriage which provides that the husband is not the father of a child born to the wife during the marriage or within three hundred (300) days of the entry of the final decree, or which names another person as the father of such child shall be given preclusive effect unless scientific tests to determine parentage are first performed and the results of the test which exclude the husband from parentage of the child or children or which establish paternity in another person are admitted into evidence. The results of such parentage testing shall only be admitted into evidence in accordance with the procedures established in § 24-7-112.

36-5-102. Portion of spouse's estate decreed to spouse entitled to alimony or support - Maintenance of minor custodial parent.

(a) In cases where the court orders alimony or child support in accordance with § 36-5-101, the court may decree to the spouse who is entitled to such alimony or child support such part of the other spouse's real and personal estate as it may think proper. In doing so, the court may have reference and look to the property which either spouse received by the other at the time of the marriage, or afterwards, as well as to the separate property secured to either by marriage contract or otherwise.

(b) In addition to child support, a judge may require the noncustodial adult parent, who is not the legal spouse of the custodial parent, to pay an amount for the maintenance and support of the custodial parent if the custodial parent of the child is a minor. Such amount shall be determined by the court based on the noncustodial parent's ability to pay and shall be in addition to any court-ordered child support. Any order requiring the non-custodial parent to pay an additional amount for the maintenance and support of the custodial parent shall continue to be effective after the custodial parent reaches eighteen (18) years of age if the custodial parent is in high school. Such order shall continue until the custodial parent marries or graduates from high school or until the class of which the custodial parent is a member when the custodial parent attains eighteen (18) years of age graduates, whichever occurs first. As used in this subsection, "maintenance and support of the custodial parent" may also include counseling and other special medical services needed by the custodial parent.

36-5-103. Enforcement of decree for alimony and support [Amended effective January 1, 2005. See the Compiler's Notes].

(a) (1) In addition to the remedies in part 5 of this chapter, the court shall enforce its orders and decrees by requiring the obligor to post a bond or give sufficient personal surety under § 36-5-101(b) to secure past, present, and future support, unless the court finds that the payment record of the obligor parent, the availability of other remedies and other relevant factors make the bond or surety unnecessary.

(2) The court may enforce its orders and decrees by sequestering the rents and profits of the real estate of the obligor against whom such order or decree was issued, if such obligor has any, and such obligor's personal estate and choses in action, and by appointing a receiver thereof, and from time to time causing the same to be applied to the use of the obligee and the children, or by such other lawful means the court deems necessary to assure compliance with its orders, including, but not limited to, the imposition of a lien against the real and personal property of the obligor.

(b) In intrastate cases, jurisdiction to modify, alter or enforce orders or decrees for the support of children shall be determined in accordance with the provisions of parts 30 and 31 of this chapter.

(c) The plaintiff spouse may recover from the defendant spouse, and the spouse or other person to whom the custody of the child, or children, is awarded may recover from the other spouse reasonable attorney fees incurred in enforcing any decree for alimony and/or child support, or in regard to any suit or action concerning the adjudication of the custody or the change of custody of any child, or children, of the parties, both upon the original divorce hearing and at any subsequent hearing, which fees may be fixed and allowed by the court, before whom such action or proceeding is pending, in the discretion of such court.

(d) No state court order shall preclude the department of human services from implementing federal requirements for the interception of federal income tax refunds of an obligor for the payment of arrearages of child support.

(e) The commissioner of human services is expressly authorized to issue an administrative order of income assignment to the commissioner of labor and workforce development against any wages or wage benefits to which an obligor is entitled. Such administrative order shall be based upon and issued pursuant to an order from a court of competent jurisdiction or pursuant to state or local law, shall be deemed to be legal process in the nature of a garnishment pursuant to 42 U.S.C. § 662(e) [repealed], and shall direct the payment of child or spousal support by an obligor parent.

(1) Administrative orders of income assignment issued pursuant to the authority of this part may, in the discretion of the commissioner of human services, be delivered to a representative of the commissioner for the purpose of execution, and such representative shall have the power and authority to levy and execute such administrative order.

(2) The administrative order of income assignment authorized by this section may be directed to, and effectively served upon, the commissioner of labor and workforce development by electronically transmitted data to compel the assignment of unemployment benefits in order to satisfy the legal obligation of obligor parents to provide child support payments. The transmission of any such order by the commissioner of human services shall be certification by the commissioner of the existence of the underlying court order and that the procedural requirements for notice to the obligor parent as required by part 5 of this chapter have been satisfied. The administrative order shall show the amount to be deducted from the obligor's unemployment compensation benefits by the department of labor and workforce development so as to comply with the underlying court order, and with any applicable statutes, rules, regulations, or inter-departmental agreements and, when necessary, the order shall contain the last known address of the obligor parent.

(3) The state child support enforcement computer system records shall be the official records of child support orders and child support-related spousal support orders and payment records for purposes of this subsection.

(4) If it is determined that the department of labor and workforce development has erroneously or wrongfully withheld benefits from an individual and delivered such benefits to the department of human services pursuant to a commissioner's order of income assignment, the department of human services will pay the correct amount to the individual to correct the erroneous payment.

(f) (1) (A) [Amended effective January 1, 2005] Every three (3) years, upon request of the custodial or noncustodial parent, or any other caretaker of the child, or, if there is an assignment of support pursuant to title 71, chapter 3, part 1, upon the request of the department or upon the request of the custodial or noncustodial parent, or of any other caretaker of the child, then, in any support order subject to enforcement under Title IV-D of the Social Security Act, the department shall review, and, if appropriate, seek an adjustment of the order in accordance with child support guidelines established pursuant to § 36-5-101(e) without a requirement for proof or showing of any other change in circumstances. If at the time of the review, there is a "significant variance", as defined by the department's child support guidelines, between the current support order and the amount that would be ordered under the department's child support guidelines, the department shall seek an adjustment of the order.

(B) In the case of a request for review that is made between three-year cycles, the department shall review, and, if the requesting party demonstrates to the department that there has been a substantial change in circumstances, the department shall seek an adjustment to the support order in accordance with the guidelines established pursuant to § 36-5-101(e). For purposes of this subsection (f), a "substantial change in circumstances" shall be a "significant variance", as defined by the department's child support guidelines, between the amount of the current order and the amount that would be ordered under the department's child support guidelines.

(C) The review and adjustment in subdivisions (f)(1)(A) and (f)(1)(B) may be conducted by the court, or by the department by issuance of an administrative order by the department or its contractors.

(2) As an alternative to the method described in subdivision (f)(1) for review and adjustment, the child support order may be reviewed, and the order may be adjusted by an administrative order issued by the department or its contractors by:

(A) Applying a cost-of-living adjustment to the order in accordance with a formula developed by the department; or

(B) Using automated methods, including automated comparisons with wage data to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment based upon a threshold developed by the department.

(3) The methods for adjustment of orders of support by issuance of an administrative order pursuant to this section shall be promulgated in the department's rules.

(4) The department shall give written notice to the obligor and obligee that a review of the order of support has been initiated.

(5) The department shall give written notice to the obligor and obligee of the review findings. If the department elects to seek the adjustment of the support order by issuance of an administrative order instead of by judicial order, notice of the proposed administrative adjustment to the order of support shall be sent to the last known address of the obligor and obligee thirty (30) calendar days prior to the issuance of the administrative order adjusting the order of support pursuant to the same procedures for service of administrative orders described in § 36-5-807.

(6) (A) The obligor and obligee shall have the right to contest the proposed administrative adjustment to the order of support within thirty (30) days of the mailing date of the notice of the proposed administrative adjustment to the order of support by filing a motion for a hearing on the proposed adjustment with the court having jurisdiction to modify the order of support and by providing notice of the hearing to the department by copy of such motion.

(B) The review by the court shall be completed within timeframes established by federal law.

(C) If the obligor or obligee contests the proposed administrative adjustment pursuant to the procedure in this subdivision (f), no further administrative appeal to the department shall be available, and further appeal of the modified support order entered by the court shall be made pursuant to the Tennessee Rules of Appellate Procedure.

(7) If the obligor or obligee does not contest the proposed administrative adjustment to the order of support within thirty (30) calendar days of the mailing date of the notice of the proposed adjustment pursuant to the provisions of subdivision (f)(6), the department shall issue the administrative order adjusting the order of support.

(8) A copy of an administrative order of adjustment of the child support order shall be sent to the clerk of the court that has jurisdiction of the child support order that has been administratively adjusted and it shall be filed in the court record. A copy of the order shall be sent to the obligor and the obligee by the department by general mail at the last known address shown in the department's records.

(9) If an order of support is adjusted by administrative order of the department pursuant to subdivision (f)(7), the obligor and obligee shall have the right to administratively appeal the adjustment by requesting the appeal to the department as provided in part 10 of this chapter. The obligor or obligee may request a stay of the administrative order pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The appeal from any decision resulting from the administrative appeal shall be to the court having jurisdiction of the support order and shall be subject to the scope of review as provided pursuant to the provisions of § 36-5-1003.

(10) Notice of the right to request a review, and, if appropriate, adjust the child support order shall be sent to the obligor and the obligee by the department at least every three (3) years for a child subject to an order being enforced pursuant to Title IV-D of the Social Security Act. The notice may be included in the order.

(11) The requirement for review and adjustment may be delayed if the best interests of the child require. Such interests would include the threat of physical or emotional harm to the child if the review and adjustment were to occur or the threat of severe physical or emotional harm to the child's custodial parent or caretaker.

(g) Judgments for child support payments for each child subject to the order for child support pursuant to this part shall be enforceable without limitation as to time.

36-5-104. Failure to comply with child support order - Criminal sanctions.

(a) Any person, ordered to provide support and maintenance for a minor child or children, who fails to comply with the order or decree, may, in the discretion of the court, be punished by imprisonment in the county workhouse or county jail for a period not to exceed six (6) months.

