CHAPTER 598

DISSOLUTION OF MARRIAGE AND DOMESTIC RELATIONS

Referred to in §135.108, 232.3, 236.11, 236.19, 252A.3A, 252B.3, 252B.4, 252B.5, 252B.6A, 252B.14, 252B.20, 252B.26, 252C.1, 252C.3, 252D.1, 252D.16, 252D.16A, 252E.1, 252E.1A, 252E.16, 252F.4, 252H.2, 252H.4, 252H.21, 252I.2, 252J.1, 425.2, 425A.4, 455B.172, 558A.1, 562A.27A, 562B.25A, 600.11, 600B.40A, 602.6111, 602.8102(47, 84), 602.8105, 664A.1, 664A.2, 664A.5, 664A.7, 815.11

598.1 Definitions.

As used in this chapter:

1. *"Best interest of the child"* includes but is not limited to the opportunity for maximum continuous physical and emotional contact possible with both parents, unless direct physical or significant emotional harm to the child may result from this contact. Refusal by one parent to provide this opportunity without just cause shall be considered harmful to the best interest of the child.

2. *"Dissolution of marriage"* means a termination of the marriage relationship and shall be synonymous with the term *"divorce"*.

3. *"Joint custody"* or *"joint legal custody"* means an award of legal custody of a minor child to both parents jointly under which both parents have legal custodial rights and responsibilities toward the child and under which neither parent has legal custodial rights superior to those of the other parent. Rights and responsibilities of joint legal custody include but are not limited to equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

4. *"Joint physical care"* means an award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child including but not limited to shared parenting time with the child, maintaining homes for the child, providing routine care for the child and under which neither parent has physical care rights superior to those of the other parent.

5. *"Legal custody"* or *"custody"* means an award of the rights of legal custody of a minor child to a parent under which a parent has legal custodial rights and responsibilities toward the child. Rights and responsibilities of legal custody include but are not limited to decision making affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

6. *"Minor child"* means any person under legal age.

7. *"Physical care"* means the right and responsibility to maintain a home for the minor child and provide for the routine care of the child.

8. *"Postsecondary education subsidy"* means an amount which either of the parties may be required to pay under a temporary order or final judgment or decree for educational expenses of a child who is between the ages of eighteen and twenty-two years if the child is regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs; or is, in good faith, a full-time student in a college, university, or community college; or has been accepted for admission to a college, university, or community college and the next regular term has not yet begun.

9. *"Support"* or *"support payments"* means an amount which the court may require either of the parties to pay under a temporary order or a final judgment or decree, and may include alimony, child support, maintenance, and any other term used to describe these obligations. For orders entered on or after July 1, 1990, unless the court specifically orders otherwise, medical support is not included in the monetary amount of child support. The obligations shall include support for a child who is between the ages of eighteen and nineteen years who is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age; and may include support for a child of any age who is dependent on the parties to the dissolution proceedings because of physical or mental disability.

[C71, 73, 75, 77, 79, 81, §598.1; 82 Acts, ch 1250, §1]

84 Acts, ch 1088, §1; 86 Acts, ch 1245, §1495; 90 Acts, ch 1224, §41; 90 Acts, ch 1253, §120; 97 Acts, ch 175, §182 – 185, 200

Referred to in §8A.222, 252B.1, 252B.13A, 252B.14, 252B.24, 252D.16, 633.425

598.2 Jurisdiction and venue.

The district court has original jurisdiction of the subject matter of this chapter. Venue shall be in the county where either party resides.

[C51, §1480; R60, §2532; C73, §2220; C97, §3171; C24, 27, 31, 35, 39, §**10468;** C46, 50, 54, 58, 62, 66, §598.1; C71, 73, 75, 77, 79, 81, §598.2]

598.2A Choice of law.

In a proceeding to establish, modify, or enforce a child support order the forum state's law shall apply except as follows:

1. In interpreting a child support order, a court shall apply the law of the state of the court or administrative agency that issued the order.

2. In an action to enforce a child support order, a court shall apply the statute of limitations of the forum state or the state of the court or administrative agency that issued the order, whichever statute provides the longer period of limitations.

96 Acts, ch 1141, §26

598.3 Kind of action — joinder.

An action for dissolution of marriage shall be by equitable proceedings, and no cause of action, save for alimony, shall be joined therewith. Such actions shall not be subject to counterclaim or cross petition by the respondent. After the appearance of the respondent, no dismissal of the cause of action shall be allowed unless both the petitioner and the respondent sign the dismissal.

[R60, §4184; C73, §2511; C97, §3430; C24, 27, 31, 35, 39, §**10469;** C46, 50, 54, 58, 62, 66, §598.2; C71, 73, 75, 77, 79, 81, §598.3]

598.4 Caption of petition for dissolution.

The petition for dissolution of marriage shall be captioned substantially as follows:

In the District Court of the State of Iowa
In and For ..... County
In Re the Marriage of
..... and .....

Upon the Petition of	Petition for
.....	Dissolution
(Petitioner)	of Marriage
and Concerning	Equity No. .....
.....	
(Respondent)	

[C71, 73, 75, 77, 79, 81, §598.4]

598.5 Contents of petition — verification — evidence.

1. The petition for dissolution of marriage shall:

a. State the name, birth date, address and county of residence of the petitioner and the name and address of the petitioner's attorney.

b. State the place and date of marriage of the parties.

c. State the name, birth date, address and county of residence, if known, of the respondent.

d. State the name and age of each minor child by date of birth whose welfare may be affected by the controversy.

e. State whether or not a separate action for dissolution of marriage or child support has been commenced and whether such action is pending in any court in this state or elsewhere. State whether the entry of an order would violate 28 U.S.C. § 1738B. If there is an existing child support order, the party shall disclose identifying information regarding the order.

f. Allege that the petition has been filed in good faith and for the purposes set forth therein.

g. Allege that there has been a breakdown of the marriage relationship to the extent that

the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

h. Set forth any application for temporary support of the petitioner and any children without enumerating the amounts thereof.

i. Set forth any application for permanent alimony or support, child custody, or disposition of property, as well as attorney fees and suit money, without enumerating the amounts thereof.

j. State whether the appointment of a conciliator pursuant to section 598.16 may preserve the marriage.

k. Except where the respondent is a resident of this state and is served by personal service, state that the petitioner has been for the last year a resident of the state, specifying the county in which the petitioner has resided and the length of such residence in the state after deducting all absences from the state, and that the maintenance of the residence has been in good faith and not for the purpose of obtaining a dissolution of marriage only.

2. The petition shall be verified by the petitioner.

3. The allegations of the petition shall be established by competent evidence.

[C71, 73, 75, 77, 79, 81, §598.5]

85 Acts, ch 178, §4; 97 Acts, ch 175, §186; 2005 Acts, ch 69, §30

598.6 Additional contents. Repealed by 2005 Acts, ch 69, § 58. See § 598.5.

598.7 Mediation.

1. The district court may, on its own motion or on the motion of any party, order the parties to participate in mediation in any dissolution of marriage action or other domestic relations action. Mediation performed under this section shall comply with the provisions of chapter 679C. The provisions of this section shall not apply if the action involves a child support or medical support obligation enforced by the child support recovery unit. The provisions of this section shall not apply to actions which involve domestic abuse pursuant to chapter 236. The provisions of this section shall not affect a judicial district's or court's authority to order settlement conferences pursuant to rules of civil procedure. The court shall, on application of a party, grant a waiver from any court-ordered mediation under this section if the party demonstrates that a history of domestic abuse exists as specified in section 598.41, subsection 3, paragraph "*j*".

2. The supreme court shall establish a dispute resolution program in family law cases that includes the opportunities for mediation and settlement conferences. Any judicial district may implement such a dispute resolution program, subject to the rules prescribed by the supreme court.

3. The supreme court shall prescribe rules for the mediation program, including the circumstances under which the district court may order participation in mediation.

