

Vermont Divorce Laws

Title 15: Domestic Relations

Chapter 1: MARRIAGE

§ 8. Marriage definition

Marriage is the legally recognized union of one man and one woman.

Chapter 11: ANNULMENT AND DIVORCE

§ 511. Void marriages; consanguinity, affinity, or living spouse

(a) Marriages prohibited by law on account of consanguinity or affinity between the parties or on account of either party having a wife or husband living, if solemnized within this state, shall be void without decree of divorce or other legal process.

(b) When the validity of a marriage is uncertain for causes mentioned in subsection (a) of this section, either party may file a complaint to annul the same. Upon proof of the nullity of the marriage it shall be declared void by a decree of nullity.

§ 512. Voidable marriages-Grounds for annulment generally

The marriage contract may be annulled when, at the time of marriage, either party had not attained the age of sixteen years or was an idiot or lunatic or physically incapable of entering into the marriage state or when the consent of either party was obtained by force or fraud.

§ 513. -Party under age of sixteen years

A complaint to annul a marriage on the ground that one of the parties was under the age of sixteen years may be brought by the parent or guardian entitled to the custody of such minor or by a person admitted by the court to prosecute the same as the next friend of such minor. However, such marriage shall not be annulled on the complaint of a party of legal age at the time it was contracted nor when the parties, after they attained the age of consent, freely cohabited as husband and wife.

§ 514. -Party an idiot or lunatic

(a) When a marriage is sought to be annulled on the ground of the idiocy of one of the parties, it may be declared void on the complaint of a relative of such idiot at any time during the life of either of the parties.

(b) When a marriage is sought to be annulled on the ground of the lunacy of one of the parties, on the complaint of a relative of the lunatic, such marriage may be declared void during the continuance of such lunacy, or after the death of the lunatic in that condition and during the lifetime of the other party to the marriage.

(c) The marriage of a lunatic may be declared void upon the complaint of a lunatic after restoration to reason, but a decree of nullity shall not be pronounced if the parties freely cohabited as husband and wife after the lunatic was restored to sound mind.

(d) If an action is not prosecuted by a relative, the marriage of an idiot or a lunatic may be annulled during the lifetime of both the parties to the marriage, on the complaint of a person admitted by the court to prosecute as the next friend of such idiot or lunatic.

(e) The word "lunatic" as used in sections 511-514 of this title shall extend to persons of unsound mind other than idiots.

§ 515. -Party physically incapacitated

A suit to annul a marriage on the ground of the physical incapacity of one of the parties shall be maintained only by the injured party against the party whose incapacity is alleged and shall be brought within two years from the solemnization of the marriage.

§ 516. -Force or fraud

A marriage may be annulled during the lifetime of the parties, or one of them, on the ground that the consent of one of the parties was obtained by force or fraud, on the complaint of the party whose consent was so obtained or of the parent or guardian of such party or of some relative interested to contest the validity of the marriage. When such proceedings have been commenced and the party whose consent was so obtained dies before final decree, a parent or relative interested to contest the validity of the marriage may enter and prosecute such complaint. A marriage shall not be annulled on such ground if, before the commencement of the action, the parties voluntarily cohabited as husband and wife.

§ 517. -Custody and maintenance of issue

If there is issue of a marriage annulled on the ground of force or fraud, the court shall decree their custody to the innocent parent and may provide for their education and maintenance out of the estate and property of the guilty party.

§ 518. Declarations of parties not sufficient proof

A marriage shall not be declared null solely on the declarations or confessions of the parties, but the court shall require other satisfactory evidence of the facts on which the allegation of nullity is founded.

§ 519. Decree of nullity

A decree of nullity of marriage, if pronounced during the lifetime of the parties, shall be conclusive evidence of the invalidity of the marriage in all courts and proceedings. If such decree is pronounced after the death of either of the parties to the marriage, it shall be conclusive only as against the parties in the action and those claiming under them.

§ 520. Children of marriage annulled

Children of a marriage annulled pursuant to this subchapter shall be legitimate and shall succeed to the real and personal estate of both parents.

§ 551. Grounds for divorce from bond of matrimony

A divorce from the bond of matrimony may be decreed:

- (1) For adultery in either party;
- (2) When either party is sentenced to confinement at hard labor in the state prison in this state for life, or for three years or more, and is actually confined at the time of the bringing of the libel; or when either party being without the state, receives a sentence for an equally long term of imprisonment by a competent court having jurisdiction as the result of a trial in any one of the other states of the United States, or in a federal court, or in any one of the territories, possessions or other courts subject to the jurisdiction of the United States, or in a foreign country granting a trial by jury, and is actually confined at the time of the bringing of the libel;
- (3) For intolerable severity in either party;
- (4) For wilful desertion or when either party has been absent for seven years and not heard of during that time;
- (5) On complaint of either party when one spouse has sufficient pecuniary or physical ability to provide suitable maintenance for the other and, without cause, persistently refuses or neglects so to do;
- (6) On the ground of incurable insanity of either party, as provided for in sections 631-637 of this title;
- (7) When a married person has lived apart from his or her spouse for six consecutive months and the court finds that the resumption of marital relations is not reasonably probable.

§ 552. Reconciliation

If one of the parties had denied under oath or affirmation that the parties have lived apart for the requisite period of time or has alleged that reconciliation is reasonably probable, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the complaint and the prospect of reconciliation, and shall:

(1) make a finding whether the parties have lived apart for the requisite period of time or not and whether the reconciliation of the parties to the marriage is reasonably probable or not; or

(2) continue the matter for further hearing not less than 30 or more than 60 days later, and may suggest to the parties that they seek counseling. At the adjourned hearing, the court shall make a finding whether the parties have lived apart for the requisite period of time or not and whether the reconciliation of the parties to the marriage is reasonably probable or not.

§ 553. Collusion

The term "collusion," as used in divorce actions, shall not be construed to include conversations or negotiations of the parties carried on in good faith in an effort to resolve their marital difficulties, where the purpose or result of the conference is not to hinder or obstruct justice or to suppress evidence as to the merits of the case.

§ 554. Decrees nisi

(a) A decree of divorce from the bonds of matrimony in the first instance, shall be a decree nisi and shall become absolute at the expiration of three months from the entry thereof but, in its discretion, the court which grants the divorce may fix an earlier date upon which the decree shall become absolute. If one of the parties dies prior to the expiration of the nisi period, the decree shall be deemed absolute immediately prior to death.

(b) Either party may file any post-trial motions under the Vermont Rules of Civil Procedure. The time within which any such motion shall be filed shall run from the date of entry of the decree of divorce and not from the date the nisi period expires. The court shall retain jurisdiction to hear and decide the motion after expiration of the nisi period. A decree of divorce shall constitute a civil judgment under the Vermont Rules of Civil Procedure.

(c) If the stated term at which the decree nisi was entered has adjourned when a motion is filed, the presiding judge of the stated term shall have power to hear and determine the matter and make new decree therein as fully as the court might have done in term time; but, in the judge's discretion, the judge may strike off the decree and continue the cause to the next stated term.

§ 555. Legal separation

A legal separation forever or for a limited time may be granted for any of the causes for which an absolute divorce may be granted.

§ 558. Woman allowed to take maiden name

Upon granting a divorce to a woman, unless good cause is shown to the contrary, the court may allow her to resume her maiden name or the name of a former husband.

§ 559. Change of children's names

The court may change the names of the minor children of divorced parents when application for that purpose is made in the complaint for divorce.

§ 560. Remarriage

When a marriage is dissolved pursuant to this chapter, the parties shall be deemed single and may lawfully marry again.

§ 562. Recrimination

Recrimination shall not constitute a defense or a bar to a complaint for divorce.

§ 563. Condonation

Condonation shall not constitute a defense or a bar to a complaint for divorce.

§ 591. Jurisdiction and power of courts

Superior courts shall hear and determine complaints for divorce and for affirming or annulling the marriage contract and may issue process of attachment, execution and other proper process necessary for the dispatch and final determination of such causes. The judges of the superior court shall be triers of questions of fact as well as of law. Their determination of questions of fact shall be final and exceptions may be taken and questions of law heard in the supreme court as in other causes.

§ 592. Residence

A complaint for divorce or annulment of marriage may be brought if either party to the marriage has resided within the state for a period of six months or more, but a divorce shall not be decreed for any cause, unless the plaintiff or the defendant has resided in the state one year next preceding the date of final hearing. Temporary absence from the state because of illness, employment without the state, service as a member of the armed forces of the United States, or other legitimate and bona fide cause, shall not affect the six months' period or the one year period specified in the preceding sentence, provided the person has otherwise retained residence in this state.

§ 593. Place for bringing action; caption of divorce action

(a) Complaints for divorce for any cause and for affirming or annulling the marriage contract shall be brought in the county in which the parties or one of them resides. Petitions directed to a superior judge for temporary orders under the provisions of Vermont Rule of Civil Procedure 80(c) may be heard within or without the county where such cause is pending at such place as shall be convenient for the parties and the judge hearing the same.