(b) No arrest warrant shall issue for the violation of any court order of support if such violation occurred during a period of time in which the obligor was incarcerated in any penal institution and was otherwise unable to comply with the order.

(c) In addition to the sanction provided in subsection (a), the court shall have the discretion to require an individual who fails to comply with the order or decree of support and maintenance to remove litter from the state highway system, public playgrounds, public parks, or other appropriate locations for any prescribed period or to work in a recycling center or other appropriate location for any prescribed period of time in lieu of or in addition to any of the penalties otherwise provided; provided, however, that any person sentenced to remove litter from the state highway system, public playgrounds, public parks, or other appropriate locations or to work in a recycling center shall be allowed to do so at a time other than such person's regular hours of employment.

36-5-105. Intestacy of plaintiff spouse - Effect on alimony.

(a) If the bonds of matrimony have been dissolved at the suit of the plaintiff spouse, the defendant spouse shall not be entitled to any part of the real or personal estate of the plaintiff spouse in case of such plaintiff's intestacy. Any entitlement a spouse may have to alimony shall be decided on the basis of factors set forth in § 36-5-101.

(b) However, when the cause of divorce is irreconcilable differences under § 36-4-103, subsection (a) shall not apply if the parties have entered into a written marital dissolution agreement wherein the plaintiff consents to the payment to the defendant of alimony, either in lump sum form or periodic payments; provided, that such marital dissolution agreement is approved by the court granting the decree of divorce.

36-5-113. Plans for payment of child support; work requirements.

(a) (1) In any case in which a child is receiving assistance under a state program funded under Title IV-A of the Social Security Act, including, but not limited to, temporary assistance as provided under title 71, and the payment of support for such child is overdue, then the department of human services may issue an administrative order to direct an individual who owes overdue support to such a child to pay the overdue support in accordance with a plan for payment of all overdue support.

(2) The plan shall require the obligor to pay the overdue amount in full, or by monthly installments, which are calculated to reduce the overdue amount by a reasonable payment over a reasonable period of time. The order may be enforced by either the court with jurisdiction of the support order or by the department pursuant to § 36-5-811 or § 36-5-812, or by any other remedies available for the collection or enforcement of current support.

(b) The department may also order the individual who is not incapacitated and who is subject to a plan requiring payment of the overdue support for a child receiving assistance under a state program funded under Title IV-A of the Social Security Act, including, but not limited to, temporary assistance as provided under title 71, to engage in work activities as required under § 71-3-154.

(c) A copy of the order issued pursuant to this section shall be filed with the court.

(d) An order issued by the department pursuant to this part may be appealed as provided in part 10 of this chapter.

(e) For purposes of this section, "overdue" support is defined as any occasion on which the full amount of support ordered for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent the spousal support would be included for the purposes of 42 U.S.C. 654(4), is not paid by the due date for arrears as defined in § 36-5-101(a)(5), unless an income assignment is in effect and the payer of income is paying pursuant to § 36-5-501(g).

36-5-114. Federally required state collection and disbursement unit for child and spousal support.

(a) (1) The provisions of this section are intended to outline a flexible waiver application procedure for the federally required centralized collection and disbursement of child and spousal support established pursuant to 42 U.S.C. § 654b. Wherever the terminology "collection and disbursement" is used in this section, or in other sections of law using that terminology, it is the legislative intent that the use of such term in the conjunctive shall not be construed to prevent the department of human services from seeking waivers and the state of Tennessee from implementing any procedures, permitted by federal law, regulations, or interpretations of such law or regulations or such waivers, which may allow for alternate methods or processes for either collection or disbursement of child and spousal support by the clerks of the courts of this state.

(2) (A) If the federal law, or regulations or the interpretation of such law or regulations, are repealed or modified so that centralized collection and disbursement are no longer mandated by federal law, and such repeal or modification occurs before the implementation of the centralized collection system, either directly by department itself or before the execution of a contract by the department with a contractor for the operation of such system, the provisions of state law addressing such a centralized system for the collection and disbursement of child and spousal support shall be null and void.

(B) Should the federal requirement of a centralized system be repealed or modified after implementation by the department of the federally required centralized collection and disbursement system, either directly by the department or by the department through a contractor, the provisions of law relative to the federally required centralized collection and disbursement system shall remain in effect, but the commissioner of human services shall, at the request of and in conjunction with the clerks of the court, develop a plan for transition of the collection and disbursement functions to the clerks of the court which shall include proposed legislation which may be necessary to return the collection and disbursement process to the clerks of court. The plan shall be submitted to the chairs of the house children and family affairs committee and the senate judiciary committee prior to the beginning of the next session of the general assembly after the repeal or modification of the federal requirements, but in no event later than ninety (90) days after the repeal or modification of the federal requirements.

(3) Nothing herein shall impair the validity of a contract which has been executed by the state of Tennessee or the department with any person or entity for the operation of the federally required centralized collection and disbursement system before the repeal or modification of the federal centralized collection and disbursement requirement.

(b) (1) If a waiver is available under federal law or regulations that would enable the clerks of the court to continue to collect or disburse child and spousal support, the commissioner shall, at the request of the state court clerks conference, consult with the clerks of the court to determine the feasibility of implementing the provisions of such a waiver, and shall make application to the United States department of health and human services for such a waiver; provided, that if the department has contracted for the operation of the central collection and disbursement system at the time federal law and regulations, or the interpretation of such, have changed, then the provisions of this subdivision shall be subject to the contract terms.

(2) In the event the waiver is granted which permits the clerks of court to perform services in the central collection and disbursement system, the clerks of court may enter into a contract, as permitted by state and federal law, with a third party to perform any of the functions required by federal law or required under such a waiver. If such a contract is appropriate, the president of the state court clerks conference, upon authorization of the board of directors of the state court clerks conference, shall have authority to bind the members of the conference to the terms of the contract. The contract may provide for any contractor to retain or distribute all or part of the clerks' fees authorized by § 8-21-403, if permitted by federal regulations. Under any plan, the collection and disbursement of child and spousal support shall be conducted in such a manner as will not adversely affect either compliance with federal regulations or federal funding for the Title IV-A block grant program and the Title IV-D child support program.

PART 4 EXPEDITED PROCESS FOR SUPPORT

36-5-401. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Child" means a person entitled to support from such person's parents by virtue of such person's minority or who is entitled to support as provided in § 34-11-102(b) [transferred to § 34-1-102(b)];

(2) "Petitioner" means a person or governmental entity seeking to be awarded or to enforce support for a child, or seeking to modify a previous child support order;

(3) "Referee" means a duly licensed attorney who has been actively engaged in the practice of law for a period of not less than two (2) years appointed by court authority to set and enforce child support, to review the administrative hearing decisions of the department of human services pursuant to § 36-5-1003 and to administer expedited process as set out in this part;

(4) "Respondent" means a person from whom child support is sought or person in opposition to modification of prior order; and

(5) "Support" or "order of support" means child support and support for a spouse or ex-spouse if the obligor is responsible for the support of a child residing with the spouse or ex-spouse.

36-5-402. Commencement and termination of hearings and actions - Referees.

(a) (1) Hearings in all child support cases which are not being enforced pursuant to the provisions of Title IV-D of the Social Security Act shall be heard within a reasonable period of time, not to exceed forty-five (45) days of the service of process in each county in the state.

(2) Hearings in all Title IV-D support cases which seek to establish or enforce support shall be heard within the time frames established by federal child support regulations. The department of human services shall send notice of the time frames as they may be amended to the administrative director of the courts, who shall send such notice to all courts of the state with child or spousal support jurisdiction. The administrative director of the courts shall send such notice to the courts within thirty (30) days of the date of notice from the department, and the time frames shall then become effective thirty (30) days after the date of the notice from the administrative director of the courts and shall apply to all actions to establish or enforce support initiated on or after July 1, 1995.

(b) The presiding judge of each judicial district shall provide for expedited support hearings in one (1) of the following manners:

(1) (A) The presiding judge of each judicial district, after conferring with the other judges and chancellors in the presiding judge's judicial district, shall certify to the supreme court and the administrative director of the courts the number of referees, if any, needed to serve each county in the district. Such certification shall include such information as may be required by the supreme court and the administrative director of the courts. The supreme court and the administrative director of the courts shall determine the number of referees, if any, needed for each such district, and the referees shall be selected and appointed by the presiding judge and shall serve at the presiding judge's pleasure. In counties having a metropolitan form of government and in counties having a population of not less than three hundred thirty-five thousand (335,000) nor more than three hundred thirty-six thousand (336,000), according to the 1990 federal census or any subsequent federal census, the referee(s) shall be selected and appointed by and serve at the pleasure of the trial court judge who hears more than fifty percent (50%) of the child support and domestic relations cases in such judicial district; provided, that this sentence does not apply to any sitting referee in such counties as of July 1, 1994. In determining the number of referees for each district, the supreme court and the administrative director of the courts shall provide for as many referees as are needed to provide hearings in all child support cases within the time schedule set out in subsection (a).

(B) In the event a judicial district has in effect on or before October 1, 1985, a system for the appointment of referees or masters to hear support cases which satisfies the requirements of the federal child support enforcement amendments of 1984 (P.L. 98-378), or subsequent federal legislation, and the regulations promulgated pursuant thereto, such district shall not be required to comply with the foregoing provisions of this part so long as such preexisting system remains in effect. Any law to the contrary notwithstanding, all referees or masters appointed pursuant to such system in circuit or chancery court shall be appointed by the presiding judge, with the concurrence of the other judges and chancellors in the district and shall serve at the pleasure of the appointing authority.

(2) In lieu of requesting a referee, the presiding judge may, with the agreement of all judges having child support jurisdiction in a particular county or counties, enter into agreements with juvenile courts to set, enforce, and modify support orders as provided in this part. In the event such an agreement is entered into, the juvenile court shall have jurisdiction over all support cases in such county, except as may otherwise be provided in the agreement, any contrary provision of law notwithstanding.