4. Any dispute resolution program shall comply with all of the following standards:

a. Participation in mediation shall include attendance at a mediation session with the mediator and the parties to the action, listening to the mediator's explanation of the mediation process, presentation of one party's view of the case, and listening to the response of the other party. Participation in mediation does not require that the parties reach an agreement.

b. The parties may choose the mediator, or the court shall appoint a mediator. A court-appointed mediator shall meet the qualifications established by the supreme court.

c. Parties to the mediation have the right to advice and presence of counsel at all times.

d. The parties to the mediation shall present any agreement reached through the mediation to their attorneys, if any. A mediation agreement reached by the parties shall not be enforceable until approved by the court.

e. The costs of mediation shall be borne by the parties, as agreed to by the parties, or as ordered by the court, and may be taxed as court costs. Mediation shall be provided on a sliding fee scale for parties who are determined to be indigent pursuant to section 815.9.

5. The supreme court shall prescribe qualifications for mediators under this section. The qualifications shall include but are not limited to the ethical standards to be observed by

mediators. The qualifications shall not include a requirement that the mediator be licensed to practice any particular profession.

[C51, §1481; R60, §2533; C73, §2222; C97, §3173; C24, 27, 31, 35, 39, §**10471;** C46, 50, 54, 58, 62, 66, §598.4; C71, 73, 75, 77, 79, 81, §598.7]

2005 Acts, ch 69, §31

598.7A Mediation. Repealed by 2005 Acts, ch 69, § 58. See § 598.7.

598.8 Hearings — exceptions.

1. Except as otherwise provided in subsection 2, hearings for dissolution of marriage shall be held in open court upon the oral testimony of witnesses, or upon the depositions of such witnesses taken as in other equitable actions or taken by a commissioner appointed by the court. The court may in its discretion close the hearing. Hearings held for the purpose of determining child custody may be limited in attendance by the court. Upon request of either party, the court shall provide security in the courtroom during the custody hearing if a history of domestic abuse relating to either party exists.

2. The court may enter a decree of dissolution without a hearing under either of the following circumstances:

a. All of the following circumstances have been met:

(1) The parties have certified in writing that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

(2) All documents required by the court and by statute have been filed.

(3) The parties have entered into a written agreement settling all of the issues involved in the dissolution of marriage.

b. The respondent has not entered a general or special appearance or filed a motion or pleading in the case, the waiting period provided under section 598.19 has expired, and all of the following circumstances have been met:

(1) The petitioner has certified in writing that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

(2) All documents required by the court and by statute have been filed.

[C73, §2222; C97, §3173; C24, 27, 31, 35, 39, §**10472;** C46, 50, 54, 58, 62, 66, §598.5; C71, 73, 75, 77, 79, 81, §598.8]

95 Acts, ch 165, §1; 95 Acts, ch 182, §21; 2000 Acts, ch 1034, §1, 2

598.9 Residence — failure of proof.

If the averments as to residence are not fully proved, the hearing shall proceed no further, and the action be dismissed by the court.

[C73, §2222; C97, §3173; C24, 27, 31, 35, 39, §**10473;** C46, 50, 54, 58, 62, 66, §598.6; C71, 73, 75, 77, 79, 81, §598.9]

598.10 Temporary orders.

1. *a.* The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the other party and the children and to enable such party to prosecute or defend the action. The court may on its own motion and shall upon application of either party or an attorney or guardian ad litem appointed under section 598.12 determine the temporary custody of any minor child whose welfare may be affected by the filing of the petition for dissolution.

b. In order to encourage compliance with a visitation order, a temporary order for custody shall provide for a minimum visitation schedule with the noncustodial parent, unless the court determines that such visitation is not in the best interest of the child.

2. The court may make such an order when a claim for temporary support is made by the petitioner in the petition, or upon application of either party, after service of the original notice and when no application is made in the petition; however, no such order shall be entered until at least five days' notice of hearing, and opportunity to be heard, is given the

other party. Appearance by an attorney or the respondent for such hearing shall be deemed a special appearance for the purpose of such hearing only and not a general appearance. An order entered pursuant to this section shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

2005 Acts, ch 69, §32
Referred to in §598.11, 598.22

598.11 How temporary order made — changes — retroactive modification.

1. In making temporary orders, the court shall take into consideration the age of the applicant, the physical and pecuniary condition of the parties, and other matters as are pertinent, which may be shown by affidavits, as the court may direct. The hearing on the application shall be limited to matters set forth in the application, the affidavits of the parties, and the required statements of income. The court shall not hear any other matter relating to the petition, respondent's answer, or any pleadings connected with the petition or answer.

2. Subject to 28 U.S.C. § 1738B, after notice and hearing, subsequent changes in temporary orders may be made by the court on application of either party demonstrating a substantial change in the circumstances occurring subsequent to the issuance of such order. If the order is not so modified, it shall continue in force and effect until the action is dismissed or a decree is entered dissolving the marriage.

3. An order for temporary support may be retroactively modified only from three months after notice of hearing for temporary support pursuant to section 598.10 or from three months after notice of hearing for modification of a temporary order for support pursuant to this section. The three-month limitation applies to modification actions pending on or after July 1, 1997.

[C73, §2226; C97, §3177; C24, 27, 31, 35, 39, §**10478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §598.11]

85 Acts, ch 178, §5; 2005 Acts, ch 69, §33

598.12 Attorney or guardian ad litem for minor child — investigations.

1. The court may appoint an attorney to represent the legal interests of the minor child or children of the parties. The attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify before the court on matters pertinent to the legal interests of the children.

2. The court may appoint a guardian ad litem to represent the best interests of the minor child or children of the parties.

a. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include all of the following:

(1) Conducting general in-person interviews with the child, if the child's age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by the person's legal counsel.

(2) Conducting interviews with the child, if the child's age is appropriate for the interview, prior to any court-ordered hearing.

(3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including visiting the home or residence or prospective home or residence each time placement is changed.

(4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, prior to any court-ordered hearing.

(5) Obtaining firsthand knowledge, if possible, of facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(6) Attending any hearings in the matter in which the person is appointed guardian ad litem.

b. The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian ad litem may interview any person providing medical, mental health, social, educational, or other

services to the child; may attend any meeting with the medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem; and may inspect and copy any records relevant to the proceedings.

3. The same person may serve both as the child's legal counsel and as guardian ad litem. However, the court may appoint a separate guardian ad litem, if the same person cannot properly represent the legal interests of the child as legal counsel and also represent the best interests of the child as guardian ad litem, or a separate guardian ad litem is required to fulfill the requirements of subsection 2.

4. The court may require that an appropriate agency make an investigation of both parties regarding the home conditions, parenting capabilities, and other matters pertinent to the best interests of the child or children in a dispute concerning custody of the child or children. The investigation report completed by the appropriate agency shall be submitted to the court and available to both parties. The investigation report completed by the appropriate agency shall be a part of the record unless otherwise ordered by the court.

5. The court shall enter an order in favor of the attorney, the guardian ad litem, or an appropriate agency for fees and disbursements, and the amount shall be charged against the party responsible for court costs unless the court determines that the party responsible for costs is indigent, in which event the fees shall be borne by the county.

[C71, 73, 75, 77, 79, 81, §598.12; 82 Acts, ch 1250, §3]

83 Acts, ch 96, §157, 159; 2000 Acts, ch 1067, §1; 2005 Acts, ch 69, §34

Referred to in §598.10, 598.16

598.13 Financial statements filed.

1. Both parties shall disclose their financial status. A showing of special circumstances shall not be required before the disclosure is ordered. A statement of net worth set forth by affidavit on a form prescribed by the supreme court and furnished without charge by the clerk of the district court shall be filed by each party prior to the dissolution hearing. However, the parties may waive this requirement upon application of both parties and approval by the court.

Failure to comply with the requirements of this subsection constitutes failure to make discovery as provided in rule of civil procedure 1.517.

2. The court may, in its discretion, order a trustee to provide, on behalf of a trust, information including, but not limited to, trust documents and financial statements relating to any beneficial interest a party to the pending action may have in the trust.