(b) An action for divorce or annulment may be captioned as follows:
Complaint for Divorce [Annulment]-Involving:

§ 594. Representation and testimony of child

(a) The court may appoint an attorney to represent the interest of a minor or dependent child with respect to child support and the allocation of parental rights and responsibilities.

(b) The court shall appoint an attorney for a minor child before the minor child is called as a witness in a proceeding under this chapter. The child may only be called as a witness if the court finds after hearing that:

(1) the child's testimony is necessary to assist the court in determining the issue before it;

(2) the probative value of the child's testimony outweighs the potential detriment to the child; and

(3) the evidence sought is not reasonably available by any other means.

(c) The examination of the child may be conducted by the court in chambers in the presence of such other persons as the court may specify and shall be recorded by a court reporter.

(d) The court shall enter an order for costs, fees and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs, fees, and disbursements shall be borne as provided by rule of court.

§ 594a. Temporary relief

Either party or both parties to a marriage may apply for temporary relief at any time following the separation of the parties to the marriage coincidental with, or subsequent to the filing of complaint for absolute divorce or legal separation. The court to which the cause is returnable, or a superior judge, on such notice to the adverse party as the court or judge directs, may make such orders pending final hearing and further order of the court as the court would be authorized to make upon final hearing. A prompt hearing will be held, and the evidence shall be recorded by a court reporter. The court or judge shall issue an order within 10 days from the date of the hearing. Failure of the court or judge to issue an order within 10 days shall not affect the validity of any order issued after the 10-day period.

§ 603. Contempt

A person who disobeys a lawful order or decree of a court or judge, made under the provisions of this chapter, may be proceeded against for contempt as provided by section 122 of Title 12. The department of prevention, assistance, transition, and health access may institute such proceedings in all cases in which a party or dependent children of the parties are the recipients of financial assistance from the department. The court may order restitution to the department of prevention, assistance, transition, and health access, and that payments be made to the department of prevention, assistance, transition, and health access for distribution, or make such other orders or conditions as it deems proper.

§ 604. Costs on motion to revise

Upon a motion to revise and alter a decree made by force of this chapter and sections 291-294 of this title, the court may award costs to either party as equity requires.

§ 606. Action to recover maintenance, child support, and suit money; sanction for noncompliance

(a) When a judgment or order for the payment of either temporary or permanent maintenance, child support, or suit money has been made by the family court, and personal jurisdiction of the person liable for the payment of money under the judgment or order has been obtained, the party entitled by the terms of the judgment or order to payment thereunder, or the office of child support in all cases in which the party or dependent children of the parties are the recipients of financial assistance from the department of prevention, assistance, transition, and health access, may file a motion in the family court asking for a determination of the amount due. Upon notice to the other party and hearing thereon, the family court shall render judgment for the amount due under the judgment or order; the court may order restitution to the department of prevention, assistance, transition, and health access, order that payments be made to the office of child support for distribution, or make such other orders or conditions as it deems proper. The judgment shall be as binding and as enforceable in all respects as though rendered in any other civil action. Notice shall be given in such manner as the supreme court shall by rule provide. An additional motion may be brought at any time for further unpaid balances. The family court in which the cause was pending at the time the original judgment or order was made shall have jurisdiction of motions under the provisions of this section, irrespective of the amount in controversy or the residence of the parties. The motions may be brought and judgment obtained on judgments, decrees and orders previously rendered and still in force.

(b) For the purpose of enforcing child support orders under this title and Title 33, any support payment or installment shall become a judgment on the date it becomes due.

(c) An action to enforce a judgment under subsection (b) of this section may be brought no later than six years after the youngest child covered by the support order attains the age of majority or no later than six years after a child covered by section 659(b) of this title is no longer covered.

(d) In lieu of interest on unpaid child support which has accrued under a child support order, a child support surcharge shall be imposed on past-due child support. The surcharge shall be computed and assessed monthly at a rate of one percent or an annual rate of 12 percent and shall not be compounded. All surcharges shall be deemed principal and not interest. Payments received for child support obligations shall be allocated and distributed as follows:

- (1) first to current support obligations;
- (2) second to arrearages; and
- (3) third to surcharge arrears.

§ 607. Action by attorney to recover suit money

When a final order has been made providing for the payment by either party of suit money to the attorney for the opposite party or for a minor child of the parties, and service of the order has been made or accepted, the attorney may recover the suit money by a civil action on this section or by contempt proceedings brought in the attorney's own name, either with or without the consent of the client.

§ 631. Generally

A divorce may be granted forthwith when either husband or wife has become incurably insane. A divorce shall not be granted under these provisions unless such insane person shall have been duly and regularly confined in a mental institution, wherever located, for at least five years next preceding the commencement of the action for divorce, nor unless it shall appear to the court that such insanity is incurable. No action shall be maintained under the provisions hereof unless the libelant is an actual resident of this state and shall have resided therein for two years next preceding the commencement of such action.

§ 632. Jurisdiction; guardian ad litem for insane libelee

The superior courts of the several counties of this state shall have jurisdiction of such an action. Upon the filing by the plaintiff of a complaint, duly verified, showing that such cause of action exists, a superior judge shall appoint some person to act as guardian ad litem of such insane person in such action. The complaint and summons in such action shall be served upon the defendant by delivering a copy thereof to such guardian and another to the state's attorney of the county in which such action is brought.

§ 633. Duty of state's attorney

The state's attorney upon whom the complaint and summons in such action shall be served shall appear for such defendant and defend the same. No divorce shall be granted unless the provisions of this section have been complied with.

§ 634. Alimony; distribution of property; care and custody of children

(a) In actions brought for the cause of insanity, the courts and the judges thereof shall possess all the powers relative to the payment of alimony, the distribution of property and the care and custody of the children of the parties, that such courts now have, or may hereafter have, in other actions for divorce.

(b) The court may make such orders for the division of property held by the parties as tenants by the entirety as may be proper.

(c) No order shall be made providing for continued support of a sane spouse from the estate of an insane spouse after the remarriage of the sane spouse.

§ 635. Support of defendant

(a) At the time of granting a divorce on the grounds of incurable insanity or any time thereafter, on motion of either party, or of the guardian of the insane spouse, or of any other person, town or municipality charged with the support of the insane spouse, the court may make such orders requiring support of the defendant or security for such support as may be proper.

(b) An order for the support of the insane party shall be enforceable in the same manner as orders relating to alimony.

(c) On motion of either party or of the guardian of the insane spouse, or of any person, town or municipality charged with the support of such defendant, an order relating to such support may be reviewed and altered at any time thereafter in such manner as to the court may seem just and proper.

§ 636. Filing certified copies of orders with court which committed insane party

If the insane party was committed by a court of competent jurisdiction, then the clerk of the court shall file with such court which committed such insane party a certified copy of all orders entered in proceedings brought under these provisions.

§ 637. Costs and expenses

All the costs in such action, as well as the actual expenses of the state's attorney therein, together with the expenses and fees of the guardian therein, shall be paid by the plaintiff. Such expenses of the state's attorney and expenses and fees of the guardian shall be fixed and allowed by the court.

The court or the judge thereof may make such order relative to the payment of such fees and expenses as to the court or judge may seem proper.

§ 650. Legislative findings and purpose

The legislature finds and declares as public policy that after parents have separated or dissolved their marriage it is in the best interests of their minor child to have the opportunity for maximum continuing physical and emotional contact with both parents, unless direct physical harm or significant emotional harm to the child or a parent is likely to result from such contact. The legislature further finds and declares as public policy that parents have the responsibility to provide child support and that child support orders should reflect the true costs of raising children and approximate insofar as possible the standard of living the child would have enjoyed had the family remained intact.