(3) If a judicial district does not recommend the need for referees or if the supreme court and the administrative director of the courts do not approve such recommendation, the supreme court, the administrative director of the courts and the presiding judges of such districts shall provide such information to the commissioner of human services as may be required by the secretary of health and human services for the granting of a waiver in accordance with the provisions of the federal child support enforcement amendments of 1984 (P.L. 98-378), or subsequent federal legislation, and the regulations promulgated pursuant thereto. In the event the secretary does not grant a waiver for one (1) or more judicial districts, or in the event a waiver is revoked, the supreme court, and the administrative director of the courts shall proceed to appoint a referee in accordance with subdivision (b)(1)(A) or take such other action as may be required to comply with federal law.

(4) The presiding judge shall prescribe which county or counties within the district that a referee will serve. All other terms and conditions of the appointment, including, but not limited to, compensation to be paid and reimbursement of expenses and whether the position shall be full time or part time, shall be prescribed by rule of the supreme court, which is hereby granted such rulemaking authority with regard to the accomplishment of the purposes of this part as it deems appropriate in the public interest.

(c) If by July 1, 1986, the presiding judge fails to comply with the provisions of subsection (b), the judge will be deemed to have delegated this responsibility to the supreme court and the administrative director of the courts, and the supreme court shall immediately appoint a referee to serve in accordance with this section, if necessary.

(d) The administrative director of the courts shall have authority to enter into contracts with the Tennessee state IV-D office of child support enforcement to obtain funding for compensation for the referee, support staff and other expenses necessary to provide for the performance of duties required in this part and required in part 5 of this chapter. Such contracts shall be subject to availability of funds.

(e) The appointment of referees in juvenile court which may be necessary to meet the provisions of this section shall be governed by the provisions of title 37, chapter 1.

36-5-403. Powers of referee.

The referee shall have the same authority and power as a circuit court judge to issue any and all process and in conducting hearings and other proceedings in accordance with this part; provided, that all final orders of a referee must be reviewed by a judge as provided in § 36-5-405.

36-5-405. Actions for support.

(a) Any person seeking to set, enforce, modify or terminate support may commence such an action by filing a petition and testimony in the form prescribed by § 36-5-406 with the office of the clerk.

(b) When a petition is filed, the clerk shall designate a hearing date on the notice prescribed in this part or, in the alternative, shall designate a hearing date on the summons to be served by the sheriff if the petitioner elects to proceed by having the sheriff serve process to initiate this proceeding. The hearing date shall be within thirty (30) days of the date the petition is filed. If process is served by certified mail, the clerk shall then send a copy of the completed petition, testimony, and notice to respondent by certified mail, return receipt requested. The clerk shall give a copy of completed notice, petition, and testimony to petitioner.

(c) If the return receipt is not received by the hearing date, and the respondent fails to appear, then the referee shall direct the clerk to reissue the petition with a new notice of hearing and may direct service as set out in subsection (b), or may direct service by issuance of a summons to be served by the sheriff or process server, designated by the referee. If a petition is for contempt, either the referee or the judge may issue an attachment for the arrest of the respondent with a bond.

(d) If the respondent fails to appear after service and if the return receipt does bear the signature of respondent, the referee may grant the relief sought in the petition by default. If a petition is for contempt, either the referee or the judge may issue an attachment for the arrest of the respondent with a bond.

(e) If respondent does appear, the referee may enter a consent order if the parties reach an agreement and the referee finds the agreement to be reasonable.

(f) If the respondent appears and the parties do not agree, the referee shall hear testimony and issue an order granting such relief as the referee finds appropriate.

(g) Upon the conclusion of the hearing in each case, the referee shall transmit to the judge all papers relating to the case, along with the referee's findings and recommendations in writing. A referee's decision on a preliminary matter, not dispositive of the ultimate issue in the case, shall be final and not reviewable by the judge.

(h) Any party may, within five (5) days thereafter, excluding nonjudicial days, file a request for a hearing by the judge of the court having jurisdiction. The judge may, on the judge's own motion, order a rehearing of any matter heard before a referee, and shall allow a hearing if a request for such is filed as herein prescribed. Unless the judge orders otherwise, any recommendation of the referee shall be in effect pending rehearing or approval by the court.

(i) If a hearing before the judge is not requested, the findings and recommendations of the referee become the final decree of the court when confirmed by an order of the judge.

(j) There shall be no litigation tax and the clerk shall not refuse to file a petition for a party proceeding under this part for failure to pay a filing fee. When a party is unable to pay the filing fee, such party shall be required to take and subscribe to in writing the pauper's oath set out in § 20-12-127, and such affidavit shall be attached to such party's petition.

(k) Any party may appeal a final order entered under this section to the court of appeals. Any such appeal shall be governed by the applicable provisions of the Tennessee Rules of Appellate Procedure.

36-5-406. Promulgation and approval of forms.

The department of human services has the authority by regulation to promulgate forms which shall be available for use pursuant to the provisions of this part. Such forms shall be promulgated pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and shall be approved by the judicial council prior to becoming effective.

PART 5 ASSIGNMENT OF INCOME FOR SUPPORT

36-5-501. Income withholding.

(a) (1) For any order of child support issued, modified, or enforced on or after July 1, 1994, the court shall order an immediate assignment of the obligor's income, including but not necessarily limited to: wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, profit sharing, interest, annuities, and other income due or to become due to the obligor. The order of assignment shall issue regardless of whether support payments are in arrears on the effective date of the order. The court's order, shall include an amount sufficient to satisfy an accumulated arrearage, if any, within a reasonable time. The order may also include an amount to pay any medical expenses which the obligor owing the support is obligated or ordered to pay. Withholding shall not exceed fifty percent (50%) of the employee's income after FICA, withholding taxes, and a health insurance premium which covers the child, are deducted. The order shall also include an amount necessary to cover the fee due the clerk of the court or the department, if appropriate. In the event the court does not order an immediate assignment pursuant to subdivision (a)(2), every order shall be enforceable by income assignment as provided in this chapter.

(2) Income assignment under this subsection shall not be required:

(A) If, in cases involving the modification of support orders, upon proof by one party, there is a written finding of fact in the order of the court that there is good cause not to require immediate income assignment and the proof shows that the obligor has made timely payment of previously ordered support. "Good cause" shall only be established upon proof that the immediate income assignment would not be in the best interests of the child. The court shall, in its order, state specifically why such assignment will not be in the child's best interests; or

(B) If there is a written agreement by both parties that provides for alternative arrangements. Such agreement must be reviewed by the court and entered in the record.

(C) If the case is being enforced under Title IV-D of the Social Security Act and is subject to an assignment of support due to receipt of public assistance, the department of human services or its contractor must be notified of the request for exemption under subdivisions (a)(2)(A) and (B) and may present evidence for purposes of subdivision (a)(2)(A), or must agree in order to permit exemption from income withholding as otherwise permitted pursuant to subdivision (a)(2)(B).

(3) (A) Unless a court or administrative order stipulates that alternative health care coverage to employer-based coverage is to be provided for a child subject to a Title IV-D child support order, in

any case in which a noncustodial parent is required by a court or administrative order to provide health care coverage for such a child, and the employer of the noncustodial parent is known to the department, the department shall use any federally-required medical support notices to provide notice to the employer of the requirement for employer-based health care coverage for such child through the child's parent who has been ordered to provide health care coverage for such child. The department shall send the federal medical support notice to any employer of a noncustodial parent subject to such an order within two (2) business days of the entry of such employee who is an obligor in a Title IV-D case into the directory of new hires under title 36, chapter 5, part 11.

(B) Within twenty (20) business days after the date of the medical support notice, the employer of a noncustodial parent subject to an order for health care coverage for the child shall transfer the notice to the appropriate plan providing such health care coverage for which the child is eligible. The employer shall withhold from the noncustodial parent's compensation any employee contributions necessary for coverage of the child and shall send any amount withheld directly to the health care plan to provide such health care coverage for the child. If the employee contests the withholding of such employee contributions, the employer shall initiate withholding until the contest is resolved. The employee/obligor shall have the right to contest the withholding order issued pursuant to subdivision (a)(3) based upon a mistake of fact according to the provisions for appeal provided pursuant to title 36, chapter 5, part 10.

(C) (i) An employer shall notify the department promptly whenever the noncustodial parent's employment is terminated.

(ii) The department shall promptly notify the employer when there is no longer a current order for medical support in effect for which the department is responsible.

(D) The liability of the noncustodial parent for employee contributions to the health care plan necessary to enroll the child in the plan shall be subject to all available enforcement mechanisms under this title or any other provision of law.

(E) Upon receipt of the notice required by subdivision (a)(3) which appears regular on its face and which has been appropriately completed, the notice is deemed a qualified medical child support order under 29 U.S.C. § 1169(a)(5)(C)(i). The health insurance plan administrator of a participant under a group health plan who is the noncustodial parent of the child for whom the notice was received pursuant to this subdivision, shall, within forty (40) business days:

(i) Notify the state Title IV-D agency of any state or territory that issued the notice with respect to whether coverage is available for such child under the terms of the plan, and, if so, whether such child is covered under the plan and either the effective date of the coverage or, if necessary, any steps to be taken by the custodial parent, or official of a state or political subdivision thereof substituted for the name of the child pursuant to 29 U.S.C. § 1169(a)(3)(A), to effectuate coverage. The department or its contractors, in consultation with the custodial parent, must promptly select from available plan options when the plan administrator reports that there is more than one (1) option available under the employer's plan; provided, however, if such response is not made to the plan administrator within twenty (20) business days, and if the plan has a default option for coverage, the plan administrator shall enroll the child in that default option. If there is no default option, the plan administrator may call the office of the department or contractor which sent the notice and seek direction as to the child's enrollment in the available plans;

(ii) Provide the custodial parent (or such substituted official) a description of the coverage available and any forms or documents necessary to effectuate such coverage and permit the custodial parent or substituted official to file claims;

(iii) Send the explanation of benefit statements to the custodial parent, substituted official and the employee;

(iv) Send the reimbursement to the custodial parent, legal guardian or substituted official for expenses paid by the custodial parent, legal guardian or substituted official for which the child may be eligible under the plan.