[C71, 73, 75, 77, 79, 81, §598.13]

87 Acts, ch 89, §1; 2001 Acts, ch 112, §1

Referred to in §598.26

[P] The form of affidavit prescribed by the Supreme Court is published in the compilation "Iowa Court Rules", R.C.P. 1.1901 – Form 7

598.14 Attachment.

The petition may be presented to the court for the allowance of an order of attachment, which, by endorsement thereon, may direct such attachment and fix the amount for which it may issue, and the amount of the bond, if any, that shall be given. Any property taken by virtue thereof shall be held to satisfy the judgment or decree of the court, but may be discharged or released as in other cases.

[C73, §2228; C97, §3179; C24, 27, 31, 35, 39, §**10480;** C46, 50, 54, 58, 62, 66, §598.13; C71, 73, 75, 77, 79, 81, §598.14]

85 Acts, ch 99, §9; 85 Acts, ch 195, §52; 96 Acts, ch 1141, § 27; 2005 Acts, ch 69, §35

598.14A Retroactive modification of temporary support order. Repealed by 2005 Acts, ch 69, § 58. See § 598.11.

598.14B Child visitation — temporary custody orders. Repealed by 2005 Acts, ch 69, § 58. See § 598.10.

598.15 Mandatory course — parties to certain proceedings.

1. The parties to any action which involves the issues of child custody or visitation shall participate in a court-approved course to educate and sensitize the parties to the needs of any child or party during and subsequent to the proceeding within forty-five days of the service of notice and petition for the action or within forty-five days of the service of notice and application for modification of an order. Participation in the course may be waived or delayed by the court for good cause including but not limited to a default by any of the parties or a showing that the parties have previously participated in a court-approved course or its equivalent. Participation in the course is not required if the proceeding involves termination of parental rights of any of the parties. A final decree shall not be granted or a final order shall not be entered until the parties have complied with this section, unless participation in the course is waived or delayed for good cause or is otherwise not required under this subsection.

2. Each party shall be responsible for arranging for participation in the course and for payment of the costs of participation in the course.

3. Each party shall submit certification of completion of the course to the court prior to the granting of a final decree or the entry of an order, unless participation in the course is waived or delayed for good cause or is otherwise not required under subsection 1.

4. If participation in the court-approved course is waived or delayed for good cause or is otherwise not required under this section, the court may order that the parties receive the information described in subsection 5 through an alternative format.

5. Each judicial district shall certify approved courses for parties required to participate in a course under this section. Approved courses may include those provided by a public or private entity. At a minimum and as appropriate, an approved course shall include information relating to the parents regarding divorce and its impact on the children and family relationship, parenting skills for divorcing parents, children's needs and coping techniques, and the financial responsibilities of parents following divorce.

6. In addition to the provisions of this section relating to the required participation in a court-approved course by the parties to an action as described in subsection 1, the court may require age-appropriate counseling for children who are involved in a dissolution of marriage action. The counseling may be provided by a public or private entity approved by the court. The costs of the counseling shall be taxed as court costs.

7. The supreme court may prescribe rules to implement this section.

[C73, §2227; C97, §3178; C24, 27, 31, 35, 39, §**10479;** C46, 50, 54, 58, 62, 66, §598.12; C71, 73, 75, 77, 79, 81, §598.15]

2005 Acts, ch 69, §36; 2010 Acts, ch 1159, §7

598.16 Conciliation — domestic relations divisions.

1. A majority of the judges in any judicial district, with the cooperation of any county board of supervisors in the district, may establish a domestic relations division of the district court of the county where the board is located. The division shall offer counseling and related services to persons before the court.

2. Except as provided in subsection 7, upon the application of the petitioner in the petition or by the respondent in the responsive pleading thereto or, within twenty days of appointment, of an attorney appointed under section 598.12, the court shall require the parties to participate in conciliation efforts for a period of sixty days from the issuance of an order setting forth the conciliation procedure and the conciliator.

3. At any time upon its own motion or upon the application of a party the court may require the parties to participate in conciliation efforts for sixty days or less following the issuance of such an order.

4. Every order for conciliation shall require the conciliator to file a written report by a date certain which shall state the conciliation procedures undertaken and such other matters as may have been required by the court. The report shall be a part of the record unless otherwise ordered by the court. Such conciliation procedure may include but is not limited to referrals to the domestic relations division of the court, if established, public or private marriage counselors, family service agencies, community health centers, physicians and clergy.

5. The costs of conciliation procedures shall be paid in full or in part by the parties and

taxed as court costs; however, if the court determines that the parties will be unable to pay the costs without prejudicing their financial ability to provide themselves and any minor children with economic necessities, the costs may be paid in full or in part by the county.

6. Persons providing counseling and other services pursuant to this section are not court employees, but are subject to court supervision.

7. Upon application, the court shall grant a waiver from the requirements of this section if a party demonstrates that a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to commencement of an action pursuant to section 236.3, the issuance of a protective order against a party or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a party in contempt pursuant to section 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a party following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

[C71, 73, 75, 77, 79, 81, §598.16]

83 Acts, ch 123, §194, 209; 83 Acts, ch 186, §10110, 10201; 93 Acts, ch 54, §11; 2007 Acts, ch 180, §1

Referred to in §331.424, 598.5, 602.11101

598.17 Dissolution of marriage — evidence.

A decree dissolving the marriage may be entered when the court is satisfied from the evidence presented that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. The decree shall state that the dissolution is granted to the parties, and shall not state that it is granted to only one party.

If at the time of trial petitioner fails to present satisfactory evidence that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, the respondent may then proceed to present such evidence as though the respondent had filed the original petition.

A dissolution of marriage granted when one of the spouses has mental illness shall not relieve the other spouse of any obligation imposed by law as a result of the marriage for the support of the spouse with mental illness. The court may make an order for the support or may waive the support obligation when satisfied from the evidence that it would create an undue hardship on the obliged spouse or that spouse's other dependents.

[C71, 73, 75, 77, 79, 81, §598.17]

89 Acts, ch 296, §77; 96 Acts, ch 1129, §101

Referred to in §97A.1, 410.10, 411.1

598.18 Recrimination not a bar to dissolution of marriage.

If, upon the trial of an action for dissolution of marriage, both of the parties are found to have committed an act or acts which would support or justify a decree of dissolution of marriage, such dissolution may be decreed, and the acts of one party shall not negate the acts of the other, nor serve to bar the dissolution decree in any way.

[C71, 73, 75, 77, 79, 81, §598.18]

598.19 Waiting period before decree.

No decree dissolving a marriage shall be granted in any proceeding before ninety days shall have elapsed from the day the original notice is served, or from the last day of publication of notice, or from the date that waiver or acceptance of original notice is filed or until after conciliation is completed, whichever period shall be longer. However, the court may in its discretion, on written motion supported by affidavit setting forth grounds of emergency or necessity and facts which satisfy the court that immediate action is warranted or required to protect the substantive rights or interests of any party or person who might be affected by the decree, hold a hearing and grant a decree dissolving the marriage prior to the expiration of the applicable period, provided that requirements of notice have been complied with. In

such case the grounds of emergency or necessity and the facts with respect thereto shall be recited in the decree unless otherwise ordered by the court. The court may enter an order finding the respondent in default and waiving conciliation when the respondent has failed to file an appearance within the time set forth in the original notice.

[C58, 62, 66, §598.25; C71, 73, 75, §598.16, 598.19; C77, 79, 81, §598.19]

Referred to in §598.8

598.19A Mandatory course — parties to certain proceedings. Repealed by 2005 Acts, ch 69, § 58. See § 598.15.

598.20 Forfeiture of marital rights.

When a dissolution of marriage is decreed the parties shall forfeit all rights acquired by marriage which are not specifically preserved in the decree. This provision shall not obviate any of the provisions of section 598.21, 598.21A, 598.21B, 598.21C, 598.21D, 598.21E, or 598.21F.

[C51, §1486; C73, §2230; C97, §3181; C24, 27, 31, 35, 39, §**10483;** C46, 50, 54, 58, 62, 66, §598.16; C71, 73, 75, 77, 79, 81, §598.20]

2005 Acts, ch 69, §37

598.20A Beneficiary revocation — life insurance.