§ 653. Definitions

As used in this subchapter:

- (1) "Available income" means gross income, less
 - (A) the amount of spousal support or preexisting child support obligations actually paid;
 - (B) the actual cost to a parent of providing adequate health insurance coverage for the children who are the subject of the order;
 - (C) FICA taxes (7.65% for regular wage earners and 15.3% for self-employed, or any amount subsequently set by federal law as FICA tax);
 - (D) state and federal income taxes, calculated as follows:
 - (i) for custodial parents, using the standard deduction, head of household filing status and exemptions for the parent and for each of the children who are the subject of the order (not to exceed five children), plus earned income tax credits if applicable;
 - (ii) for noncustodial parents, using the standard deduction, single filing status and one exemption;
 - (iii) for parents who share custody as defined in section 657 of this title, using the standard deduction, head of household filing status and one exemption for the parent and an equal share of the exemptions attributable to the children who are the subject of the order, plus earned income tax credits if applicable.
 - (E) in cases where a child is in the custody of the department of social and rehabilitation services:
 - (i) the additional housing costs necessary to allow for the child's return where the department of social and rehabilitation services plan is for reunification with the parents;
 - (ii) family court or department of social and rehabilitation services mandated out-of-pocket expenses necessary to comply with the child's case plan.
- (2) "Child care costs" means the actual child care costs reasonably incurred by a parent on behalf of the children due to employment or employment related education. Monthly child care costs shall be calculated based on an annualized amount. Child care costs shall not include the amount of child care subsidies or child care tax credits if available.
- (3) "Court" means the court with jurisdiction over a child support proceeding.
- (4) "Extraordinary expenses" means any extraordinary medical or education expenses, including expenses related to the special needs of a child, incurred on behalf of involved children. Extraordinary medical expenses shall include but not be limited to uninsured annual medical expenses in excess of \$200.00.
- (5) "Gross income" means actual gross income of a parent.
 - (A) Gross income shall include:
 - (i) income from any source, including, but not limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and spousal support actually received. Income at the current rate for long-term United States Treasury Bills shall be imputed to nonincome producing assets with an aggregate fair market value of \$10,000.00 or more, other than a primary residence and not more than \$15,000.00 of the value of a motor vehicle;
 - (ii) expense reimbursements or in-kind payments received by a parent in the course of employment or self-employment or operation of a business if they reduce personal living expenses;
 - (iii) the potential income of a parent who is voluntarily unemployed or underemployed, unless:
 - (l) the parent is physically or mentally incapacitated; or

(II) the parent is attending a vocational or technical education program related to current employment, or a job training program sponsored by the department of employment and training, the department of economic development, or the agency of human services; or

(III) the unemployment or underemployment of the parent is in the best interest of the child;

(iv) gross receipts minus ordinary and necessary expenses where a party is self-employed or derives income from proprietorship of a business, joint ownership of a partnership or a closely held business operation; and rents, minus ordinary and necessary expenses. In determining ordinary and necessary expenses, the court may exclude amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses. The court may also determine that other business expenses are inappropriate for determining gross income for purposes of calculating child support.

(B) Gross income shall not include the amount of money received from means tested public assistance programs, including but not limited to, aid to families with dependent children, supplemental income, food stamps, and general assistance.

(6) "Parental support obligation" means the proportion of total support obligation a parent is ordered to pay in money as child support.

(7) "Self-support reserve" means the needs standard established annually by the commissioner of prevention, assistance, transition, and health access which shall be an amount sufficient to provide a reasonable subsistence compatible with decency and health. The needs standard shall take into account the available income of the parent responsible for payment of child support.

(8) "Support guideline" means the guideline for child support established by the secretary of human services under section 654 of this title.

(9) "Total support obligation" means the sum of money determined by adding:

(A) amounts derived from the support guideline appropriate to the parties' available income;

(B) child care costs; and

(C) extraordinary expenses.

§ 654. Support guideline

The secretary of human services shall prescribe by rule a guideline for child support which reflects the percent of combined available income which parents living in the same household in Vermont ordinarily spend on their children. The rule shall be based on the concept that children should receive the same proportion of parental income after separation or divorce of their parents as they would receive if their parents were living together in one household. The rule shall be based on the financial needs of Vermont children, established by such reliable data as most accurately reflect their needs. The amounts of child support determined under the guideline shall be expressed in dollars and shall be presumed to be the total support obligation of parents. The secretary may amend the guideline from time to time as may be necessary, but not less than once every four years. The secretary shall also prepare and make available forms suitable for calculating amounts payable under this section.

§ 655. Total child support obligation

In any proceeding to establish or modify child support, the total support obligation shall be presumed to be the amount of child support needed, from which a parental support obligation shall be calculated and ordered to be paid unless support is established under section 659 of this title. The court shall review the adequacy of a child support amount agreed to by the parties with reference to the total support obligation.

§ 656. Computation of parental support obligation

(a) Except in situations where there is shared or split physical custody, the total child support obligation shall be divided between the parents in proportion to their respective available incomes and the noncustodial parent shall be ordered to pay, in money, his or her share of the total support obligation to the custodial parent. The custodial parent shall be presumed to spend his or her share directly on the child.

(b) If the noncustodial parent's available income is less than the lowest income figure in the support guideline adopted under section 654 of this title or is less than the self-support reserve, the court shall use its discretion to determine support using the factors in section 659 of this title and shall require payment of a nominal support amount.

(c) If the noncustodial parent's available income is greater than the self-support reserve but payment of a child support order based on application of the guideline would reduce the noncustodial parent's income below the self-support reserve, the noncustodial parent's share of the total support obligation shall be presumed to be the difference between the self-support reserve and his or her available income. If the noncustodial parent owes arrears to the custodial parent, the court shall not order the payment of arrears in an amount that, by itself or in combination with the noncustodial parent's share of the total support obligation, would reduce the noncustodial parent's income below the self-support reserve, unless the custodial parent can show good cause why the payment of arrears should be ordered despite the fact that such an order would drop the noncustodial parent's income below the self-support reserve. Such arrears shall remain the responsibility of the noncustodial parent and be subject to repayment at a time when the noncustodial parent's income is above the self-support reserve.

(d) The court may use its discretion in determining child support in circumstances where combined available income exceeds the uppermost levels of the support guideline adopted under section 654 of this title.

§ 656a. Adjustment for additional dependents

(a) As used in this section, "additional dependents" means any natural and adopted children and stepchildren for whom the parent has a duty of support.

(b) In any proceeding to establish or modify child support, the total child support obligation for the children who are the subject of the support order shall be adjusted if a parent is also responsible for the support of additional dependents who are not the subject of the support order. The adjustments shall be made by calculating an amount under the guidelines to represent the support obligation for additional dependents based only upon the responsible parent's available income, without any other adjustments. This amount shall be subtracted from that parent's available income prior to calculating the total child support obligation based on both parents' available income as provided in section 655 of this title.

(c) The adjustment for additional dependents shall not be made to the extent that it contributes to the calculation of a support order lower than a previously existing support order for the children who are the subject of the modification hearing at which the adjustment is sought.

(d) A motion for modification may not be dismissed or denied solely because the adjustment for additional dependents results in an increase of child support of ten percent or less if the increase without the adjustment is greater than ten percent.

§ 657. Shared or split physical custody

(a) When each parent exercises physical custody for 30 percent or more of a calendar year, the total child support obligation shall be increased by 50 percent to reflect the additional costs of maintaining two households. Each parental support obligation shall be determined by dividing the total support obligation between the parents in proportion to their respective available incomes and in proportion to the amount of time each parent exercises physical custody. The parental support obligations shall then be offset, with the parent owing the larger amount being required to pay the difference between the two amounts to the other parent.

(b) When one parent exercises physical custody for 25 percent or more but less than 30 percent of a calendar year, each parent's respective share of the total support obligation shall be determined in accordance with a shared costs table adopted by the agency of human services by rule. The shared costs table shall be developed in such a way as to minimize economic disputes over parent-child contact or visitation and shall reflect the additional costs of maintaining two households by increasing the total support obligation by 50 percent.

(c) In no event shall a parent be required to pay child support under subsection (a) or (b) of this section in an amount greater than the amount that would have been ordered under the support guidelines.

(d) For purposes of this section, "physical custody" means keeping the children overnight. The parent having custody for the greater period of time shall be considered the custodial parent for the purposes of section 661 of this title.

(e) When each parent has physical custody of at least one of the children, a theoretical support payment shall be determined for each parent for the children in the custody of the other, prorating the obligations among all children in the household. The obligations shall then be offset, with the

parent owing the larger amount being required to pay the difference between the two amounts to the other parent.

§ 658. Support

(a) In an action under this chapter or under chapter 21 of this title, the court shall order either or both parents owing a duty of support to a child to pay an amount for the support of the child in accordance with the support guidelines as set forth in this subchapter, unless otherwise determined under section 659 of this title.

(b) A request for support may be made by either parent, a guardian, the department of social and rehabilitation services or prevention, assistance, transition, and health access, or the office of child support, if a party in interest. A court may also raise the issue of support on its own motion.

(c) The court may order support to be continued until the child attains the age of majority or terminates secondary education whichever is later.

(d) The family court judge or magistrate may order a parent who is in default of a child support order, to participate in employment, educational, or training related activities if the court finds that participation in such activities would assist in addressing the causes of the default. The court may also order the parent to participate in substance abuse or other counseling if the court finds that such counseling may assist the parent to achieve stable employment. Activities ordered under this section shall not be inconsistent with any requirements of a state or federal program in which the parent is participating. For the purpose of this subsection, "employment, educational, or training related activities" shall mean:

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
- (12) the provision of child care services to an individual who is participating in a community service program.

(e) A consent to the adoption of a child or the relinquishment of a child, for the purpose of adoption, covered by a child support order shall terminate an obligor's duty to provide future support for the adopted child without further order of the family court. Unpaid support installments accrued prior to adoption are not discharged and are subject to the jurisdiction of the family court. In a case involving a child covered by a Vermont child support order, the probate court shall file the consent or relinquishment with the family court that issued the support order and shall notify the office of child support of any order terminating parental rights and of the final adoption decree. Upon receipt of the consent or relinquishment the office of child support shall terminate the obligor's duty to provide further support.