(v) Nothing in subdivision (a)(3)(E) shall be construed as requiring a group health plan, upon receipt of a medical support notice, to provide benefits under the plan, or eligibility for benefits, under the terms of the plan in addition to, or different from, those provided immediately before receipt of such notice, except as may otherwise be required by the provisions of title 56, chapter 7, part 23.

(b) (1) (A) In all cases in which the court has ordered immediate income assignment, the clerk of the court, or the department of human services or its contractor in Title IV-D cases, shall immediately issue an income assignment to an employer once the employer of an obligor has been identified.

(B) In all cases in which an immediate assignment of income has not been previously ordered, or in which an obligor who is ordered to pay child support in which an immediate income assignment was not required pursuant to subdivision (a)(2), and when the obligor becomes in arrears as defined in this subdivision as reflected in the records of the clerk of court, if the support is paid through the clerk's office or in the records of the department of human services, then the clerk of the court, or the department or its contractor in Title IV-D child support cases shall, without the necessity of an affidavit of the obligee, issue an order of income assignment to the employer of the obligor, if known, or at such time as the employer's name and whereabouts are made known to the clerk or the department or its contractor. No court order expressly authorizing an income assignment shall be required under this paragraph.

(C) The order of assignment issued by the department or its contractor pursuant to subdivisions (b)(1)(A) and (B) shall include an amount sufficient to satisfy an accumulated arrearage within a reasonable time without further order of the court. The order shall also include an amount to pay any medical expenses which the obligor owing the support is obligated or ordered to pay. Withholding shall not exceed fifty percent (50%) of the employee's income after FICA, withholding taxes, and a health insurance premium which covers the child, are deducted. The order shall also include an amount necessary to cover the fee due the clerk of the court, if appropriate.

(D) In all other cases in which the child support payments were ordered to be paid directly to a parent or guardian or custodian of the child or children, and the child support payments are in arrears as defined in this subdivision, the parent, guardian or custodian may, by affidavit filed with the clerk, or, the department or its contractor in Title IV-D child support cases, request that an order of income assignment be sent by the clerk of the court, or by the department, to the employer, if known, or at such time as the employer's name and whereabouts are made known to the clerk, the department or its contractor. No court order expressly authorizing an income assignment shall be required under this subdivision.

(E) The order of assignment issued by the clerk or the department or its contractor pursuant to subdivision (b)(1)(D) shall include an amount sufficient to satisfy an accumulated arrearage within a reasonable time. The order may also include an amount to pay any medical expenses which the obligor owing the support is obligated or ordered to pay. Withholding shall not exceed fifty percent (50%) of the employee's income after FICA, withholding taxes, and a health insurance premium which covers the child, are deducted. The order shall also include an amount necessary to cover the fee due the clerk of the court, if appropriate.

(F) An income assignment pursuant to this subsection shall be mandatory even if subsequent to the issuance of the order of assignment the obligor pays the amount of arrearage in part or in full as long as current support or arrearages are still owed.

(G) For purposes of this part, "arrears" means any occasion on which the full amount of ordered support ordered for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent the spousal support would be included for the purposes of 42 U.S.C. § 654a(e)(4), is not paid by the due date for arrears as defined in § 36-5-101(a)(5) unless an income assignment is in effect and the payor of income is paying pursuant to subsection (g).

(H) Clerks of court are authorized to issue an order of income assignment to the employer of the obligor and to institute the process to assign income when the obligor fails to pay court costs, but shall not have priority over the income assignment for child or spousal support.

(2) When an order of income assignment has been issued pursuant to subdivision (b)(1)(B) or (b)(1)(D), the clerk, or the department in Title IV-D cases, shall send a notice to the obligor within two (2) business days of the issuance of the order of income assignment being sent to the obligor's employer. If the assignment is made pursuant to subdivisions (b)(1)(B) or (b)(1)(D), the notice must be sent to the address of the obligor, if known, or to the obligor at the address of the employer of the obligor if the obligor's address is unknown.

(3) In addition to any other required or pertinent information, all notices of assignment sent to the obligor who resides in this state pursuant to this section shall include:

(A) The amount of money owed by the obligor, including both current support and arrears;

(B) The amount of income withholding, except where otherwise ordered by the court, which shall be applied for current support, the amount which shall be applied for arrearages and the amount to be applied for alimony. The amount withheld shall be an amount reasonably sufficient to satisfy an accumulated arrearage within a reasonable time;

(C) Notice that the obligor has the right to a hearing before the court, or, in Title IV-D cases, an administrative review by the department of human services. The administrative hearing shall be conducted pursuant to the provisions of part 10 of this chapter; and

(D) Notice that the obligor must request the hearing by notifying the clerk, or the department in Title IV-D cases, within fifteen (15) days of the date of the notice, or the date of personal service, if used.

(4) Orders of income assignment issued by the department of human services or its contractors shall be filed with the court.

(5) (A) In all Title IV-D child or spousal support cases in which payment of such support is to be made by income assignment, and in all cases where payments made by income assignment based upon support orders entered on or after January 1, 1994, that are not Title IV-D support cases but must be made to the central collection and disbursement unit as provided by § 36-5-116, the court, the clerk of court, or the department or its contractors shall only order that the support payments be made by income assignment to the central collection and disbursement unit pursuant to § 36-5-116. No agreement by the parties in a parenting plan, either temporary or permanent, entered pursuant to the provisions of title 36, chapter 6, part 4, or any other agreement of the parties or order of the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall alter the requirements for payment by income assignment to the central collection and disbursement unit as required by § 36-5-116, and any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of § 36-5-116, whether or not approved by the court, except as may otherwise be allowed by § 36-5-501(a)(2)(B), shall be void and of no effect. No credit shall be given by the court, the court clerk or the department of human services for child or spousal support payments required by the support order that are made in contravention of such requirements; provided, however, the department may make any necessary adjustments to the balances owed to account for changes in the Title IV-D or central collection and disbursement status of the support case.

(B) The payment of child support through the centralized collection and disbursement unit established pursuant to § 36-5-116 does not establish the case as a Title IV-D case unless the case otherwise meets the criteria of § 71-3-124 for a case in which the department of human services will provide child support services to an assignor of support rights or to any person who has otherwise applied for such services.

(c) (1) In the event the obligor requests a hearing in cases not being enforced pursuant to Title IV-D regarding the withholding as provided in subdivisions (b)(1)(B) within fifteen (15) days of the date of the notice, or the date of personal service, if used, the clerk shall promptly docket the case with the referee or court as provided by part 4 of this chapter, shall give notice to all parties, and shall take any other action as is necessary to ensure that the time limits provided in subsection (d) are met.

(2) If the withholding was issued by the department or its contractor in Title IV-D cases and the obligor requests an administrative hearing as permitted by part 10 of this chapter, the department shall promptly schedule the case for a hearing, shall give notice to all parties, and shall take any other action as is necessary to ensure that the time limits provided in subsection (d) are met.

(d) In all cases in which the obligor requests a hearing or administrative review, the referee or court, or the department, shall conduct a hearing and make a determination, and the clerk or department shall notify the obligor and the employer of the decision within forty-five (45) days of the date of the order provided in subdivision (b)(1).

(e) The obligor may contest the results of the department's administrative review by requesting a judicial review as provided in part 10 of this chapter.

(f) The amount to be withheld under the income assignment withheld for support may not be in excess of fifty percent (50%) of the income due after FICA, withholding taxes, and a health insurance premium which covers the child are deducted.

(g) (1) The assignment or any subsequent modification is binding upon any employer, person or corporation, including successive employers, fourteen (14) days after mailing or other transmission or personal service of the order from the clerk of the court, or from the department by administrative order of income assignment, pursuant to this section. The amount withheld must be sent to the clerk or the department, or if based upon a direct withholding from another state pursuant to the Uniform Interstate Family Support Act compiled in parts 20-29 of this chapter, shall be sent to the other state as directed by that order of assignment. The amount withheld shall be sent by the employer within seven (7) days of the date the person obligated to pay support is paid or the date such person is to be paid or the date the amount due such person is to be credited. The order is binding until further notice.

(2) The employer, person, corporation or institution shall provide notice to the clerk, the department, or the entity in the other state to which the withheld income was to be sent, and the division of employment security of the department of labor and workforce development, of

termination of employment or income payments to the employee. Any employer, person, corporation or institution that files for bankruptcy or ceases to operate as a business shall provide notice to the clerk or the department of the bankruptcy or cessation of business upon filing bankruptcy or at least ten (10) days prior to ceasing to operate as a business. Any notice provided pursuant to this subsection (g) shall include the names of all the affected employees subject to an income assignment, the last known address of each of those employees, and the name and address of the new employer or source of income of each of those employees, if known.

(h) For any order of alimony in solido, in futuro or rehabilitative issued, modified or enforced on or after April 24, 2002, the court may order immediate assignment of the obligor's income, including, but not necessarily limited to: wages, salary, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, profit sharing, interest, annuities and other income due or to become due to the obligor. The order of assignment shall issue regardless of whether support payments are in arrears on the effective date of the order. The court's order may include an amount sufficient to satisfy an accumulative arrearage, if any, within a reasonable time. Withholding shall not exceed fifty percent (50%) of the employee's income after FICA, withholding taxes, and a health insurance premium which covers the child, if any, are deducted. The order shall also include an amount necessary to cover the fee due the clerk of the court, if appropriate.

(i) It is unlawful for an employer to use the assignment as a basis for discharge or any disciplinary action against the employee. Compliance by an employer, other person, institution or corporation with the order shall operate as a discharge of the liability of such employer, other person, institution or corporation to the affected individual as to that portion of the income so affected. An employer shall be subject to a fine for a Class C misdemeanor if the income assignment is used as a basis to refuse to employ a person or to discharge the obligor/employee or for any disciplinary action against the obligor/employee or if the employer fails to withhold from the obligor's income or to pay such amounts to the clerk or to the department as may be directed by the withholding order.