1. Except as preempted by federal law, if a decree of dissolution, annulment, or separate maintenance is issued after an insured has designated the insured's spouse or one or more relatives of the insured's spouse as a beneficiary under a life insurance policy in effect on the date of the decree, a provision in the life insurance policy making such a designation is voided by the issuance of the decree unless any of the following apply:

a. The decree designates the insured's former spouse or one or more relatives of the insured's spouse as beneficiary.

b. After issuance of the decree, the insured executes a designation of beneficiary form provided by the insurance company naming the insured's former spouse or one or more relatives of the insured's former spouse as beneficiary.

c. The insured and the insured's former spouse remarry.

2. If a beneficiary designation is not effective pursuant to subsection 1, the benefits or proceeds of the life insurance policy are payable to an alternate beneficiary, or if there is no alternate beneficiary, to the estate of the insured.

3. An insurer who pays benefits or proceeds of a life insurance policy to a beneficiary under a designation that is void pursuant to subsection 1 is not liable for payment to an alternative beneficiary as provided under subsection 2 unless both of the following apply:

a. At least ten days prior to payment of the benefits or proceeds of the life insurance policy to the designated beneficiary, the insurer receives written notice at the home office of the insurer that the designation of the beneficiary is not effective pursuant to subsection 1.

b. The insurer has failed to interplead the benefits or proceeds of the life insurance policy in a court of competent jurisdiction in accordance with the rules of civil procedure.

4. This section does not limit the right of a beneficiary to seek recovery from any person or entity that erroneously receives or collects the benefits or proceeds from a life insurance policy.

5. This section does not affect the right of an insured's former spouse to assert an ownership interest in a life insurance policy that is not disclosed to the insured's spouse prior to the decree of dissolution, annulment, or separate maintenance and that is not addressed by the decree.

6. For purposes of this section, *"relative of the insured's spouse"* means a person who is related to the insured's former spouse by blood, adoption, or affinity, and who, subsequent to a decree of dissolution, annulment, or separate maintenance, ceases to be related to the insured by blood, adoption, or affinity.

2007 Acts, ch 134, §4, 28

[SP] Section applies to all decrees of dissolution, annulment, or separate maintenance entered on or after July 1, 2007; 2007 Acts, ch 134, §28

598.20B Beneficiary revocation — other contracts.

1. Except as preempted by federal law, if a decree of dissolution, annulment, or separate maintenance is issued after a participant, annuitant, or account holder has designated the participant's, annuitant's, or account holder's spouse or one or more relatives of the participant's, annuitant's, or account holder's spouse as beneficiary under any individual retirement account, stock option plan, transfer on death account, payable on death account, or annuity in force at the date of the decree, a provision in the retirement account, stock option plan, transfer on death account, payable on death account, or annuity designating the participant's, annuitant's, or account holder's spouse or one or more relatives of the participant's, annuitant's, or account holder's spouse as beneficiary is voided by the issuance of the decree unless any of the following apply:

a. The decree designates the participant's, annuitant's, or account holder's spouse or one or more relatives of the participant's, annuitant's, or account holder's spouse as beneficiary.

b. After issuance of the decree, the participant, annuitant, or account holder executes a designation of beneficiary form provided by the plan or company naming the participant's, annuitant's, or account holder's former spouse or one or more relatives of the participant's, annuitant's, or account holder's former spouse as the beneficiary.

c. The participant, annuitant, or account holder and the participant's, annuitant's, or account holder's former spouse remarry.

d. Prior to the issuance of the decree, annuity payments have irrevocably commenced based on the joint life expectancies of the participant, annuitant, or account holder and the participant's, annuitant's, or account holder's former spouse.

2. If a beneficiary designation is not effective pursuant to subsection 1, the benefits or proceeds from the individual retirement account, stock option plan, transfer on death account, payable on death account, or annuity are payable to an alternate beneficiary, or if there is no alternate beneficiary, to the estate of the participant, annuitant, or account holder.

3. A business entity, employer, insurer, financial institution, or other person or entity obligated to pay the benefits or proceeds from an individual retirement account, stock option plan, transfer on death account, payable on death account, or annuity to a beneficiary under a designation that is void pursuant to subsection 1 is not liable for payment of the benefits or proceeds to a beneficiary as provided under subsection 2 unless both of the following apply:

a. At least ten days prior to payment of the benefits or proceeds to the designated beneficiary, the business entity, employer, insurer, financial institution, or other person or entity obligated to pay the benefits or proceeds receives written notice at the home office of the business entity, employer, insurer, financial institution, or other person or entity that the designation of the beneficiary is not effective pursuant to subsection 1.

b. The business entity, employer, insurer, financial institution, or other person or entity has failed to interplead the benefits or proceeds in a court of competent jurisdiction in accordance with the rules of civil procedure.

4. This section does not limit the right of a beneficiary to seek recovery from any person or entity that erroneously receives or collects the benefits or proceeds of an individual retirement account, stock option plan, transfer on death account, payable on death account, or annuity.

5. This section does not affect the right of the participant's, annuitant's, or account holder's former spouse to assert an ownership interest in an individual retirement account, stock option plan, transfer or payable on death account, or annuity that is not disclosed to the participant's, annuitant's, or account holder's spouse prior to the issuance of the decree of dissolution, annulment, or separate maintenance and that is not addressed by the decree.

6. For purposes of this section, *"relative of the participant's, annuitant's, or account holder's spouse"* means a person who is related to the participant's, annuitant's, or account holder's former spouse by blood, adoption, or affinity, and who, subsequent to a decree of dissolution, annulment, or separate maintenance ceases to be related to the participant, annuitant, or account holder by blood, adoption, or affinity.

2007 Acts, ch 134, §5, 28

[SP] Section applies to all decrees of dissolution, annulment, or separate maintenance entered on or after July 1, 2007; 2007 Acts, ch 134, §28

598.21 Orders for disposition of property.

1. *General principles.* Upon every judgment of annulment, dissolution, or separate maintenance, the court shall divide the property of the parties and transfer the title of the property accordingly, including ordering the parties to execute a quitclaim deed or ordering a change of title for tax purposes and delivery of the deed or change of title to the county recorder of the county in which each parcel of real estate is located.

2. *Duties of county recorder.* The county recorder shall record each quitclaim deed or change of title and shall collect the fee specified in section 331.507, subsection 2, paragraph *"a"*, and the fees specified in section 331.604.

3. *Duties of clerk of court.* If the court orders a transfer of title to real property, the clerk of court shall issue a certificate under chapter 558 relative to each parcel of real estate affected by the order and immediately deliver the certificate for recording to the county recorder of the county in which the real estate is located. Any fees assessed shall be included as part of the court costs. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58, subsection 1.

4. *Property for children.* The court may protect and promote the best interests of children of the parties by setting aside a portion of the property of the parties in a separate fund or conservatorship for the support, maintenance, education, and general welfare of the minor children.

5. *Division of property.* The court shall divide all property, except inherited property or gifts received or expected by one party, equitably between the parties after considering all of the following:

a. The length of the marriage.

b. The property brought to the marriage by each party.

c. The contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services.

d. The age and physical and emotional health of the parties.

e. The contribution by one party to the education, training, or increased earning power of the other.

f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

h. The amount and duration of an order granting support payments to either party pursuant to section 598.21A and whether the property division should be in lieu of such payments.

i. Other economic circumstances of each party, including pension benefits, vested or unvested. Future interests may be considered, but expectancies or interests arising from inherited or gifted property created under a will or other instrument under which the trustee, trustor, trust protector, or owner has the power to remove the party in question as a beneficiary, shall not be considered.

j. The tax consequences to each party.

k. Any written agreement made by the parties concerning property distribution.

l. The provisions of an antenuptial agreement.

m. Other factors the court may determine to be relevant in an individual case.

6. *Inherited and gifted property.* Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

7. *Not subject to modification.* Property divisions made under this chapter are not subject to modification.