§ 659. Child support order

(a) The total support obligation shall be presumed to be the amount of child support needed. Upon request of a party, the court shall consider the following factors in respect to both parents. If, after consideration of these factors, the court finds that application of the guidelines is unfair to the child or to any of the parties, the court may adjust the amount of child support:

- (1) The financial resources of the child.
- (2) The financial resources of the custodial parent.
- (3) The standard of living the child would have enjoyed had the marital relationship not been discontinued.
- (4) The physical and emotional condition of the child.

- (5) The educational needs of the child.
 - (6) The financial resources and needs of the noncustodial parent.
 - (7) Inflation.
 - (8) The costs of meeting the educational needs of either parent, if the costs are incurred for the purpose of increasing the earning capacity of the parent.
 - (9) Extraordinary travel and other travel-related expenses incurred in exercising the right to parent-child contact.
 - (10) Any other factors the court finds relevant.
- (b) If the parties agree, the court may include in the child support order an additional amount designated for the purpose of providing for postsecondary education.

§ 660. Modification

- (a) On motion of either parent or any other person to whom support has previously been granted, or any person previously charged with support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the child support order has not been modified by the court for at least three years, the court may waive the requirement of a showing of a real, substantial and unanticipated change of circumstances.
- (b) A child support order, including an order in effect prior to adoption of the support guideline, which varies more than ten percent from the amounts required to be paid under the support guideline, shall be considered a real, substantial and unanticipated change of circumstances.
- (c) Receipt of workers' compensation, unemployment compensation or disability benefits shall be considered a real, substantial and unanticipated change of circumstances.
- (d) A motion to modify a support order under subsection (b) of this section shall be accompanied by an affidavit setting forth calculations demonstrating entitlement to modification and shall be served on other parties and filed with the court. Upon proof of service, and if the calculations demonstrate cause for modification, the clerk of the court shall enter an order modifying the support award in accordance with the calculations provided, unless within 15 days of service of, or receipt of, the request for modification, either party requests a hearing. The court shall conduct a hearing within 20 days of the request. No order shall be modified without a hearing if one is requested.
- (e) An order may be modified only as to future support installments and installments which accrued subsequent to the date of notice of the motion to the other party or parties. The date the motion for modification is filed shall be deemed to be the date of notice to the opposing party or parties.

§ 661. Child support maintenance supplement

- (a) A party may request a child support maintenance supplement to be paid while a child support obligation arising out of an action for support exists. After considering the respective financial circumstances of the parties, including gross income, assets, liabilities, including tax liabilities, and the obligation to pay child support, the court shall order payment of a child support maintenance supplement to the obligee to correct any disparity in the financial circumstances of the parties if the court finds that the disparity has resulted or will result in a lower standard of living for the child than the child would have if living with the noncustodial parent.
- (b) Any sum awarded under this section shall be taken into consideration in making an order under section 752 of this title.
- (c) On motion of either parent, a person to whom a child support maintenance supplement has previously been granted, a person previously charged with paying a child support maintenance supplement, and upon a showing of a real, substantial, and unanticipated change of circumstances, the court may annul, vary, or modify a supplement order, whether or not the order is based on a stipulation or agreement. A real, substantial, unanticipated change of circumstances shall be deemed to exist if the proportion of income of the parties varies more than 15 percent from the time the order was issued, or if either parent's gross income changes by more than 15 percent.
- (d) This section shall not apply to orders or modifications made prior to April 1, 1987.

§ 662. Income statements

(a) A party to a proceeding under this subchapter shall file an affidavit of income and assets which shall be in a form prescribed by the court administrator. Upon request of either party, or the court, the other party shall furnish information documenting the affidavit. The court may require a party who fails to comply with this section to pay an economic penalty to the other party.

(b) Failure to provide the information required under subsection (a) of this section shall create a presumption that the noncomplying parent's gross income is the greater of:

(1) 150 percent of the most recently available annual average covered wage for all employment as calculated by the department of employment and training; or

(2) the gross income indicated by the evidence.

§ 663. Support orders; required contents

(a) Every order for child support made or modified under this chapter shall be issued in a standardized format and sent to the registry in the office of child support. The order shall include:

(1) The name, address, Social Security number and employer of both parents.

(2) The name and address of children who are the subject of the order.

(3) An annualized amount of child support.

(4) Frequency of the child support payment.

(5) Total arrearages, if any, and the periodic amount ordered for payment of arrearages.

(6) Any other information which may affect the obligation to pay child support.

(b) Child care costs shall be specifically stated in the order for the purpose of providing information on the amount of child care costs used to compute the total support obligation.

(c) Every order for child support made or modified under this chapter on or after July 1, 1990, shall:

(1) include an order for immediate wage withholding or, if not subject to immediate wage withholding, include a statement that wage withholding will take effect under the expedited procedure set forth in section 782 of this title;

(2) require payments to be made to the registry in the office of child support unless subject to an exception under section 4103 of Title 33;

(3) require that every party to the order must notify the registry in writing of their current mailing address and current residence address and of any change in either address within seven days of the change, until all obligations to pay support or support arrearages or to provide for visitation are satisfied;

(4) include in bold letters notification of remedies available under section 798 of this title;

(5) include in bold letters notification that the parent may seek a modification of his or her support obligation if there has been a showing of a real, substantial and unanticipated change of circumstances.

(d) The parent under a medical support order shall notify his or her employer of such obligation in writing within 10 days of the date of the order. If the parent is not employed or is self-employed, the parent shall notify his or her insurer of such obligation in writing within 10 days of the date of the order. If a parent under a medical support order fails to give notice as provided in this subsection, he or she shall be liable for all health care expenses of the child subsequent to the date of the order until the order is modified by the court with respect to medical support.

(e) A child support order shall include the following language: "A PARENT OR ANY OTHER PERSON TO WHOM SUPPORT HAS BEEN GRANTED, OR ANY PERSON CHARGED WITH SUPPORT, MAY FILE A MOTION FOR A MODIFICATION OF A CHILD SUPPORT ORDER UNDER 15 V.S.A. § 660. A MODIFICATION MAY BE GRANTED UPON A REAL, SUBSTANTIAL, AND UNANTICIPATED CHANGE OF CIRCUMSTANCES, INCLUDING LOSS OF EMPLOYMENT OR A CONSIDERABLE REDUCTION OR INCREASE IN SALARY OR WAGES. AN OBLIGOR IS RESPONSIBLE FOR ANY REQUIRED PAYMENTS SET FORTH IN AN ORDER UNLESS THE ORDER IS VACATED OR MODIFIED BY A COURT. THUS, ANY SUBSEQUENT AGREEMENT BETWEEN THE PARTIES THAT DIFFERS FROM THE ORDER IS NOT LEGALLY BINDING, AND THE OBLIGOR IS STILL LEGALLY REQUIRED TO PAY THE AMOUNT ORDERED BY THE COURT."

§ 664. Definitions

As used in this subchapter:

(1) "Parental rights and responsibilities" means the rights and responsibilities related to a child's physical living arrangements, parent child contact, education, medical and dental care, religion, travel and any other matter involving a child's welfare and upbringing.

(A) "Legal responsibility" means the rights and responsibilities to determine and control various matters affecting a child's welfare and upbringing, other than routine daily care and control of the child. These matters include but are not limited to education, medical and dental care, religion and travel arrangements. Legal responsibility may be held solely or may be divided or shared.

(B) "Physical responsibility" means the rights and responsibilities to provide routine daily care and control of the child subject to the right of the other parent to have contact with the child. Physical responsibility may be held solely or may be divided or shared.

(2) "Parent child contact" means the right of a parent who does not have physical responsibility to have visitation with the child.

§ 665. Rights and responsibilities order; best interests of the child

(a) In an action under this chapter the court shall make an order concerning parental rights and responsibilities of any minor child of the parties. The court may order parental rights and responsibilities to be divided or shared between the parents on such terms and conditions as serve the best interests of the child. When the parents cannot agree to divide or share parental rights and responsibilities, the court shall award parental rights and responsibilities primarily or solely to one parent.

(b) In making an order under this section, the court shall be guided by the best interests of the child, and shall consider at least the following factors:

(1) the relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection and guidance;

(2) the ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs and a safe environment;

(3) the ability and disposition of each parent to meet the child's present and future developmental needs;

(4) the quality of the child's adjustment to the child's present housing, school and community and the potential effect of any change;

(5) the ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent;

(6) the quality of the child's relationship with the primary care provider, if appropriate given the child's age and development;

(7) the relationship of the child with any other person who may significantly affect the child;

(8) the ability and disposition of the parents to communicate, cooperate with each other and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided; and

(9) evidence of abuse, as defined in section 1101 of this title, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.

(c) The court shall not apply a preference for one parent over the other because of the sex of the child, the sex of a parent or the financial resources of a parent.

(d) The court may order a parent who is awarded responsibility for a certain matter involving a child's welfare to inform the other parent when a major change in that matter occurs.