(j) (1) An assignment under this section shall take priority over any other assignment or garnishment of wages, as described in title 26, chapter 2, or salary, commissions or other income, except those deductions made mandatory by law or hereafter made mandatory.

(2) (A) If the employer, person, corporation or institution receives more than one (1) order of income assignment against an individual, the employer, person, corporation or institution must comply by giving first priority to all orders for amounts due for current support due a child, second to all orders for amounts due for arrearages due a child, third to all orders for amounts due for current support due a spouse, and fourth to all orders for amounts due for arrearages due a spouse, and must honor all withholdings to the extent the total amount withheld from wages does not exceed fifty percent (50%) of the employee's wages after FICA and withholding taxes and a health insurance premium which covers the child are deducted.

(B) Any employer, person or entity receiving an order for income withholding from another state or territory shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

- (i) The employer's fee for processing an income withholding order;
- (ii) The maximum amount permitted to be withheld from the obligor's income;
- (iii) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (iv) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (v) Any withholding terms and conditions not specified in the order.

(C) The "principal place of employment" for an obligor who is employed in this state and for whom an income withholding order has been received in this state from another state or territory shall be deemed to be this state, and the provisions set forth in the requirements of this section regarding income withholding shall apply to the determinations made in (j)(2)(B)(i)-(v).

(3) (A) If any employer, person, or other entity receives any income assignment for current support against an individual which would cause the deduction from any two (2) or more assignments for current support to exceed fifty percent (50%) of the individual's income after FICA, withholding taxes, and a health insurance premium which covers the child are deducted, then the allocation of all current support ordered withheld by all income assignments they receive against that individual shall be determined by the employer, person, or entity as follows:

- (i) The employer, person, or other entity shall determine the total dollar amount of the assignments for current support it has received involving the obligor to whom it owes any wages,

salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, profit sharing, interest, annuities, and other income due or to become due to the obligor;

(ii) Each individual assignment shall then be calculated as a percentage of the total obtained pursuant to subdivision (j)(3)(A)(i);

(iii) The employer, person, or entity shall then allocate the available income of the obligor, subject to the limits described above, based on the percentage computation pursuant to subdivision (j)(3)(A)(ii) and shall, as directed by the order of income assignment, pay the amounts withheld from the obligor's income, to the clerk or clerks, or to the department, its contractor, or other entity or Title IV-D child support agency in any other state which issued such order.

(B) In the event all current support obligations are met from the assignments and support arrearages exist in more than one (1) case and there is not sufficient income to pay all ordered support arrearage, then the support arrearages shall be allocated on the same basis as set forth in subdivision (j)(3)(A).

(C) The obligor shall be responsible for seeking any modifications to the existing orders for support.

(4) An employer, person, corporation or institution may make one (1) payment to the clerk of the court, the department its contractor or other entity in another state so long as the employer separately identifies the portion of the single payment attributable to each individual obligor parent, and, if amounts are included which represent withholdings for more than one (1) pay period, so long as the amounts representing each pay period are separately identified.

(k) (1) "Employer, person, corporation or institution," as used in this section, includes the federal government, the state and any political subdivision thereof and any other business entity which has in its control funds due to be paid to a person who is obligated to pay child support.

(2) "Spousal support" for purposes of enforcement of child support by the department of human services under the Title IV-D child support program means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children who are receiving child support services from the department and for whom the individual also owes support. Income assignments pursuant to this part that are enforced as part of the Title IV-D services provided by the department shall apply to spousal support obligations as defined in this subdivision (k)(2).

(l) Any employer, person, corporation or institution which is ordered to pay an income assignment on behalf of an individual may charge the obligor parent an amount of up to five percent (5%) not to exceed five dollars (\$5.00) per month for such service.

(m) The notices and orders required to be issued pursuant to this section shall be transmitted to any party or person by any method chosen by the court or the department, including but not limited to: certified mail, return receipt requested, regular mail, electronic mail, facsimile transmission, or by personal service, and may be generated by computer or on paper. The notices and orders required by this section need not be entered in the minutes of the court. If a notice or order is returned or otherwise not deliverable, then service shall be had by any alternative method chosen by the court or the department, as listed in this subsection. Before taking action against an employer or other payor for failure to comply with this part, the court or department shall ensure that service of the notice or order was made by certified mail or by personal service. Electronically reproduced signatures shall be effective to issue any orders or notices pursuant to this section.

(n) There shall be no litigation tax imposed on proceedings pursuant to this part.

(o) (1) The department of human services shall have authority to establish mandatory rules, forms, and any necessary standards and procedures to implement income assignments which shall be used by all the courts and by the department pursuant to this part. The department of human services may implement the use of such forms at any time following passage of this act by public necessity rule following approval by the attorney general and reporter. Permanent rules implementing the forms shall be promulgated pursuant to the rulemaking provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) Prior to the filing of a notice of rulemaking for permanent rules pursuant to this subsection, the rules shall be sent by the department for review by an advisory group composed of two (2) representatives of the state court clerks' conference appointed by the president of the state court clerks' association, two (2) representatives of the judges of courts which have child support responsibilities one of whom will be appointed by the Chief Justice of the Supreme Court and one of whom will be appointed by the president of the council of juvenile and family court judges, a representative of the administrative office of the courts, and two (2) representatives of the department of human services designated by the commissioner. Nothing contained herein shall be

construed to prevent the department from filing any notice of rulemaking prior to or at the time the proposed permanent rules are sent to the advisory group where the department determines that immediate filing of the notice without prior review by the advisory group is necessary to meet any requirements relative to the potential expiration of public necessity or emergency rules or to comply with any federal statutory or regulatory requirements or any federal policy directives.

(p) If any employer, person, corporation or institution fails or refuses to comply with the requirements of this section, then that employer, person, corporation or institution is liable for any amounts up to the accumulated amount that should have been withheld. In addition, that employer, person, corporation or institution may be subject to a civil penalty to be assessed and distributed pursuant to the requirements of this subsection (p).

(1) Upon the first failure to comply with an order of income assignment, that employer, person, corporation or institution may be subject to a civil penalty of one hundred dollars (\$100) per obligor for whom an order of income assignment was received, two hundred dollars (\$200) per obligor for the second failure to comply and five hundred dollars (\$500) per obligor for each occurrence thereafter.

(2) The civil penalty, when assessed and collected by the department of human services, shall be prorated among the children for whom the income assignment order was issued and with which the employer, person, corporation or institution failed to comply. If there are multiple income assignments for an obligor, the prorated amounts of the civil penalty shall be distributed to the children in the proportion that each order for which the income assignment was issued is to the total amount of all income assignments with which the employer, person, corporation or institution failed to comply.

(3) The civil penalty amount received by the children shall not reduce in any manner the amount of support owed by the obligor parent, but shall be received in addition to all ordered child support.

(q) (1) Penalties authorized by this section shall be assessed by the commissioner of human services after written notice to the employer, person, corporation or institution. The notice shall provide fifteen (15) days from the mailing date of the notice for the employer, person, corporation or institution to file a written request to the department for appeal of the civil penalty. If an appeal is timely filed with the department, the department shall set an administrative hearing on the issue of the assessment pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, relative to contested case hearings. Failure to timely appeal the assessment of the civil penalty shall be final and conclusive of the correctness of the assessment.

(2) Any amount found owing shall be due and payable not later than fifteen (15) days after the mailing date of the determination. Failure to pay an assessment shall result in a lien against the real or personal property of the employer, person, corporation or institution in favor of the department. If an assessment is not paid when it becomes final, the department may collect the amount of the civil penalty by any available administrative enforcement procedures or by court action. The non-prevailing party shall be liable for all court costs and litigation taxes of the proceedings and shall be liable to the department for the cost of any private, contract or government attorney representing the state and for the time of any of its Title IV-D or contractor staff utilized in litigating the assessment.

(3) Any appeal of the action of the commissioner pursuant to this section shall be made in conformity with § 36-5-1003.

36-5-503. Termination of income assignment

(a) The following procedures shall apply to termination of income assignment:

(1) Any party or its agents or assignees may seek termination of an order under this section if there are no arrearages owed by the obligor to the obligee parent, any guardian or custodian of the child, the department of human services or any other agency of the state of Tennessee, or any other Title IV-D agency of any state, the costs of court have been paid, and there are no longer any children to whom the obligor parent is obligated to pay support because:

(A) Of the marriage of the child or children;

(B) Of the death of the child or children;

(C) [Amended effective January 1, 2005. See the Compiler's Notes] The child or children have reached majority and have graduated from high school, or the class of which the child is a member when the child attains eighteen (18) years of age graduates, whichever occurs later, and no other special circumstances requiring the obligation continue to exist.

(2) If there are children to whom the obligor is still obligated to pay support, though a change of circumstances has occurred as a result of the discontinuation of the obligation to at least one (1)

child, the obligor may not seek termination of the income assignment order, but must seek modification of the support order. Upon obtaining modification of the support order, the clerk of court or the department or its contractors shall issue a modified income assignment;

(3) Parties seeking a change of custody, pursuant to § 36-6-101, may not seek termination under this provision but must request termination by the trial court if there is a change in custody ordered;

(4) The clerk of the court or the department of human services or its contractor in Title IV-D cases shall send the order and notice of termination of income assignment to the obligor parent, obligee parent, and employer, person, corporation, or institution upon the decision to terminate or not to terminate; and

(5) (A) [Amended effective January 1, 2005. See the Compiler's Notes] In Title IV-D cases, when the department of human services or its contractor is informed or otherwise determines that the conditions of § 36-5-503(a)(1) have been met, then the department or its contractor shall administratively terminate or modify the income assignment order to reflect the change in circumstances pursuant to the child support guidelines in accordance with this section. In all other circumstances, modification or termination of an income assignment shall be obtained by court order.