8. *Necessary content of order.* Orders made pursuant to this section need mention only

those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

[C51, §1485; R60, §2537; C73, §2229; C97, §3180; C24, 27, 31, 35, 39, §**10481;** C46, 50, 54, 58, 62, 66, §598.14; C71, 73, 75, 77, 79, §598.17, §598.21; C81, §598.21; 82 Acts, ch 1054, §1, ch 1250, §4 – 9]

83 Acts, ch 101, §118; 85 Acts, ch 159, §10; 85 Acts, ch 178, §6, 7; 86 Acts, ch 1079, §5; 88 Acts, ch 1141, §2; 89 Acts, ch 102, §6; 89 Acts, ch 166, §6; 90 Acts, ch 1224, §42 – 45; 92 Acts, ch 1195, §405, 406, 508, 509; 93 Acts, ch 78, §44 – 46; 93 Acts, ch 79, §48, 49; 94 Acts, ch 1171, §40 – 42; 95 Acts, ch 52, §8; 95 Acts, ch 115, §11, 12; 96 Acts, ch 1106, §17; 96 Acts, ch 1141, §7, 28, 29; 97 Acts, ch 41, §32; 97 Acts, ch 175, §188 – 193, 200; 99 Acts, ch 103, §44, 45; 2001 Acts, ch 143, §8; 2002 Acts, ch 1018, §16, 17, 21; 2003 Acts, ch 151, §28; 2004 Acts, ch 1157, §1; 2005 Acts, ch 69, §38; 2007 Acts, ch 163, §1 – 3; 2009 Acts, ch 27, §36; 2009 Acts, ch 159, §14; 2009 Acts, ch 179, §44

Referred to in §321A.17, 598.20, 598.21A

598.21A Orders for spousal support.

1. *Criteria for determining support.* Upon every judgment of annulment, dissolution, or separate maintenance, the court may grant an order requiring support payments to either party for a limited or indefinite length of time after considering all of the following:

a. The length of the marriage.

b. The age and physical and emotional health of the parties.

c. The distribution of property made pursuant to section 598.21.

d. The educational level of each party at the time of marriage and at the time the action is commenced.

e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

f. The feasibility of the party seeking maintenance becoming self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, and the length of time necessary to achieve this goal.

g. The tax consequences to each party.

h. Any mutual agreement made by the parties concerning financial or service contributions by one party with the expectation of future reciprocation or compensation by the other party.

i. The provisions of an antenuptial agreement.

j. Other factors the court may determine to be relevant in an individual case.

2. *Necessary content of order.* Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

96 Acts, ch 1106, §18; 2005 Acts, ch 69, §39

Referred to in §252A.3, 252A.6, 598.20, 598.21, 598.22

598.21B Orders for child support and medical support.

1. *Child support guidelines.*

a. The supreme court shall maintain uniform child support guidelines and criteria and review the guidelines and criteria at least once every four years, pursuant to the federal Family Support Act of 1988, Pub. L. No. 100-485. The initial review shall be performed within four years of October 12, 1989, and subsequently within the four-year period of the most recent review.

b. The guidelines prescribed by the supreme court shall incorporate provisions for medical support as defined in chapter 252E to be effective on or before January 1, 1991.

c. It is the intent of the general assembly that, to the extent possible within the requirements of federal law, the court and the child support recovery unit consider the individual facts of each judgment or case in the application of the guidelines and determine

the support obligation accordingly. It is also the intent of the general assembly that in the supreme court's review of the guidelines, the supreme court shall do both of the following:

(1) Emphasize the ability of a court to apply the guidelines in a just and appropriate manner based upon the individual facts of a judgment or case.

(2) In determining monthly child support payments, consider other children for whom either parent is legally responsible for support and other child support obligations actually paid by either party pursuant to a court or administrative order.

d. The guidelines prescribed by the supreme court shall be used by the department of human services in determining child support payments under sections 252C.2 and 252C.4. A variation from the guidelines shall not be considered by the department without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under criteria prescribed by the supreme court.

2. *Child support orders.*

a. Court's authority. Unless prohibited pursuant to 28 U.S.C. § 1738B, upon every judgment of annulment, dissolution, or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for supporting a child.

b. Calculating amount of support.

(1) In establishing the amount of support, consideration shall be given to the responsibility of both parents to support and provide for the welfare of the minor child and of a child's need, whenever practicable, for a close relationship with both parents.

(2) For purposes of calculating a support obligation under this section, the income of the parent from whom support is sought shall be used as the noncustodial parent income for purposes of application of the guidelines, regardless of the legal custody of the child.

(3) For the purposes of including a child's dependent benefit in calculating a support obligation under this section for a child whose parent has been awarded disability benefits under the federal Social Security Act, the provisions of section 598.22C shall apply.

c. Rebuttable presumption in favor of guidelines. There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded.

d. Variation from guidelines. A variation from the guidelines shall not be considered by a court without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under the criteria prescribed by the supreme court.

e. Special circumstances justifying variation from guidelines. Unless the special circumstances of the case justify a deviation, the court or the child support recovery unit shall establish a monthly child support payment in accordance with the guidelines for a parent who is nineteen years of age or younger, who has not received a high school or high school equivalency diploma, and to whom each of the following apply:

(1) The parent is attending a school or program described as follows or has been identified as one of the following:

(a) The parent is in full-time attendance at an accredited school and is pursuing a course of study leading to a high school diploma.

(b) The parent is attending an instructional program leading to a high school equivalency diploma.

(c) The parent is attending a vocational education program approved pursuant to chapter 258.

(d) The parent has been identified by the director of special education of the area education agency as a child requiring special education as defined in section 256B.2.

(2) The parent provides proof of compliance with the requirements of subparagraph (1) to the child support recovery unit, if the unit is providing services under chapter 252B, or if the unit is not providing services pursuant to chapter 252B, to the court as the court may direct. Failure to provide proof of compliance under this subparagraph or proof of compliance under section 598.21G is grounds for modification of the support order using the uniform child support guidelines and imputing an income to the parent equal to a forty-hour workweek at the state minimum wage, unless the parent's education, experience, or actual earnings justify a higher income.

3. *Medical support.* The court shall order child medical support as provided in section 252E.1A. The premium cost of a health benefit plan may be considered by the court as a reason for varying from the child support guidelines.

4. *Necessary content of order.* Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

2005 Acts, ch 69, §40; 2007 Acts, ch 218, §184, 187; 2008 Acts, ch 1019, §18, 20; 2010 Acts, ch 1142, §9

Referred to in §234.39, 252A.3, 252A.6, 252A.6A, 252B.5, 252B.6, 252B.9, 252C.1, 252C.2, 252C.3, 252C.4, 252E.1, 252E.1A, 252E.2A, 252F.3, 252F.4, 252F.5, 252H.2, 252H.6, 252H.8, 252H.9, 252H.14A, 252H.15, 252H.19, 252H.21, 598.20, 598.21C, 598.21E, 598.22, 598.22C, 600B.25, 600B.41A

[SP] For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

598.21C Modification of child, spousal, or medical support orders.

1. *Criteria for modification.* Subject to 28 U.S.C. § 1738B, the court may subsequently modify child, spousal, or medical support orders when there is a substantial change in circumstances. In determining whether there is a substantial change in circumstances, the court shall consider the following:

a. Changes in the employment, earning capacity, income, or resources of a party.

b. Receipt by a party of an inheritance, pension, or other gift.

c. Changes in the medical expenses of a party.

d. Changes in the number or needs of dependents of a party.

e. Changes in the physical, mental, or emotional health of a party.

f. Changes in the residence of a party.

g. Remarriage of a party.

h. Possible support of a party by another person.

i. Changes in the physical, emotional, or educational needs of a child whose support is governed by the order.

j. Contempt by a party of existing orders of court.

k. Entry of a dispositional or permanency order in juvenile court pursuant to chapter 232 placing custody or physical care of a child with a party who is obligated to pay support for a child. Any filing fees or court costs for a modification filed or ordered pursuant to this paragraph are waived.

l. Other factors the court determines to be relevant in an individual case.