(e) The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction Act, if another state has jurisdiction as provided in that act. For the purposes of interpreting that act and any other provision of law which refers to a custodial parent, including but not limited to section 2451 of Title 13, the parent with physical responsibility shall be considered the custodial parent.

§ 666. Agreements between parents

(a) Any agreement between the parents which divides or shares parental rights and responsibilities shall be presumed to be in the best interests of the child.

(b) An agreement between the parties which is a complete agreement on parental rights and responsibilities shall include provisions that address at least the following:

(1) physical living arrangements;

(2) parent child contact;

(3) education of the minor child;

(4) medical, dental and health care;

(5) travel arrangements;

(6) procedures for communicating about the child's welfare; and
(7) if parental rights and responsibilities are to be shared or divided, procedures for resolving disputes. Such procedures may include but shall not be limited to mediation and binding arbitration.

(c) If the court finds that an agreement between the parents is not in the best interests of the child or if the court finds that an agreement was not reached voluntarily the court shall refuse to approve the agreement.

§ 667. Evidence

(a) Evidence of conduct of a parent not related to the factors in section 665 of this title shall only be admissible for the purposes of determining parental rights and responsibilities if it is shown that the conduct affects the parent's relationship with the child.

(b) Reports prepared by a person qualified as an expert under the Vermont Rules of Evidence, evaluating the best interests of the child shall be admissible for the purposes of determining parental rights and responsibilities provided that the expert is available for cross-examination.

§ 668. Modification of order

On motion of either parent or any other person to whom custody or parental rights and responsibilities have previously been granted, and upon a showing of real, substantial and unanticipated change of circumstances, the court may annul, vary or modify an order made under this subchapter if it is in the best interests of the child, whether or not the order is based upon a stipulation or agreement.

§ 668a. Enforcement of visitation

(a) When a noncustodial parent who is ordered to pay child support or alimony and who is awarded visitation rights fails to pay child support or alimony, the custodial parent shall not refuse to honor the noncustodial parent's visitation rights.

(b) When a custodial parent refuses to honor a noncustodial parent's visitation rights, the noncustodial parent shall not fail to pay any ordered child support or alimony.

(c) If a custodial parent refuses to honor a noncustodial parent's visitation rights, the court shall enforce such rights unless it finds good cause for the failure or that a modification of the visitation rights is in the best interests of the child. Unless restoration of the visitation is not in the best interests of the child, enforcement of the visitation rights shall include the restoration of the amount of visitation improperly denied. When a party files a motion for enforcement of parent-child contact under this subsection, the court shall conduct a hearing within 30 days of service of the motion.

(d) A person who violates this section may be punished by contempt of court or other remedies as the court deems appropriate, including awarding attorney's fees and costs to the prevailing party.

(e) If a custodial parent refuses to honor a noncustodial parent's visitation rights without good cause, the court may modify the parent-child contact order if found to be in the best interests of the child. Good cause shall include a pattern or incidence of domestic or sexual violence, a history of failure to honor the visitation schedule agreed to in the parent-child contact order, or reasonable fear for the child or the custodial parent's safety.

(f) All parent-child contact orders issued by the family court in connection with a divorce or parentage proceeding shall bear the following statement: "A PERSON WHO FAILS TO COMPLY WITH ALL TERMS OF THE CURRENT ORDER GOVERNING PARENT-CHILD CONTACT MAY BE SUBJECT TO CONTEMPT OF COURT CHARGES. THE COURT MAY IMPOSE ADDITIONAL REMEDIES, INCLUDING A MODIFICATION OF THE CURRENT PARENT-CHILD CONTACT ORDER IF FOUND TO BE IN THE BEST INTERESTS OF THE CHILD."

§ 669. Guardian ad litem

In all cases involving parental rights and responsibilities the court may appoint a guardian ad litem to represent the best interests of the child.

§ 670. Access to records

Access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement and school records shall not be denied to a parent solely because that parent has not been awarded parental rights and responsibilities. The court may order that access to all or a portion of the records or information shall be denied if access is not in the best interest of the child or if access may cause detriment to the other parent including but not limited to abuse.

§ 711. Sale of property

If a party in a cause instituted under the provisions of this chapter and sections 291-294 of this title shall be in default for the period of thirty days upon an order for the payment of money, made according to the provisions thereof, which shall have become a valid lien upon the real or personal property of such party or on the stock of such party in a corporation as provided in this chapter, the court before which such cause is pending, or a superior judge, may order to be sold at public sale the real or personal property and stock upon which such lien shall exist, or such portion thereof as shall be necessary to satisfy the cost of the sale and the amount in arrears at the time of such order of sale, or so much thereof as such court or judge shall designate.

§ 712. Whole of real estate may be sold

If, in the opinion of the court or of such judge, the real estate upon which such lien exists is so constituted as to render it impracticable to divide the same, the whole of such real estate may be ordered to be sold.

§ 713. Execution

Execution signed by the clerk of such court shall issue to carry the order of sale mentioned in sections 711 and 712 of this title into effect and shall be governed by all the provisions and limitations touching executions issued on judgments so far as shall be consistent with sections 714 and 715 of this title.

§ 714. Disposition of proceeds

(a) The sheriff or constable selling such property upon such execution, after deducting his lawful fees, shall pay the proceeds to the clerk of such court, who shall disburse such proceeds to the petitioner or other persons entitled to the same pursuant to the terms of such order.

(b) If the terms of such order are not fully satisfied by the proceeds so disbursed, the lien upon such property or stock shall attach to the balance of such proceeds. Such proceeds shall be retained by the clerk of such court or deposited in some savings bank, trust company or other banking institution in this state to the credit of such clerk in such manner as shall be directed in such order of sale.

(c) From time to time, out of the proceeds so deposited or held by him, the clerk shall thereafter pay to such petitioner or other persons designated in such order, such amount as, from time to time, shall become due by the terms thereof, unless the person against whom such order is made shall deposit with the clerk other funds to carry out the terms of such order.

(d) When the terms of such order have been fully and finally complied with, all of such proceeds in the hands of the clerk or deposited as aforesaid shall be paid to the party against whom such order is made.

§ 715. Subsequent default

The same proceedings shall be had in case of any subsequent default after an order of sale has been made as if such prior orders of sale had not been made.

§ 751. Property settlement

(a) Upon motion of either party to a proceeding under this chapter, the court shall settle the rights of the parties to their property, by including in its judgment provisions which equitably divide and assign the property. All property owned by either or both of the parties, however and whenever acquired, shall be subject to the jurisdiction of the court. Title to the property, whether in the

names of the husband, the wife, both parties, or a nominee, shall be immaterial, except where equitable distribution can be made without disturbing separate property.

(b) In making a property settlement the court may consider all relevant factors, including but not limited to:

- (1) the length of the marriage;
- (2) the age and health of the parties;
- (3) the occupation, source and amount of income of each of the parties;
- (4) vocational skills and employability;
- (5) the contribution by one spouse to the education, training, or increased earning power of the other;
- (6) the value of all property interests, liabilities, and needs of each party;
- (7) whether the property settlement is in lieu of or in addition to maintenance;
- (8) the opportunity of each for future acquisition of capital assets and income;
- (9) the desirability of awarding the family home or the right to live there for reasonable periods to the spouse having custody of the children;
- (10) the party through whom the property was acquired;
- (11) the contribution of each spouse in the acquisition, preservation, and depreciation or appreciation in value of the respective estates, including the nonmonetary contribution of a spouse as a homemaker; and
- (12) the respective merits of the parties.

§ 752. Maintenance

(a) In an action under this chapter, the court may order either spouse to make maintenance payments, either rehabilitative or permanent in nature, to the other spouse if it finds that the spouse seeking maintenance:

- (1) lacks sufficient income, property, or both, including property apportioned in accordance with section 751 of this title, to provide for his or her reasonable needs; and
- (2) is unable to support himself or herself through appropriate employment at the standard of living established during the marriage or is the custodian of a child of the parties.

(b) The maintenance order shall be in such amounts and for such periods of time as the court deems just, after considering all relevant factors including, but not limited to:

- (1) the financial resources of the party seeking maintenance, the property apportioned to the party, the party's ability to meet his or her needs independently, and the extent to which a provision for support of a child living with the party contains a sum for that party as custodian;
- (2) the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
- (3) the standard of living established during the marriage;
- (4) the duration of the marriage;
- (5) the age and the physical and emotional condition of each spouse;
- (6) the ability of the spouse from whom maintenance is sought to meet his or her reasonable needs while meeting those of the spouse seeking maintenance; and
- (7) inflation with relation to the cost of living.

§ 753. Conveyance of realty after legal separation

In all cases where a legal separation has been granted, a spouse may convey his or her real estate without the signature or consent of the other spouse, and the laws of descent applicable to absolute divorce shall apply.

§ 754. Judgment effective to convey real estate

A certified copy of the judgment, or relevant parts thereof, when recorded in the land records of the town in which real estate of the parties is located, shall be effective to convey or encumber the real estate in accordance with the terms of the judgment, as if the judgment were a deed. A property transfer return shall be filed with the judgment, but the transfer shall be exempt from the taxes imposed by chapters 231 and 236 of Title 32 to the extent of the property interests conveyed to either of the parties.