(B) In cases where an income assignment order may be terminated or modified by administrative order, the department or its contractor shall notify both the obligor, or other payer, and the obligee of the proposed action with respect to the termination or modification action. The notice shall give both the obligor and the obligee fifteen (15) days in which to appeal the proposed action, pursuant to the appeal provisions of chapter 5, part 10 of this title.

(b) Each parent or other individual having custody of a child who is receiving support payments under an income assignment order shall notify the clerk, or the department of human services or its contractor in Title IV-D cases, at such time as any of the following occur:

(1) A child for whom support is being paid dies;

(2) A child for whom support is being paid marries;

(3) A child for whom support is being paid reaches such child's eighteenth birthday if the child is not in high school on that date; or

(4) A child for whom support is being paid graduates from high school (or the class of which the child is a member graduates if the child does not graduate with the class) if the child is eighteen (18) years of age prior to the date such child graduates.

(c) (1) The obligor parent may also seek termination or modification of a support order when the whereabouts of the obligee parent and child or children are unknown and the clerk of the court, or the department of human services or its contractor in Title IV-D cases, has been unable to forward past payments, and all arrearages owed to the state as a result of the custodian's receipt of public assistance have been paid.

(2) The obligor parent may either file a motion for termination or seek modification of the child support order when support payments equal to the amount due within one (1) month have been returned to the office of the clerk, or to the department or its contractor in Title IV-D cases, and all reasonable means to locate the obligee parent and child or children have been exhausted. The clerk of the court, or the department or its contractor in Title IV-D cases, shall notify the obligor parent that such payments have been returned to the clerk, or to the department or its contractor in Title IV-D cases. The obligor parent must submit an affidavit verifying that such obligor parent has exhausted reasonable efforts to locate the obligee parent and child or children.

(d) When a motion to terminate is filed, the clerk of the court shall proceed to set a hearing and serve the parties as provided in § 36-5-405. Upon receipt of a notice from the custodial parent or individual in accordance with subsection (b), or based upon the department's own records, the clerk or the department or its contractor in Title IV-D cases shall determine whether the income assignment order includes support for any other child or children and whether there are any accumulated arrearages due which have not been satisfied. If there are no other children and no arrearages, the clerk, or the department or its contractor in Title IV-D cases, after notification to the parties, shall notify the employer, person, corporation or institution withholding support that the income assignment is terminated. If there are other children and/or accumulated arrearages, the clerk or the department or its contractor in Title IV-D cases, after notification to the parties, shall send a new notice to the employer, person, corporation or institution withholding support specifying the correct amount to be withheld as a result of the change in circumstances.

(e) If the obligor parent wishes to file a motion for termination or to seek modification of the support order, such obligor parent must complete and file an affidavit affirming that such obligor parent has contacted a reasonable number of relatives and friends of the obligee parent and all

lack any knowledge regarding the whereabouts of the custodian and child or children, and that such obligor parent has made other reasonable efforts to locate the obligee parent and child or children including:

- (1) Mailing a letter to the obligee parent's last known address requesting a new mailing address;
- (2) Checking the telephone directory and directory assistance for a listing of the obligee parent;
- (3) Contacting the obligee parent's last attorney of record and inquiring as to whether the attorney can provide a current address;
- (4) Contacting the obligee parent's last known place of employment (if known) and inquiring as to whether a current address may be provided by the employer; and
- (5) Contacting the department of human services and inquiring if its records contain a current address of the obligee parent.

PART 7 ENFORCEMENT THROUGH LICENSE DENIAL AND REVOCATION

36-5-710. Modification or amendment of support orders or obligations.

Nothing in this part prohibits an obligor from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision.

36-5-713. Noncompliance with support order to affect ability to hold other licenses.

(a) In addition to other qualifications for licensure or registration and conditions for continuing eligibility to hold a license as prescribed by law, rule or regulation issued under the provisions of titles 43, 44, 45, 55, 56, 62, 63, 68, 70 or 71, for an individual to engage in a profession, trade, occupation, business, or industry, to hunt or fish, or to operate any motor vehicle or other conveyance, applicants for licensure, certification or registration, and licensees renewing their licenses, and existing licensees, must not then be subject to a certification that the licensee is not in compliance with an order of support.

(b) The supreme court is encouraged to establish guidelines to suspend the license of an attorney who fails to comply with the requirements of §§ 36-5-701 - 36-5-707.

PART 9 OVERDUE SUPPORT

36-5-901. Liens for child support arrearages.

(a) (1) In any case of child or spousal support enforced by the department of human services or its contractors under Title IV-D of the Social Security Act in which overdue support is owed by an obligor who resides or owns property in this state, a lien shall arise by operation of law against all real and personal property, tangible or intangible, then owned or subsequently acquired by the obligor against whom the lien arises for the amounts of overdue support owed or the amount of penalties, costs or fees as provided in this chapter. The personal or real property, tangible or intangible, of the obligor that is subjected to the lien required by this part shall include all existing property at the time of the lien's perfection, or acquired thereafter, even if a prior order for overdue support or arrears only specifies a certain amount of overdue support or arrears that was owed by the obligor at the time of such order.

(2) "Overdue support" is defined, for purposes of this part, as any occasion on which the full amount of ordered support for or on behalf of a minor child, or for a spouse or former spouse of the obligor with whom the child is living to the extent spousal support would be included for the purposes of 42 U.S.C. § 654(4), is not paid by the due date for arrears as defined in § 36-5-101(a)(5) unless an income assignment is in effect and the payer of income is paying pursuant to § 36-5-101(g). "Overdue support" shall include all amounts of support that are in arrears as defined in § 36-5-101(a)(5) and that remain unpaid by the obligor at the time the lien is perfected or which become due as arrears subsequent to the perfection of the lien.

(b) (1) (A) The commissioner may cause a notice of such lien on real property or upon any personal property to be recorded or filed, as appropriate in the appropriate place for the filing of a judgment lien or security interest in the property. This notice may be filed by automated means where feasible. The department shall not be required to pay the fee for filing the notice of lien at

the time the notice is filed, but shall be given credit and billed once each month for the notices which it files pursuant to this subsection.

(B) In addition to the notice perfected pursuant to subdivision (1)(A), a notice of lien may be sent by any appropriate means, including by any automated means, by the commissioner or any authorized representative of the department, to any person or entity which holds or which may hold any assets payable or due to be paid or transferred to an obligor of overdue support to notify the person or entity of the existence of a lien for overdue support. The receipt of such notice by that person or entity shall be adequate notice of the department's lien upon the obligor's assets of any kind which are held by the person or entity or which may come into that person's or entity's possession or control. Subject to the priorities of subsections (c) and (d), or the subordination of these liens to orders or judgments pursuant to § 36-5-905(c)(1)(A) and (c)(1)(B), and subject to any exemptions allowed by § 36-5-906, payment or transfer to the obligor or other persons or entities of the funds, property, or other assets of any kind which are encumbered by the lien subsequent to the receipt of such notice, shall make the person or entity liable to the department to the extent of the overdue support, up to the value of the transferred assets, in an action in the circuit or chancery court of the county in which the order of support is being enforced.

(2) Upon request, the department shall disclose the specific amount of liability at a given date to any interested party.

(3) (A) The department may cause a notice of lien to be filed or recorded and to be effective in any county in this state against all real or personal property of the obligor by provision by the state of Tennessee of a computer terminal arrangement in the office of the register of deeds or other state or local agency where the information regarding the existence, amount and date of the lien or security interest involving an obligor is made available to anyone who may be researching a title to real property or who may be seeking the status of any security interests or liens affecting any real or personal property held by an obligor. The cost for provision of the computer terminal arrangement, if used pursuant to this subdivision, shall be paid by the department of human services.

(B) In the alternative, the department may, upon agreement by the secretary of state, develop a central site for recordation of all notices of liens on all property, real or personal, which would be subject to the lien provisions of this part and the department and the secretary of state shall have authority to promulgate any rules necessary pursuant to the provisions of the Uniform Administrative Procedures Act compiled in title 4, chapter 5, to implement such central recordation site.

(C) In addition, or in conjunction with or as an alternative to the methods described in subdivision (b)(3)(A) or (b)(3)(B), the department may cause the filing or recordation of liens against all real or personal property of the obligor by placing such notice on a site accessible on the internet. If the methods described in subdivision (b)(3)(A) or (b)(3)(B) are used, and if the internet process authorized pursuant to this subdivision is also made available, the dates shown on the department's computer record and displayed in the appropriate office of recordation as provided in subdivision (b)(3)(A) or (b)(3)(B) and those displayed on the internet site shall be the same.

(D) The date noted in the department's computer record and which is displayed in the appropriate office of recordation as provided in subdivision (b)(3)(A) or (b)(3)(B), or which is displayed on the internet site as provided in subdivision (b)(3)(C), will serve for purposes of perfection as the recording or filing date of the lien. The recording or filing provided by this subdivision shall serve as notice to anyone who may be researching a title to real property or who may be seeking the status of any security interests or liens affecting any real or personal property held by an obligor and shall become the date of recordation of the notice of lien for all purposes of this part.

(E) If any of the systems or procedures described above in this subdivision is provided by the department, the automated lien shall be effective for all purposes to give notice to persons who may be affected by the existence of such lien in the same manner as the recordation of notice in the lien book maintained by the register of deeds or in the records of any state or local agency maintaining such records.

(F) Prior to the implementation of the provisions of this subdivision, the department shall promulgate rules establishing procedures for the use of the automated system and shall, in addition to the other requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for notice, provide specific notice to the state clerks of court conference, registers of deeds, and the Tennessee Bar Association.