2. *Additional criteria for modification of child support orders.*

a. Subject to 28 U.S.C. § 1738B, but notwithstanding subsection 1, a substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to section 598.21B or a parent has a health benefit plan available as provided in section 252E.1A and the current order for support does not contain provisions for medical support.

b. This basis for modification is applicable to petitions filed on or after July 1, 1992, notwithstanding whether the guidelines prescribed by section 598.21B were used in establishing the current amount of support. Upon application for a modification of an order for child support for which services are being received pursuant to chapter 252B, the court shall set the amount of child support based upon the most current child support guidelines established pursuant to section 598.21B, including provisions for medical support pursuant to chapter 252E. The child support recovery unit shall, in submitting an application for modification, adjustment, or alteration of an order for support, employ additional criteria and procedures as provided in chapter 252H and as established by rule.

3. *Applicable law.* Unless otherwise provided pursuant to 28 U.S.C. § 1738B, a modification of a support order entered under chapter 234, 252A, 252C, 600B, this chapter, or any other support chapter or proceeding between parties to the order is void unless the modification is approved by the court, after proper notice and opportunity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 234.39, 239B.6,

or 252E.11, or if services are being provided pursuant to chapter 252B, the department is a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598B. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 598.41.

4. *Temporary modification of child support orders.* While an application for modification of a child support or child custody order is pending, the court may, on its own motion or upon application by either party, enter a temporary order modifying an order of child support. The court may enter such temporary order only after service of the original notice, and an order shall not be entered until at least five days' notice of hearing and opportunity to be heard, is provided to all parties. In entering temporary orders under this subsection, the court shall consider all pertinent matters, which may be demonstrated by affidavits, as the court may direct. The hearing on application shall be limited to matters set forth in the application, the affidavits of the parties, and any required statements of income. The court shall not hear any other matter relating to the application for modification, respondent's answer, or any pleadings connected with the application for modification or the answer. This subsection shall also apply to an order, decree, or judgment entered or pending on or before July 1, 2007, and shall apply to an order entered under this chapter, chapter 252A, 252C, 252F, 252H, 252K, or 600B, or any other applicable chapter of the Code.

5. *Retroactivity of modification.* Judgments for child support or child support awards entered pursuant to this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code which are subject to a modification proceeding may be retroactively modified only from three months after the date the notice of the pending petition for modification is served on the opposing party. The three-month limitation applies to a modification action pending on or after July 1, 1997. The prohibition of retroactive modification does not bar the child support recovery unit from obtaining orders for accrued support for previous time periods. Any retroactive modification which increases the amount of child support or any order for accrued support under this subsection shall include a periodic payment plan. A retroactive modification shall not be regarded as a delinquency unless there are subsequent failures to make payments in accordance with the periodic payment plan.

6. *Modification of periodic due date.* The periodic due date established under a prior order for payment of child support shall not be changed in any modified order under this section, unless the court determines that good cause exists to change the periodic due date. If the court determines that good cause exists, the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

7. *Modification by child support recovery unit.* Notwithstanding any other provision of law to the contrary, when an application for modification or adjustment of support is submitted by the child support recovery unit, the sole issues which may be considered by the court in that action are the application of the guidelines in establishing the amount of support pursuant to section 598.21B, and provision for medical support under chapter 252E. When an application for a cost-of-living alteration of support is submitted by the child support recovery unit pursuant to section 252H.24, the sole issue which may be considered by the court in the action is the application of the cost-of-living alteration in establishing the amount of child support. Issues related to custody, visitation, or other provisions unrelated to support shall be considered only under a separate application for modification.

8. *Necessary content of order.* Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

9. *Duty of clerk of court.* If the court modifies an order, and the original decree was entered in another county in Iowa, the clerk of court shall send a copy of the modification by

regular mail, electronic transmission, or facsimile to the clerk of court for the county where the original decree was entered.

2005 Acts, ch 69, §41; 2006 Acts, ch 1030, §71; 2006 Acts, ch 1119, §7, 10; 2007 Acts, ch 106, §1; 2007 Acts, ch 218, §185, 187; 2008 Acts, ch 1019, §18, 20

Referred to in §234.39, 252B.5, 252H.10, 252H.18A, 598.20, 598.22, 598.22C

[SP] For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

598.21D Relocation of parent as grounds to modify order of child custody.

If a parent awarded joint legal custody and physical care or sole legal custody is relocating the residence of the minor child to a location which is one hundred fifty miles or more from the residence of the minor child at the time that custody was awarded, the court may consider the relocation a substantial change in circumstances. If the court determines that the relocation is a substantial change in circumstances, the court shall modify the custody order to, at a minimum, preserve, as nearly as possible, the existing relationship between the minor child and the nonrelocating parent. If modified, the order may include a provision for extended visitation during summer vacations and school breaks and scheduled telephone contact between the nonrelocating parent and the minor child. The modification may include a provision assigning the responsibility for transportation of the minor child for visitation purposes to either or both parents. If the court makes a finding of past interference by the parent awarded joint legal custody and physical care or sole legal custody with the minor child's access to the other parent, the court may order the posting of a cash bond to assure future compliance with the visitation provisions of the decree. The supreme court shall prescribe guidelines for the forfeiting of the bond and restoration of the bond following forfeiting of the bond.

2005 Acts, ch 69, §42

Referred to in §598.20

598.21E Contesting paternity to challenge child support order.

1. If, during an action initiated under this chapter or any other chapter in which a child or medical support obligation may be established based upon a prior determination of paternity, a party wishes to contest the paternity of the child or children involved, all of the following apply:

a. (1) If the prior determination of paternity is based on an affidavit of paternity filed pursuant to section 252A.3A, or a court or administrative order entered in this state, or by operation of law when the mother and established father are or were married to each other, the provisions of section 600B.41A apply.

(2) If following the proceedings under section 600B.41A the court determines that the prior determination of paternity should not be overcome, and that the established father has a duty to provide support, the court shall enter an order establishing the monthly child support payment and the amount of the support debt accrued and accruing pursuant to section 598.21B, or the medical support obligation pursuant to chapter 252E, or both.

b. If a determination of paternity is based on an administrative or court order or other means pursuant to the laws of a foreign jurisdiction, any action to overcome the prior determination of paternity shall be filed in that jurisdiction. Unless a stay of the action initiated in this state to establish child or medical support is requested and granted by the court, pending a resolution of the contested paternity issue by the foreign jurisdiction, the action shall proceed.

c. Notwithstanding paragraph "*a*", in a pending dissolution action under this chapter, a prior determination of paternity by operation of law through the marriage of the established father and mother of the child may be overcome under this chapter if the established father and mother of the child file a written statement with the court that both parties agree that the established father is not the biological father of the child.

2. If the court overcomes a prior determination of paternity, the previously established father shall be relieved of support obligations as specified in section 600B.41A, subsection 4. In any action to overcome paternity other than through a pending dissolution action, the provisions of section 600B.41A apply. Overcoming paternity under subsection 1,

paragraph "*c*", does not bar subsequent actions to establish paternity. A subsequent action to establish paternity against the previously established father is not barred if it is subsequently determined that the written statement attesting that the established father is not the biological father of the child may have been submitted erroneously, and that the person previously determined not to be the child's father during the dissolution action may actually be the child's biological father.

3. If an action to overcome paternity is brought pursuant to subsection 1, paragraph "*c*", the court shall appoint a guardian ad litem for the child for the pendency of the proceedings.

2005 Acts, ch 69, §43; 2006 Acts, ch 1030, §72
Referred to in §598.20, 598.22

598.21F Postsecondary education subsidy.

1. *Order of subsidy.* The court may order a postsecondary education subsidy if good cause is shown.

2. *Criteria for good cause.* In determining whether good cause exists for ordering a postsecondary education subsidy, the court shall consider the age of the child, the ability of the child relative to postsecondary education, the child's financial resources, whether the child is self-sustaining, and the financial condition of each parent. If the court determines that good cause is shown for ordering a postsecondary education subsidy, the court shall determine the amount of subsidy as follows:

a. The court shall determine the cost of postsecondary education based upon the cost of attending an in-state public institution for a course of instruction leading to an undergraduate degree and shall include the reasonable costs for only necessary postsecondary education expenses.

b. The court shall then determine the amount, if any, which the child may reasonably be expected to contribute, considering the child's financial resources, including but not limited to the availability of financial aid whether in the form of scholarships, grants, or student loans, and the ability of the child to earn income while attending school.

c. The child's expected contribution shall be deducted from the cost of postsecondary education and the court shall apportion responsibility for the remaining cost of postsecondary education to each parent. The amount paid by each parent shall not exceed thirty-three and one-third percent of the total cost of postsecondary education.