§ 755. Judge out of office may sign judgment for maintenance

After the expiration of his term of office, a judge of the superior court may sign a judgment for maintenance as of the date when made.

§ 756. Court may order money paid to trustees

When part of the estate of either spouse, or money in lieu thereof, is awarded to the spouse having custody, as provided in this subchapter and sections 291, 293, and 294 of this title, instead of ordering the same to be delivered or paid into the hands of the custodial spouse, the court may order it delivered or paid to one or more trustees appointed by the court. The trustees shall invest the same and apply the income thereof to the support and maintenance of the custodial spouse and minor children of the marriage or any of them, in such manner as the court directs, and shall pay over the principal to the custodial spouse and children in such proportions and at such times as shall be ordered by the court. In the disposition of the income and of the principal regard shall be had to the situation and circumstances of the custodial spouse and children, and the trustees shall give such bonds as the court requires for the faithful performance of their trust.

§ 757. Security for payment

When maintenance or other annual allowance is granted to either spouse or children, the court may require sufficient security to be given for payment thereof, according to the terms of the judgment.

§ 758. Revision of judgment relating to maintenance

On motion of either party and due notice, and upon a showing of a real, substantial, and unanticipated change of circumstances, the court may from time to time annul, vary or modify a judgment relative to maintenance, whether or not such judgment relative to maintenance is based upon a stipulation or an agreement.

§ 762. Insurance benefits

In a proceeding under this chapter, the court may assign insurance benefits to a spouse or children, and may require the spouse who is required to make the assignment to execute a blanket assignment giving notice of the assignment to the provider of the insurance benefits.

§ 780. Definitions

As used in this chapter:

- (1) "Court" means the court with jurisdiction over the proceeding.
- (2) "Employer" means any employer or payor of wages of any type to the obligor.
- (3) "Obligee" means the person found to be legally entitled to receive support or any person to whom the obligee has assigned or authorized all rights of collection.
- (4) "Obligor" means the person required to pay support under a support order.
- (5) "Registry" means the registry established in section 4103 of Title 33.
- (6) "Support" means periodic payments ordered for the support of dependent children or, for the purposes of sections 783-790 of this title only, a spouse. Support includes periodic amounts to be applied toward unpaid arrearages.
- (7) "Support order" means any judgment, order or contract for support enforceable in this state, including, but not limited to, orders issued pursuant to 15 V.S.A. chapters 5 (relating to desertion and support and parentage), 7 (relating to URESA) or 11 (relating to annulment and divorce).
- (8) "Wage withholding order" means a transfer from the obligor to the obligee of the right to receive a portion of the obligor's wages directly from the obligor's employer.
- (9) "Wages" means any compensation paid or payable for personal services, whether designated as wages, salary, commission, bonuses or otherwise, and shall include periodic payments under pension or retirement programs, workers' compensation or insurance policies of any type.

§ 781. Withholding wages upon issuance or modification of support order after July 1, 1990

All orders for child support made or modified on or after July 1, 1990 shall include an order for immediate wage withholding in an amount equal to the support obligation and any obligation to pay support arrearages, unless the court finds good cause not to order immediate wage withholding or the parties have entered into an alternative arrangement by written agreement which is affirmatively stated in the order. In determining good cause, the court may consider a history of financial responsibility toward the family and the absence of any threat by the obligor to withhold financial support from the family.

§ 782. Expedited procedure for wage withholding

(a) In the case of an order for child support made or modified after July 1, 1990 which does not include an order for immediate wage withholding, an obligee may request a wage withholding order when any amount due under the order has not been paid within seven days after the amount is due. The obligor may request wage withholding at any time. The petition for wage withholding shall set forth:

(1) The amount of support arrearages, if any.

(2) The terms of the support order.

(3) The periodic amount to be withheld for support and arrearages.

(4) A statement that the obligor may object to wage withholding on the basis of an error in the amount of current support or arrearages or an error in identity, at a hearing to be held within ten days of the date the petition is filed.

(b) The petition shall be served upon the other party or parties as provided in section 783 of this title.

(c) The court shall set the date for the hearing and notify the parties of the place, date and time. The hearing shall be held within ten days of the date the petition is filed.

(d) The court shall enter a judgment for wage withholding under any one of the following circumstances:

(1) The obligor does not appear at the hearing without good cause.

(2) The obligor has requested the wage withholding order.

(3) The court finds after hearing that any amount due under a support order has not been paid within seven days after the amount is due.

(e) In all cases the court shall issue an order for wage withholding, if any, within 15 days of notice sent to the responding party.

(f) Notwithstanding the provisions of this section to the contrary, the office of child support may notify an employer to initiate wage withholding without obtaining a modification of the court order if any amount due under the order has accumulated to one-twelfth of the annualized amount of child support after:

(1) verifying the arrears based on a sworn statement of the obligee or, if the office of child support has maintained the financial records, an employee familiar with the financial records; and

(2) notifying the obligor of the withholding pursuant to subsection 783(b) of this title and giving the obligor an opportunity to object and request a hearing in family court to contest the withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.

§ 783. Wage withholding; notice and hearing

(a) In the case of a child support order issued prior to July 1, 1990 or a spousal support order, an obligee may request a wage withholding order when any amount due under a support order has not been paid within seven days after the amount is due. The obligor may request wage withholding at any time. The petition for wage withholding shall set forth:

(1) The amount of support arrearages, if any.

(2) The terms of the support order.

(3) The periodic amount to be withheld for support and arrearages.

(4) A statement that the obligor may object to wage withholding on the basis of an error in the amount of current support or arrearages or an error in identity, by filing the objection with the court within 20 days of receiving the petition under this subsection.

(5) A statement that an obligor may move for modification of the support order because of a real, substantial and unanticipated change of circumstances, which includes a difference of 10 percent or more between the child support order and the amount required to be paid under the support guidelines.

(b) The petition shall be served by the court or the office of child support by personal service or by mailing to the obligor, at one or more of the addresses supplied by the obligor, by certified mail, return receipt requested and delivery restricted to the addressee, the expense being paid by the petitioner. If acceptance of service is refused, the court or the office of child support may serve the obligor by sending the petition to the obligor by ordinary first class mail and by certifying that such service has been made. In the alternative, the court or the office of child support may provide for mail service as provided in V.R.C.P. 4(e).

(c) If the obligor does not file an objection to wage withholding within 20 days of receiving the petition sent pursuant to subsection (a) of this section or if the obligor has requested the wage withholding order, the court shall enter a judgment for wage withholding as stated in the petition without requiring a hearing or additional motions or additional affidavits, and shall send copies to the parties.

(d) If the obligor files an objection, the matter shall be set for hearing within 20 days of receipt of the objection.

(e) The court shall order wage withholding if the obligor has requested wage withholding or if any amount due under a support order has not been paid within seven days after the amount is due. In all cases the court shall issue a wage withholding order, if any, within 45 days of notice sent to the responding party.

(f) If a petition for wage withholding and a motion for modification are filed in connection with the same order, the court shall hear the matters at the same time if it is possible to do so within the time limits established by this section.

§ 785. Wage withholding orders

(a) A wage withholding order shall set forth:

- (1) The annualized amount of child support.
- (2) Frequency of the child support payment.
- (3) Judgment for support arrearages, if any.
- (4) Provisions for periodic repayment of arrearages.
- (5) Appropriate reduction and termination dates.

(b) A wage withholding order shall require an employer to withhold a periodic amount of child support up to the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)). All wage withholdings shall be made payable to the registry.

(c) The court shall file a wage withholding order with the registry. Within seven days of receipt of the order, the registry shall provide the obligor's employer with notice of withholding by first class mail and send a copy of the notice and the order to the obligor and the obligee.

§ 786. Obligee's responsibility

(a) The obligee shall notify the registry and the obligor of any event that would affect the amount of support to be withheld under the order. Any person who has assigned or authorized all rights of collection shall notify the assignee of any event that would affect the amount of support to be withheld under the order. Notice shall be in writing, mailed or delivered within seven days of any such event.

(b) Any amounts received by the obligee in excess of the amounts required to be withheld under any wage withholding order shall be paid by the obligee to the registry within seven days of receipt.

§ 787. Employer's responsibility; compensation

(a) Upon receipt of notice of wage withholding under this chapter or under a similar law of another state, an employer shall:

- (1) withhold from the wages paid to the obligor the periodic support amount specified in the order for each wage period;
- (2) within seven working days after wages are withheld, forward the withheld wages to the registry and specify the date the support was withheld from wages;
- (3) retain a record of all withheld wages;
- (4) cease withholding wages upon notice from the court or the registry; and
- (5) notify the registry within 10 days of the date the obligor's employment is terminated.

(b) In addition to the amounts withheld pursuant to this subchapter, the employer may retain not more than \$5.00 per month from the obligor's wages as compensation for administrative costs incurred.