(4) Nothing herein shall require the department to file a notice of lien for the seizure of an obligor's assets held by a state or local agency, by a court or administrative tribunal, by a lottery, by a financial institution or by a public or private retirement fund pursuant to § 36-5-904(a)(1)-(3)

or to obtain any income withholding from any employer or other payor of income as otherwise permitted under title 36, chapter 5, part 5.

(c) The lien of the department for child support arrearages shall be superior to all liens and security interests created under Tennessee law except:

(1) County and municipal ad valorem taxes and special assessments upon real estate by county and municipal governments;

(2) Deeds of trust which are recorded prior to the recordation of notice of the department's lien;

(3) Security interests created pursuant to Article 9 of the Uniform Commercial Code, compiled in title 47, chapter 9, which require filing for perfection and which are properly filed prior to recordation of the notice of the department's lien;

(4) Security interests perfected under the Uniform Commercial Code without filing, as provided in title 47, chapter 9, which are properly perfected prior to recordation of the notice of the department's lien;

(5) The lien or security interest of a financial institution against an obligor's interest in a deposit account at that institution for any indebtedness to the institution, including but not limited to, that institution's security interest in accounts pledged for loans, its rights under the Uniform Commercial Code or by contract to charge back uncollected deposits, revoke settlements or take other action against the account, its right to recover overdrafts and fees, and its right of offset for mature indebtedness;

(6) Other security interests in deposit accounts at a financial institution when such interests are reflected in the records of that financial institution prior to the receipt of an administrative order of seizure;

(7) Other liens recorded prior to the recordation of the department's lien, or concerning which a judicial proceeding was initiated prior to recordation of the department's lien.

(8) Vendors' liens on real estate provided for in title 66, chapter 10 which are recorded prior to the recordation of notice of the department's lien; and

(9) The tax liens of the department of revenue filed pursuant to title 67 prior to the department's child support lien.

(d) (1) Nothing in this section shall be interpreted to give the department priority over any deed of trust or any security interest perfected under the Uniform Commercial Code prior to the filing of the notice of the department's child support lien, irrespective of when such child support lien arises. "Filing" for purposes of this subsection shall mean that the department has recorded its notice of lien pursuant to the provisions of subsection (b) by filing a document to record its notice of lien in the appropriate office for such recordation or that it has effectively recorded its lien pursuant to the automated recordation method permitted by subdivision (b)(3).

(2) No lien for child support arrearages shall be perfected against a motor vehicle unless such lien is physically noted on the certificate of title of such motor vehicle.

(3) Nothing in this part shall be deemed to give the department any priority over any possessory lien including, but not limited to mechanics' and materialmen's liens pursuant to title 66, chapter 11, part 1; artisans liens pursuant to title 66, chapter 14; or garagekeepers' and towing firm liens pursuant to title 66, chapter 19, part 1.

(e) The notice of lien required to be filed or recorded under subsection (b), or any renewal thereof, shall be effective until the obligation is paid.

36-5-902. Full faith and credit to liens of other state child support agencies.

(a) Full faith and credit shall be accorded to liens arising in any other state or territory for cases of child or spousal support enforced by the Title IV-D child support enforcement agency of the other state or territory as a result of the circumstances of § 36-5-901(a) for all overdue support, as defined in the other state or territory, when that other state or territory agency or other entity complies with the procedural rules relative to the recording, filing or serving of liens that arise within this state.

(b) The department of human services may enforce the liens arising pursuant to this section by any means available for enforcement of its liens.

36-5-904. Enforcement of liens.

In cases where there is an arrearage of child or spousal support in a Title IV-D child support case or in which a lien arises pursuant to § 36-5-901, the department is authorized, without further

order of a court, to secure the assets of the obligor to satisfy the current obligation and the arrearage by:

(1) Intercepting or seizing periodic or lump-sum payments or benefits due the obligor:

(A) From a state or local agency;

(B) From judgments of any judicial or administrative tribunal, settlements approved by any judicial or administrative tribunal, and lottery winnings;

(2) By attaching or seizing assets of the obligor or other person or entity held in financial institutions as defined in § 36-5-910;

(3) By attaching public and private retirement funds; and

(4) By imposing liens in accordance with § 36-5-901, and, in appropriate cases by forcing the sale of the obligor's legal or equitable interest in property and by distribution of the proceeds of such sale.

36-5-909. Limitation on rights of action.

No action may be maintained against any officer or employee of the state (or former officer or employee or the officer's or employee's personal representative) with respect to any acts for which an action could be maintained under this part.

36-5-912. Enforcement procedures - Rules and regulations for enforcement - Contracts for enforcement procedures.

(a) Except where otherwise stated in this part, and to the extent not in conflict with the provisions of this part, the department shall have the same rights and duties given to the department of revenue pursuant to title 67, chapter 1, part 14 to enforce the liens established by this part against real or tangible personal property.

(b) The department has rulemaking authority to implement the provisions of this part and shall promulgate any rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, which are necessary to implement any provisions of the enforcement procedures described in this part or those procedures adapted for the department's use pursuant to title 67, chapter 1, part 14 which relate to the rights and duties necessary to seize and dispose of property subject to the liens imposed in this part to the extent those rights and duties comport with this part and with state and federal laws administering the child support program established pursuant to Title IV-D of the Social Security Act.

(c) The department may contract with the department of revenue, or any other state agency or with any private contractor, to provide services related to the seizure and disposition of property subject to the liens established by this part.

CHAPTER 6 CHILD CUSTODY AND VISITATION

Part 1 General Custody Provisions.

36-6-101. Decree for custody and support of child - Enforcement - Juvenile court jurisdiction - Presumption of parental fitness - Educational seminars.

(a) (1) In a suit for annulment, divorce or separate maintenance, where the custody of a minor child or minor children is a question, the court may, notwithstanding a decree for annulment, divorce or separate maintenance is denied, award the care, custody and control of such child or children to either of the parties to the suit or to both parties in the instance of joint custody or shared parenting, or to some suitable person, as the welfare and interest of the child or children may demand, and the court may decree that suitable support be made by the natural parents or those who stand in the place of the natural parents by adoption. Such decree shall remain within the control of the court and be subject to such changes or modification as the exigencies of the case may require.

(2) (A) Except as provided in the following sentence, neither a preference nor a presumption for or against joint legal custody, joint physical custody or sole custody is established, but the court shall have the widest discretion to order a custody arrangement that is in the best interest of the child. Unless the court finds by clear and convincing evidence to the contrary, there is a presumption that joint custody is in the best interest of a minor child where the parents have agreed to joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor

child. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court may direct that an investigation be conducted. The burden of proof necessary to modify an order of joint custody at a subsequent proceeding shall be by a preponderance of the evidence.

(B) If the issue before the court is a modification of the court's prior decree pertaining to custody, the petitioner must prove by a preponderance of the evidence a material change in circumstance. A material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change of circumstance may include, but is not limited to, failures to adhere to the parenting plan or an order of custody and visitation or circumstances which make the parenting plan no longer in the best interest of the child.

(i) In each contested case, the court shall make such a finding as to the reason and the facts that constitute the basis for the custody determination.

(ii) Nothing contained within the provisions of this subdivision (a)(2) shall interfere with the requirement that parties to an action for legal separation, annulment, absolute divorce or separate maintenance incorporate a parenting plan into the final decree or decree modifying an existing custody order.

(iii) Nothing in this subsection (a) shall imply a mandatory modification to the child support order.

(C) If the issue before the court is a modification of the court's prior decree pertaining to a residential parenting schedule, then the petitioner must prove by a preponderance of the evidence a material change of circumstance affecting the child's best interest. A material change of circumstance does not require a showing of a substantial risk of harm to the child. A material change of circumstance for purposes of modification of a residential parenting schedule may include, but is not limited to, significant changes in the needs of the child over time, which may include changes relating to age; significant changes in the parent's living or working condition that significantly affect parenting; failure to adhere to the parenting plan; or other circumstances making a change in the residential parenting time in the best interest of the child.

(3) Except when the court finds it not to be in the best interests of the affected child, each order pertaining to the custody or possession of a child arising from an action for absolute divorce, divorce from bed and board or annulment shall grant to each parent the rights listed in subdivisions (3)(A)-(F) during periods when the child is not in that parent's possession or shall incorporate such rights by reference to a prior order. Other orders pertaining to custody or possession of a child may contain the rights listed in subdivisions (3)(A)-(F). The referenced rights are as follows:

(A) The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations;

(B) The right to send mail to the child which the other parent shall not open or censor;

(C) The right to receive notice and relevant information as soon as practicable but within twenty-four (24) hours of any event of hospitalization, major illness or death of the child;

(D) The right to receive directly from the child's school upon written request which includes a current mailing address and upon payment of reasonable costs of duplicating, copies of the child's report cards, attendance records, names of teachers, class schedules, standardized test scores and any other records customarily made available to parents;

(E) Unless otherwise provided by law, the right to receive copies of the child's medical, health or other treatment records directly from the physician or health care provider who provided such treatment or health care upon written request which contains a current mailing address and upon payment of reasonable costs of duplication; provided, that no person who receives the mailing address of a parent as a result of this requirement shall provide such address to the other parent or a third person;

(F) The right to be free of unwarranted derogatory remarks made about such parent or such parent's family by the other parent to or in the presence of the child;

(G) The right to be given at least forty-eight (48) hours notice, whenever possible, of all extra-curricular activities, and the opportunity to participate or observe, including, but not limited to, the following:

(i) School activities;

(ii) Athletic activities;

(iii) Church activities; and

(iv) Other activities as to which parental participation or observation would be appropriate;

(H) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than two (2) days, an itinerary including telephone numbers for use in the event of an emergency; and

(l) The right of access and participation in education, including the right of access to the minor child or children for lunch and other activities, on the same basis that is provided to all parents, provided the participation or access is reasonable and does not interfere with day-to-day operations or with the child's educational performance.

Any of the foregoing rights may be denied in whole or in part to one or both parents by the court upon a showing that such denial is in the best interests of the child. Nothing herein shall be construed to prohibit the court from ordering additional rights where the facts and circumstances so require.