3. *Subsidy payable.* A postsecondary education subsidy shall be payable to the child, to the educational institution, or to both, but shall not be payable to the custodial parent.

4. *Repudiation by child.* A postsecondary education subsidy shall not be awarded if the child has repudiated the parent by publicly disowning the parent, refusing to acknowledge the parent, or by acting in a similar manner.

5. *Obligations of child.* The child shall forward, to each parent, reports of grades awarded at the completion of each academic session within ten days of receipt of the reports. Unless otherwise specified by the parties, a postsecondary education subsidy awarded by the court shall be terminated upon the child's completion of the first calendar year of course instruction if the child fails to maintain a cumulative grade point average in the median range or above during that first calendar year.

6. *Application.* A support order, decree, or judgment entered or pending before July 1, 1997, that provides for support of a child for college, university, or community college expenses may be modified in accordance with this section.

7. *Necessary content of order.* Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

2005 Acts, ch 69, §44; 2006 Acts, ch 1030, §73
Referred to in §598.20, 598.22, 600.11

598.21G Minor parent — parenting classes.

In any order or judgment entered under this chapter or chapter 234, 252A, 252C, 252F, or 600B, or under any other chapter which provides for temporary or permanent support

payments, if the parent ordered to pay support is less than eighteen years of age, one of the following shall apply:

1. If the child support recovery unit is providing services pursuant to chapter 252B, the court, or the administrator as defined in section 252C.1, shall order the parent ordered to pay support to attend parenting classes which are approved by the department of human services.

2. If the child support recovery unit is not providing services pursuant to chapter 252B, the court may order the parent ordered to pay support to attend parenting classes which are approved by the court.

2005 Acts, ch 69, §45; 2006 Acts, ch 1010, §152
Referred to in §598.21B

598.22 Support payments — clerk of court — collection services center — defaults — security.

1. Except as otherwise provided in section 598.22A, this section applies to all initial or modified orders for support entered under this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code. All orders or judgments entered under chapter 234, 252A, 252C, 252F,or 600B, or under this chapter or any other chapter which provide for temporary or permanent support payments shall direct the payment of those sums to the clerk of the district court or the collection services center in accordance with section 252B.14 for the use of the person for whom the payments have been awarded. Beginning October 1, 1999, all income withholding payments shall be directed to the collection services center. Payments to persons other than the clerk of the district court and the collection services center do not satisfy the support obligations created by the orders or judgments, except as provided for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, for tax refunds or rebates in section 602.8102, subsection 47, or for dependent benefits paid to the child support obligee as the result of disability benefits awarded to the child support obligor under the federal Social Security Act. For trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, the order for income withholding or notice of the order for income withholding shall require the payment of such sums to the alternate payee in accordance with the federal Act. For dependent benefits paid to the child support obligee as a result of disability benefits awarded to the child support obligor under the federal Social Security Act, the provisions of section 598.22C shall apply.

2. An income withholding order or notice of the order for income withholding shall be entered under the terms and conditions of chapter 252D. However, for trusts governed by the federal Retirement Equity Act of 1984, Pub. L. No. 98-397, the payor shall transmit the payments to the alternate payee in accordance with the federal Act.

3. An order or judgment entered by the court for temporary or permanent support or for income withholding shall be filed with the clerk. The orders have the same force and effect as judgments when entered in the judgment docket and lien index and are records open to the public. Unless otherwise provided by federal law, if it is possible to identify the support order to which a payment is to be applied, and if sufficient information identifying the obligee is provided, the clerk or the collection services center, as appropriate, shall disburse the payments received pursuant to the orders or judgments within two working days of the receipt of the payments. All moneys received or disbursed under this section shall be entered in records kept by the clerk, or the collection services center, as appropriate, and the records kept by the clerk shall be available to the public. The clerk or the collection services center shall not enter any moneys paid in the record book if not paid directly to the clerk or the center, as appropriate, except as provided for trusts and federal social security disability payments in this section, and for tax refunds or rebates in section 602.8102, subsection 47.

4. If the sums ordered to be paid in a support payment order are not paid to the clerk or the collection services center, as appropriate, at the time provided in the order or judgment, the clerk or the collection services center, as appropriate, shall certify a default to the court which may, on its own motion, proceed as provided in section 598.23.

5. Prompt payment of sums required to be paid under sections 598.10, 598.21A, 598.21B, 598.21C, 598.21E, and 598.21F is the essence of such orders or judgments and the court may

act pursuant to section 598.23 regardless of whether the amounts in default are paid prior to the contempt hearing.

6. Upon entry of an order for support or upon the failure of a person to make payments pursuant to an order for support, the court may require the person to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the person's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

7. For the purpose of enforcement, medical support is additional support which, upon being reduced to a dollar amount, may be collected through the same remedies available for the collection and enforcement of child support.

8. The clerk of the district court in the county in which the order for support is filed and to whom support payments are made pursuant to the order may require the person obligated to pay support to submit payments by bank draft or money order if the obligor submits an insufficient funds support payment to the clerk of the district court.

[C71, 73, 75, 77, 79, 81, §598.22; 82 Acts, ch 1134, §1]

85 Acts, ch 100, §7; 85 Acts, ch 178, §8; 86 Acts, ch 1246, §319, 320; 88 Acts, ch 1218, §6 – 8; 90 Acts, ch 1123, §13; 90 Acts, ch 1224, §46, 47; 93 Acts, ch 79, §50; 97 Acts, ch 175, §194; 98 Acts, ch 1170, §11, 12; 2002 Acts, ch 1018, §18; 2005 Acts, ch 69, §46; 2012 Acts, ch 1033, §10

Referred to in §96.3, 234.39, 252B.14, 252B.15, 252D.1, 252H.3, 252H.8, 252H.9, 252H.16, 252H.22, 252I.2, 252J.2, 421.17, 598.22A, 598.34, 642.21

[T] Subsection 3 amended

598.22A Satisfaction of support payments.

Notwithstanding sections 252B.14 and 598.22, support payments ordered pursuant to any support chapter for orders entered on or after July 1, 1985, which are not made pursuant to the provisions of section 252B.14 or 598.22, shall be credited only as provided in this section.

1. For payment made pursuant to an order, the clerk of the district court or collection services center shall record a satisfaction as a credit on the official support payment record if its validity is confirmed by the court upon submission of an affidavit by the person entitled to receive the payment or upon submission of documentation of the financial instrument used in the payment of the support by the person ordered to pay support, after notice is given to all parties.

If a satisfaction recorded on the official support payment record by the clerk of the district court or collection services center prior to July 1, 1991, was not confirmed as valid by the court, and a party to the action submits a written affidavit objecting to the satisfaction, notice of the objection shall be mailed to all parties at their last known addresses. After all parties have had sufficient opportunity to respond to the objection, the court shall either require the satisfaction to be removed from the official support payment record or confirm its validity.

2. For purposes of this section, the state is a party to which notice shall be given when public funds have been expended pursuant to chapter 234, 239B, or 249A, or similar statutes in another state. If proper notice is not given to the state when required, any order of satisfaction is void.

3. The court shall not enter an order for satisfaction of payments not made through the clerk of the district court or collection services center if those payments have been assigned as a result of public funds expended pursuant to chapter 234, 239B, or 249A, or similar statutes in other states and the support payments accrued during the months in which public funds were expended. If the support order did not direct payments to a clerk of the district court or the collection services center, and the support payments in question accrued during the months in which public funds were not expended, however, the court may enter an order for satisfaction of payments not made through the clerk of the district court or the collection services center if documentation of the financial instrument used in the payment of support is presented to the court and the parties to the order submit a written affidavit confirming that the financial instrument was used as payment for support.

4. Payment of accrued support debt due the department of human services shall be credited pursuant to section 252B.3, subsection 5.