(c)(1) Any employer who fails to withhold wages pursuant to a wage withholding order within 10 working days of receiving actual notice or upon the next payment of wages to the obligor, whichever is later, shall be liable to the obligee in the amount of the wages required to be withheld.

(2) No employer who withholds wages from the obligor shall, without good cause, fail to forward payment to the registry for more than 30 days. An employer who violates this subdivision shall be assessed a civil penalty of not more than \$100.00 for a first violation and not more than \$1,000.00 for a second or subsequent violation.

(3) A proceeding pursuant to this section shall be heard by the family court judge.

(d) The employer may combine amounts withheld from the wages of more than one employee in a single payment to the registry, listing separately the amount of the payment which is attributable to each individual employee.

(e) An employer shall only withhold wages from the nonexempt portion of the obligor's wages as defined under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)).

(f) An employer who makes an error in the amount of wages withheld shall not be held liable if the error was made in good faith.

(g) On request of the office of child support, the employer shall furnish the Social Security number and the amount of wages of any employee.

§ 788. Parent's responsibility

(a) Any parent subject to a child support or parental rights and responsibilities order shall notify in writing the court which issued the most recent order and the office of child support of his or her current mailing address and current residence address and of any change in either address within seven days of the change, until all obligations to pay support or support arrearages, or to provide for parental rights and responsibilities are satisfied. For good cause the court may keep information provided under this subsection confidential.

(b) When a wage withholding order is in effect, either parent shall notify in writing the registry of the name and address of a new employer within seven days of commencing new employment. If the registry has received information that a parent has changed employment it shall notify the other parent of the fact of the change but shall not disclose the identity or the location of the employer. On request of a parent, the registry shall provide information on the other parent's wages.

(c) In all cases in which a temporary or final order for relief from abuse has been entered, information provided under this section shall be kept confidential by the court. The court, for good cause shown, may release such information.

§ 789. Wage withholding exemptions; priorities and limitations

(a) A wage withholding order for a current support obligation or an obligation to pay support arrearages shall not be subject to Rule 4.2(j) of the Vermont Rules of Civil Procedure or 12 V.S.A. §§ 3167, 3169, 3170(a), (b) and (d). It shall be subject to section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)).

(b) A wage withholding order under this chapter shall have priority over other legal process against the same wages and shall be at least in the amount of the current support order. A wage withholding order for a current support obligation shall have priority over periodic payments to be applied to unpaid support arrearages, but shall not preclude withholding for both. No withholding for an arrearage may occur unless there is available income which is not exempt under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)).

(c) Wage withholding shall cease upon the termination of the obligation to pay current support or upon the repayment of all arrearages, whichever is later.

(d) If wage withholding is sought for repayment of outstanding arrearages in addition to support previously ordered, the additional amounts withheld for repayment shall not exceed twenty-five percent of the obligor's support obligation existing at the time of issuance of the wage withholding order.

(e) If arrearages exist after termination of the obligation to pay support, the amount withheld shall not be reduced until all arrearages are paid in full.

(f) If an obligor's outstanding arrearage increases by one-twelfth of the annual obligation, the office of child support may notify an employer to withhold an additional amount for repayment of any outstanding arrearage which has accumulated since the issuance of the most recent court order. The total wage withholding for arrearages shall not exceed 25 percent of the obligor's support obligation unless an additional amount is requested by the obligor.

(g) The office of child support shall not notify an employer to withhold an additional amount under subsection (f) of this section without first notifying the obligor of its intention to do so at the obligor's last known address as provided pursuant to section 783(b) of this title and giving the obligor 20 days to contest the withholding pursuant to 33 V.S.A. § 4108 on the grounds the increase would be improper due to a mistake of fact.

§ 790. Employee protected; penalty

(a) No employee may be discharged from employment or subjected to disciplinary action on account of a wage withholding order issued to an employer against earnings. Any employee discharged or subjected to disciplinary action in violation of this section may bring an action in superior court for reinstatement of employment, back wages and damages and, if that employee prevails, the court shall award costs and may award reasonable attorney's fees to the employee.

(b) An employer who discharges or subjects an employee to disciplinary action in violation of this section shall be subject to a fine of \$100.00.

§ 791. Arrearage judgment lien

(a)(1) A judgment issued by the court for support arrearages in excess of one-twelfth of the annualized amount of support shall constitute an arrearage judgment lien, if properly recorded under this section. The court shall also issue an order that payment of support shall be made through the registry.

(2) If payments are being made through the registry, a sworn affidavit of the office of child support, establishing an arrearage in excess of one-quarter of the annualized amount of support attached to the underlying court order shall constitute an arrearage lien, if properly recorded under this section.

(3) Before filing a lien provided for in subdivision (2) of this subsection, the office of child support shall serve the obligor pursuant to section 783(b) of this title with notice of the amount of the past due child support, the consequences of the filing of the lien, and the procedure for contesting the arrearage and challenging the lien pursuant to 33 V.S.A. § 4108. If the obligor does not contest the notice of lien within 20 days of service, the office may record the lien under this section. For the purposes of this section such a lien shall be considered an arrearage judgment lien.

(4) A copy of any document recorded under this subsection shall be sent to the parties by certified mail.

(b) An arrearage judgment lien shall be recorded in accordance with section 2904 of Title 12 with the clerk in any town where real property owned by the obligor may be found, or in the case of personal property in the proper place for recording a security interest under article 9 of Title 9A. The judgment shall become a lien for the amount of support arrearages at the time the judgment is issued and any arrearages which accrue after that time and until the lien is released. The judgment shall not become a lien for any sum or sums prior to the date they severally become due and payable.

(c) Within 10 days of the request of the obligor, the office of child support shall issue a certificate of release of an arrearage judgment lien if:

(1) liability for the amount due has been satisfied or has become enforceable by reason of lapse of time; or

(2) the interest of the obligee in the property has no value.

(d) If the office of child support does not issue a release of lien within 10 days or if there is a disagreement over the amount of arrearages, the obligor may request the court to determine the amount of arrearages or to issue a release of lien, or both. The court shall schedule a hearing to be held within 10 days of the request. The court may issue a release of lien without requiring the obligor to satisfy his or her liability for the total amount due if it finds that justice so requires.

(e) A certificate of release of lien applicable to real property and issued by the office of child support or the court shall be in substantially the following form: I hereby certify that the judgment for child support arrearages is paid in full and that the lien recorded in book _____, page _____ of the land records of the town of _____ is satisfied. A certificate of

release of lien which is recorded by the town clerk in the land records shall release the lien and bar actions brought thereon.

(f) The lien created pursuant to this section shall be effective eight years from the date of issuance of the judgment or eight years after termination of the obligation to pay support, whichever is later. If the lien is not satisfied within 30 days of recording, it may be foreclosed and redeemed as provided in Vermont Rules of Civil Procedure Rule 80.1.

(g) The lien created by this section shall be in addition to and separate from any other remedy or interest created by law or contract.

(h) Upon compliance with subsection (a) of this section, this state shall accord full faith and credit to arrearage liens that arise in another state if the other state accords reciprocity to this state's arrearage liens.

§ 792. Lottery offset

(a) For all Vermont lottery games, the lottery commission shall, before issuing prize money of \$500.00 or more to a winner, determine whether the winner has an outstanding child support arrearage payable to the office of child support. If the winner has a child support arrearage, the lottery commission shall withhold the entire amount of winnings and pay the same to the office of child support. The office of child support shall offset the winnings by the amount of support arrearages and the remainder of the winnings, if any, shall be sent to the winner. The obligor shall be notified by the office of child support of the offset prior to payment to the obligee and given a period not to exceed 20 days to contest the accuracy of the information.

(b) The office of child support shall inform the lottery commission of persons with child support arrearages upon request. Each liable person shall be identified by name, address and Social Security number.

(c) This section shall apply to tri-state lottery games at such time as the same or similar provisions become law in Maine and New Hampshire in accordance with the tri-state lotto compact.

§ 793. Credit reporting

(a) Information regarding the amount of arrearages owed by an obligor may be made available by the office of child support to any consumer credit bureau organization upon the request of the organization, only if the amount of the arrearages is at least one-quarter of the annual support obligation and the office of child support has notified the obligor by first class mail or other means likely to give actual notice of the proposed action and given a period not to exceed 20 days to contest the accuracy of the information with the office of child support. In computing the amount of an arrearage, any arrearage accumulated after a motion to modify has been filed shall not be included.

(b) The office of child support shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the account balance.

§ 794. Tax offsets

An order for child support may be enforced as provided in chapter 151 of Title 32.

§ 795. Licenses or governmental contracts

(a) As used in this section:

(1) "Agency" means any unit of state government, including agencies, departments, boards, commissions, authorities or public corporations.

(2) "License" means any license, certification or registration issued by an agency to conduct a trade or business, including a license to practice a profession or occupation, or a license required to engage in recreational activities, including the license to hunt, fish, or trap.

(3) "Contract" means a contract for the provision of goods, services or real estate space.