(4) Notwithstanding any common law presumption to the contrary, a finding under § 36-6-106(8), that child abuse, [as defined in § 39-15-401 or § 39-15-402], or child sexual abuse, [as defined in § 37-1-602], has occurred within the family shall give rise to a rebuttable presumption that it is detrimental to the child and not in the best interests of the child to award sole custody, joint legal or joint physical custody to the perpetrator of such abuse.

(b) Notwithstanding any provision of this section to the contrary, the party, or parties, or other person awarded custody and control of such child or children shall be entitled to enforce the provisions of the court's decree concerning the suitable support of such child or children in the appropriate court of any county in this state in which such child or children reside; provided, that such court shall have divorce jurisdiction, if service of process is effectuated upon the obligor within this state. Jurisdiction to modify or alter such decree shall remain in the exclusive control of the court which issued such decree.

(c) Nothing in this chapter shall be construed to alter, modify or restrict the exclusive jurisdiction of the juvenile court pursuant to § 37-1-103.

(d) It is the legislative intent that the gender of the party seeking custody shall not give rise to a presumption of parental fitness or cause a presumption or constitute a factor in favor or against the award of custody to such party.

(e) (1) In an action for dissolution of marriage involving minor children, or in a post-judgment proceeding involving minor children, if the court finds, on a case by case basis, that it would be in the best interest of the minor children, the court may on its own motion, or on the motion of either party, order the parties, excluding the minor children, to attend an educational seminar concerning the effects of the dissolution of marriage on the children. The program may be divided into sessions, which in the aggregate shall not exceed four (4) hours in duration. The program shall be educational in nature and not designed for individual therapy.

(2) The fees or costs of the educational sessions under this section, which shall be reasonable, shall be borne by the parties and may be assessed by the court as it deems equitable. Fees may be waived upon motion for indigent persons.

(3) No court shall deny the granting of a divorce from the bonds of matrimony for failure of a party or both parties to attend the educational session. Refusal to attend the educational session may be punished by contempt and may be considered by the court as evidence of the parent's lack of good faith in proceedings under part 4 of this chapter.

36-6-106. Child custody.

(a) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, such determination shall be made upon the basis of the best interest of the child. The court shall consider all relevant factors including the following where applicable:

(1) The love, affection and emotional ties existing between the parents and child;

(2) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;

(3) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment; provided, that where there is a finding, under § 36-6-106(8), of child abuse, as defined in § 39-15-401 or § 39-15-402, or child sexual abuse, as defined in § 37-1-602, by one (1) parent, and that a non-perpetrating parent has relocated in order to flee the perpetrating parent, that such relocation shall not weigh against an award of custody;

(4) The stability of the family unit of the parents;

(5) The mental and physical health of the parents;

(6) The home, school and community record of the child;

(7) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;

(8) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; provided, that where there are allegations that one (1) parent has committed child abuse, [as defined in § 39-15-401 or § 39-15-402], or child sexual abuse, [as defined in § 37-1-602], against a family member, the court shall consider all evidence relevant to the physical and emotional safety of the child, and determine, by a clear preponderance of the evidence, whether such abuse has occurred. The court shall include in its decision a written finding of all evidence, and all findings of facts connected thereto. In addition, the court shall, where appropriate, refer any issues of abuse to the juvenile court for further proceedings;

(9) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child; and

(10) Each parent's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child.

(b) Notwithstanding the provisions of any law to the contrary, the court has jurisdiction to make an initial custody determination regarding a minor child or may modify a prior order of child custody upon finding that the custodial parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian.

PART 3 VISITATION

36-6-301. Visitation.

After making an award of custody, the court shall, upon request of the non-custodial parent, grant such rights of visitation as will enable the child and the non-custodial parent to maintain a parent-child relationship unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health. In granting any such rights of visitation, the court shall designate in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations and other special occasions. If the court finds that the non-custodial parent has physically or emotionally abused the child, the court may require that visitation be supervised or prohibited until such abuse has ceased or until there is no reasonable likelihood that such abuse will recur. The court may not order the department of children's services to provide supervision of visitation pursuant to this section except in cases where the department is the petitioner or intervening petitioner in a case in which the custody or guardianship of a child is at issue.

36-6-302. Grandparents' visitation rights.

(a) (1) (A) If a child is removed from the custody of the child's parents, guardian or legal custodian; and

(B) If a child is placed in a licensed foster home, a facility operated by a licensed child care agency, or other home or facility designated or operated by the court, whether such placement is by court order, voluntary placement agreement, surrender of parental rights, or otherwise;

(2) Then, the grandparents of such child may be granted reasonable visitation rights to the child during such child's minority by the court of competent jurisdiction upon a finding that:

(A) Such visitation rights would be in the best interest of the minor child;

(B) The grandparents would adequately protect the child from further abuse or intimidation by the perpetrator or any other family member;

(C) The grandparents were not implicated in the commission of any alleged act against such child or of their own children that under the law in effect prior to November 1, 1989, would constitute the criminal offense of:

(D) The grandparents are not implicated in the commission of any alleged act against such child or of their own children that under the law in effect on or after November 1, 1989, would constitute the criminal offense of:

(i) Aggravated rape under § 39-13-502;

(ii) Rape under § 39-13-503;

(iii) Aggravated sexual battery under § 39-13-504;

(iv) Sexual battery under § 39-13-505;

(v) Criminal attempt for any of the offenses listed above as provided in § 39-12-101;

(vi) Incest under § 39-15-302;

- (vii) Sexual exploitation of a minor under § 39-17-1003;
- (viii) Aggravated sexual exploitation of a minor under § 39-17-1004; or
- (ix) Especially aggravated sexual exploitation of a minor under § 39-17-1005.

(b) This section shall not apply in any case in which the child has been adopted by any person other than a stepparent or other relative of the child.

36-6-306. Visitation rights of grandparents.

(a) Any of the following circumstances, when presented in a petition for grandparent visitation to the circuit or chancery court of the county in which the petitioned child currently resides, necessitates a hearing if such grandparent visitation is opposed by the custodial parent or parents:

- (1) The father or mother of an unmarried minor child is deceased;
- (2) The child's father or mother are divorced, legally separated, or were never married to each other;
- (3) The child's father or mother has been missing for not less than six (6) months;
- (4) The court of another state has ordered grandparent visitation;
- (5) The child resided in the home of the grandparent for a period of twelve (12) months or more and was subsequently removed from the home by the parent or parents (this grandparent-grandchild relationship establishes a rebuttable presumption that denial of visitation may result in irreparable harm to the child); or
- (6) The child and the grandparent maintained a significant existing relationship for a period of twelve (12) months or more immediately preceding severance of the relationship, this relationship was severed by the parent or parents for reasons other than abuse or presence of a danger of substantial harm to the child, and severance of this relationship is likely to occasion substantial emotional harm to the child.

(b) (1) In considering a petition for grandparent visitation, the court shall first determine the presence of a danger of substantial harm to the child. Such finding of substantial harm may be based upon cessation of the relationship between an unmarried minor child and the child's grandparent if the court determines, upon proper proof, that:

- (A) The child had such a significant existing relationship with the grandparent that loss of the relationship is likely to occasion severe emotional harm to the child;
- (B) The grandparent functioned as a primary caregiver such that cessation of the relationship could interrupt provision of the daily needs of the child and thus occasion physical or emotional harm; or
- (C) The child had a significant existing relationship with the grandparent and loss of the relationship presents the danger of other direct and substantial harm to the child.

(2) For purposes of this section, a grandparent shall be deemed to have a significant existing relationship with a grandchild if:

- (A) The child resided with the grandparent for at least six (6) consecutive months;
- (B) The grandparent was a full-time caretaker of the child for a period of not less than six (6) consecutive months; or
- (C) The grandparent had frequent visitation with the child who is the subject of the suit for a period of not less than one (1) year.

(3) A grandparent is not required to present the testimony or affidavit of an expert witness in order to establish a significant existing relationship with a grandchild or that the loss of the relationship is likely to occasion severe emotional harm to the child. Instead, the court shall consider whether the facts of the particular case would lead a reasonable person to believe that there is a significant existing relationship between the grandparent and grandchild or that the loss of the relationship is likely to occasion severe emotional harm to the child.

(c) Upon an initial finding of danger of substantial harm to the child, the court shall then determine whether grandparent visitation would be in the best interests of the child based upon the factors in § 36-6-307. Upon such determination, reasonable visitation may be ordered.

(d) (1) Notwithstanding the provisions of § 36-1-121, if a relative or stepparent adopts a child, the provisions of this section apply.

(2) If a person other than a relative or a stepparent adopts a child, any visitation rights granted pursuant to this section before the adoption of the child shall automatically end upon such adoption.

(e) Notwithstanding any provision of law to the contrary, as used in this section and in § 36-6-307, with regard to the petitioned child, the word "grandparent" includes, but is not limited to:

- (1) A biological grandparent;

- (2) The spouse of a biological grandparent; or
- (3) A parent of an adoptive parent.

36-6-307. Determination of best interests of child for grandparent visitations.

In determining the best interests of the child under § 36-6-306, the court shall consider all pertinent matters, including, but not necessarily limited to, the following:

- (1) The length and quality of the prior relationship between the child and the grandparent and the role performed by the grandparent;
- (2) The existing emotional ties of the child to the grandparent;
- (3) The preference of the child if the child is determined to be of sufficient maturity to express a preference;
- (4) The effect of hostility between the grandparent and the parent of the child manifested before the child, and the willingness of the grandparent, except in case of abuse, to encourage a close relationship between the child and the parent or parents, or guardian or guardians of the child;
- (5) The good faith of the grandparent in filing the petition;
- (6) If the parents are divorced or separated, the time-sharing arrangement that exists between the parents with respect to the child; and
- (7) If one (1) parent is deceased or missing, the fact that the grandparents requesting visitation are the parents of the deceased or missing person.