(b) Every applicant for a license shall sign a statement that the applicant is not subject to a child support order, or if subject to a child support order is in good standing with respect thereto or in full compliance with a plan to pay any and all child support payable under a support order as of the date the application is filed. A license may not be issued or renewed without such a statement.

(c) No agency shall enter into, extend or renew any contract unless the person submits a statement that the person is not under an obligation to pay child support or is in good standing

with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date the contract is made.

(d) For the purposes of this section, a person is in good standing with respect to any and all support payable if:

- (1) less than one-twelfth of the annual support obligation is overdue; or
- (2) liability for any support payable is being contested in a judicial or quasi-judicial proceeding; or
- (3) the person is in compliance with a repayment plan approved by the office of child support or agreed to by the parties; or
- (4) in the case of a licensee, the licensing agency finds that requiring immediate payment of support due and payable would impose an unreasonable hardship.

§ 796. Assets held in escrow

If a proceeding for enforcement of child support has previously been brought against an obligor under this subchapter and the obligor at any time thereafter fails to pay support in an amount equal to one-twelfth of the annual support obligation, the court may, in addition to any other remedies under this subchapter, order that existing liquid assets be held in escrow by the court sufficient to secure payment of support for a period not to exceed four months. If the obligor fails to pay support in an amount equal to one-twelfth of the annual support obligation, the assets held in escrow shall be applied toward unpaid support.

§ 797. Civil penalties

The court may impose a civil penalty to be paid to the obligee or to the registry on behalf of the obligee of not more than 10 percent on any amount in arrears for 30 days or more if the court determines that the arrearage was wilful.

§ 798. Enforcement of child support orders; suspension of licenses

(a) Upon noncompliance with an order issued under section 606 of this title, a motion may be filed seeking an order for suspension of licenses under this section. The motion shall be scheduled for hearing in accordance with the Vermont Rules of Family Proceedings within 30 days of the filing of the motion. At a hearing under this subsection, the obligor shall have the opportunity to present evidence relating to the reasons for noncompliance. An inability to comply shall be a defense in an action brought under this subsection. The noncomplying party shall have the burden of demonstrating inability to comply. An order issued under subsection (b) of this section is in addition to other remedies available at law.

(b) Upon a finding of noncompliance with an order issued under section 606 of this title and a delinquency of at least one-quarter of the annual support obligation, a family court judge or magistrate, if assigned by the presiding family court judge, may order a civil suspension of a noncomplying party's motor vehicle operator's license issued under chapter 9 of Title 23 or commercial driver license issued under chapter 39 of Title 23, recreational license, and any other license certification or registration issued by an agency to conduct a trade or business, including a license to practice a profession or occupation.

(c) Upon receipt of a license suspension order issued under this section, the license issuing authority shall suspend the license according to the terms of the order. Prior to suspending the license, the license issuing authority shall notify the license holder of the pending suspension and provide the license holder with an opportunity to contest the suspension based solely on the grounds of mistaken identity or compliance with the underlying child support order. The license shall be reinstated within five days of a reinstatement order from the court or notification from the office of child support or the custodial parent, where the rights of that parent have not been assigned to the office of child support, that the parent is in compliance with the underlying child support order. The license issuing authority shall charge a reinstatement fee as provided for in section 675 of Title 23, or as otherwise provided by law or rule.

(d) The license issuing authority shall adopt procedural rules in accordance with the provisions of chapter 25 of Title 3 to implement the provisions of this section.

§ 799. Trustee process

(a) As used in this section, "trustee" means any person, institution, or entity, holding any money, personal property or real property which belongs to or is owed to the obligor, including judgments, settlements, lottery winnings, funds held in financial institutions, and any voluntary contributions to public and private retirement funds.

(b) Upon noncompliance with a child support order in excess of one-quarter of the annual support obligation, the office of child support may seek to attach assets owned by an obligor and held by a trustee. Prior to attaching assets held by a trustee, the office of child support shall notify the obligor of the delinquency and of the office's intent to take administrative enforcement action for liens and trustee process and shall provide the obligor with an opportunity to contest the claimed delinquency and enforcement action pursuant to 33 V.S.A. § 4108. If the obligor fails to contest the claimed delinquency within 20 days after notification, or upon a final determination of a delinquency after hearing, the office of child support may issue a summons to a trustee as provided in subsection (c) of this section.

(c) If no timely contest is made or upon a final determination of nonpayment of child support equal to or greater than one-quarter of the annual support obligation, the office of child support may issue one or more summons to the trustee. The sum of the amounts for which the goods, effects or credits of the obligor are attached on trustee process shall not exceed the amount determined to be delinquent under subsection (b) of this section. The office of child support shall serve on the trustee and the obligor a disclosure form and a notice of the exemptions under subsection (f) of this section. If at any time the office finds the outstanding arrearage has been satisfied in whole or in part, the office shall discharge any trustee process which is outstanding or reduce the amounts for which the goods, effects or credits of the obligor are attached so the sum of all such amounts does not exceed the amount that remains unsatisfied. The office shall promptly notify the trustee and obligor of the change.

(d) In the event the obligor or other aggrieved person contests the summons to the trustee pursuant to 33 V.S.A. § 4108 or appeals the proposed action to the family court within 20 days of the summons and is found not to be in arrears by more than one-quarter of the annual support obligation on the date the summons to the trustee was issued, the office, within two business days, shall discharge the trustee process and notify the trustee and the obligor. In addition, the office shall pay to the obligor or other aggrieved person the sum of \$500.00.

(e) Upon receipt of a summons, the trustee shall secure and hold the assets in its possession up to the amount specified in the summons, and shall serve a disclosure under oath on the office of child support and the obligor. If no timely contest is made or upon a final determination of any contest sustaining the trustee process, the trustee shall tender to the office of child support the assets of the obligor in its possession up to the amount specified in the summons. If the trustee fails to disclose or fails or refuses to tender the property as directed, the office of child support may file an action with the family court to determine the trustee's liability. A trustee shall not be liable to the obligor for complying with this section.

(f) The exemptions from attachments and executions in 12 V.S.A. § 2740 shall apply to the trustee process provided for in this section except as follows:

- (1) the exemption in 12 V.S.A. § 2740(15) shall not exceed \$400.00;
- (2) the exemption in 12 V.S.A. § 2740(16) shall not exceed \$5,000.00; and
- (3) the exemption in 12 V.S.A. § 2740(18) shall not apply.

(g) Upon notifying a trustee to attach voluntary retirement funds, the office shall give the obligor an opportunity to have the attachment removed by making alternate payment arrangements satisfactory to the office within 30 days of issuance of the summons.

Chapter 18: GRANDPARENTS' VISITATION

§ 1011. Jurisdiction

(a) A superior, juvenile or probate court which has considered or is considering the custody or visitation of a minor child may award visitation rights to a grandparent of the child, upon written request of the grandparent filed with the court, if the court finds that to do so would be in the best interest of the child.

(b) No grandparent shall be afforded party status, but may be called as a witness by the court, and shall be subject to cross-examination by the parties.

(c) No appeal may be taken by any grandparent from the court's decision on visitation as it pertains to any grandparent.

(d) A grandparent who has visitation rights under this section may move the court for enforcement of the court's order in the same manner as would a party. A hearing shall be held thereon, and notice thereof shall be given to the parties pursuant to the Vermont Rules of Civil Procedure.

§ 1012. If a parent is deceased or cannot decide

If a parent of a minor child is deceased, physically or mentally incapable of making a decision or has abandoned the child, a grandparent of the child may commence an action in superior court in the county in which the custodian of the child resides to obtain visitation rights. The action shall promptly be tried without a jury in the same manner as a divorce case. The custodian of the child shall be the party defendant. In the event that the custodian of the child is not the parent of the child, the parent shall also be joined as a party defendant.

§ 1013. Decision

(a) The court shall grant the petitioner reasonable visitation or access to the grandchild upon determining that to do so would be in the best interests of the child.

(b) In determining the best interests of the child, the court shall consider the following factors:

- (1) the love, affection and other emotional ties existing between the grandparents involved and the child;
- (2) the capacity and disposition of the parties involved to give the child love, affection and guidance;
- (3) the nature of the relationship between the petitioner and the grandchild and the desirability of maintaining that relationship;
- (4) the moral fitness of the parties;
- (5) the mental and physical health of the parties;
- (6) the reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference;
- (7) the willingness and ability of the petitioner to facilitate and encourage a close and continuing relationship between the child and the other parties; and
- (8) any other factor which the court considers to be relevant to a just determination regarding visitation or access.

§ 1014. Modification

A court may modify or terminate any order granted under this section, issue any orders necessary to the enforcement of rights or the protection of parties under this section, and award costs for defending or prosecuting actions under this section.

§ 1015. Limit on refiling

Absent a real, substantial and unanticipated change of circumstances, no person whose petition under this section is denied with prejudice may file another petition under this section sooner than one year after that denial.

§ 1016. Automatic expiration

When a child subject to an order under this chapter is later adopted, the order under this chapter expires, except when the adopting parent is a stepparent, grandparent or other relative of the child.