90 Acts, ch 1224, §48; 91 Acts, ch 177, §7; 93 Acts, ch 79, §51; 97 Acts, ch 41, §32; 98 Acts, ch 1170, §42; 2005 Acts, ch 112, §18

Referred to in §252B.3, 252B.14, 598.22

[SP] Certain support arrearages for which rights remain assigned to the department of public health for time periods prior to October 1, 1997, are considered satisfied up to amount of assistance received or foster care funds expended; 2009 Acts, ch 182, §8

598.22B Information required in order or judgment.

This section applies to all initial or modified orders for paternity or support entered under this chapter, chapter 234, 252A, 252C, 252F, 252H, 252K, or 600B, or under any other chapter, and any subsequent order to enforce such support orders.

1. All such orders or judgments shall direct each party to file with the clerk of court or the child support recovery unit, as appropriate, upon entry of the order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of the party's employer. The order shall also include a provision that the information filed will be disclosed and used pursuant to this section. The party shall file the information with the clerk of court, or, if all support payments are to be directed to the collection services center as provided in section 252B.14, subsection 2, and section 252B.16, with the child support recovery unit.

2. All such orders or judgments shall include a statement that in any subsequent child support action initiated by the child support recovery unit or between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the unit or the court shall deem due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the clerk of court or unit pursuant to subsection 1.

3. *a.* Information filed pursuant to subsection 1 shall not be a public record.

b. Information filed with the clerk of court pursuant to subsection 1 shall be available to the child support recovery unit, upon request. Beginning October 1, 1998, information filed with the clerk of court pursuant to subsection 1 shall be provided by the clerk of court to the child support recovery unit pursuant to section 252B.24.

c. Information filed with the clerk of court shall be available, upon request, to a party unless the party filing the information also files an affidavit alleging the party has reason to believe that release of the information may result in physical or emotional harm to the affiant or child. However, even if an affidavit has been filed, any information provided by the clerk of court to the child support recovery unit shall be disclosed by the unit as provided in section 252B.9.

d. Information provided to the unit shall only be disclosed as provided in section 252B.9.

97 Acts, ch 175, §195; 98 Acts, ch 1170, §16

Referred to in §252B.24, 252F.4

598.22C Child support — social security disability dependent benefits.

If dependent benefits are paid for a child as a result of disability benefits awarded to the child's parent under the federal Social Security Act, all of the following shall apply:

1. Unless the court otherwise provides, dependent benefits paid to the child support obligee as a result of disability benefits awarded to the child support obligor fully satisfy and substitute for the support obligations for the same period of time for which the benefits are awarded.

2. For the purposes of calculating a support obligation under section 598.21B, the dependent benefits paid for any child shall be included as income to the disabled parent.

3. *a.* Any order or judgment for support for a child for whom social security disability benefits are paid to the child support obligee as a result of disability benefits awarded to the child support obligor shall include all of the following:

(1) The dollar amount of the child support obligation as calculated by application of the guidelines under section 598.21B, and a statement that the social security dependent benefits are included as income to the obligor in that calculation.

(2) The dollar amount of the social security dependent benefits paid to the obligee which shall be dollar-for-dollar satisfaction of the obligor's child support obligation.

(3) The dollar amount, if any, the obligor shall pay after application of the social security dependent benefits as a credit to or dollar-for-dollar satisfaction of the child support obligation.

b. The amount of the child support obligation stated in the order, and the amount the obligor shall pay after application of the social security disability dependent benefit credit or satisfaction stated in the order, shall continue until modified, as provided in section 598.21C.

4. The amount of any child support obligation satisfied under this section based upon the receipt of dependent benefits paid to the child support obligee as a result of disability benefits awarded to the child support obligor shall not be considered delinquent.

2002 Acts, ch 1018, §19; 2005 Acts, ch 69, §47 – 49
Referred to in §252H.3, 252H.8, 252H.9, 252H.16, 252H.22, 598.21B, 598.22

598.22D Separate fund or conservatorship for support.

The court may protect and promote the best interests of a minor child by setting aside a portion of the child support which either party is ordered to pay in a separate fund or conservatorship for the support, education, and welfare of the child.

2005 Acts, ch 69, §50

598.23 Contempt proceedings — alternatives to jail sentence.

1. If a person against whom a temporary order or final decree has been entered willfully disobeys the order or decree, the person may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense.

2. The court may, as an alternative to punishment for contempt, make an order which, according to the subject matter of the order or decree involved, does the following:

a. Withholds income under the terms and conditions of chapter 252D.

b. Modifies visitation to compensate for lost visitation time or establishes joint custody for the child or transfers custody.

c. Directs the parties to provide contact with the child through a neutral party or neutral site or center.

d. Imposes sanctions or specific requirements or orders the parties to participate in mediation to enforce the joint custody provisions of the decree.

[C24, 27, 31, 35, 39, §**10482;** C46, 50, 54, 58, 62, 66, §598.15; C71, 73, 75, 77, 79, 81, §598.23]

84 Acts, ch 1133, §1; 85 Acts, ch 67, §56; 85 Acts, ch 178, §9; 88 Acts, ch 1218, §9; 97 Acts, ch 175, §196, 197
Referred to in §96.3, 234.39, 598.22, 598.23A, 642.21

598.23A Contempt proceedings for provisions of support payments — activity governed by a license.

1. If a person against whom an order or decree for support has been entered pursuant to this chapter or chapter 234, 252A, 252C, 252F, 600B, or any other support chapter, or a comparable chapter of a foreign jurisdiction, fails to make payments or provide medical support pursuant to that order or decree, the person may be cited and punished by the court for contempt under section 598.23 or this section. Failure to comply with a seek employment order entered pursuant to section 252B.21 is evidence of willful failure to pay support.

2. If a person is cited for contempt, the court may do any of the following:

a. Require the posting of a cash bond, within seven calendar days, in an amount equivalent to the current arrearages and an additional amount which is equivalent to at least twelve months of future support obligations. If the arrearages are not paid within three months of the hearing, the bond shall be automatically forfeited to cover payment of the full portion of the arrearages and the portion of the bond representing future support obligations shall be automatically forfeited to cover future support payments as payments become due.

b. (1) Require the performance of community service work of up to twenty hours per week for six weeks for each finding of contempt. The contemnor may, at any time during

the six-week period, apply to the court to be released from the community service work requirement under any of the following conditions:

(a) The contemnor provides proof to the court that the contemnor is gainfully employed and submits to an order for income withholding pursuant to chapter 252D or to a court-ordered wage assignment.

(b) The contemnor provides proof of payment of an amount equal to at least six months' child support. The payment does not relieve the contemnor's obligation for arrearages or future payments.

(c) The contemnor provides proof to the court that, subsequent to entry of the order, the contemnor's circumstances have so changed that the contemnor is no longer able to fulfill the terms of the community service order.

(2) The contemnor shall keep a record of and provide the following information to the court at the court's request, or to the child support recovery unit established pursuant to chapter 252B, at the unit's request, when the unit is providing enforcement services pursuant to chapter 252B:

(a) The duties performed as community service during each week that the contemnor is subject to the community service requirements.

(b) The number of hours of community service performed during each week that the contemnor is subject to the community service requirements.

(c) The name, address, and telephone number of the person supervising or arranging for the performance of the community service.

(3) The performance of community service does not relieve the contemnor of any unpaid accrued or accruing support obligation.

c. Enjoin the contemnor from engaging in the exercise of any activity governed by a license.

(1) If the court determines that an extreme hardship will result from the injunction, the court order may allow the contemnor to engage in the exercise of the activity governed by the license, subject to terms established by the court, which shall include, at a minimum, that the contemnor enter into an agreement to satisfy all obligations owing over a period of time satisfactory to the court.

(2) If the court order allows for the exercise of the activity governed by a license pending satisfaction of an obligation over time, and the contemnor fails to comply with the agreement, the contemnor shall be provided an opportunity for hearing, within ten days, to demonstrate why an order enjoining the contemnor from engaging in the exercise of any activity governed by a license should not be issued.

(3) The court order under this paragraph shall be vacated only after verification is provided to the court that the contemnor has satisfied all accrued obligations owing and that the contemnor has satisfied all terms established by the court and when the person entitled to receive support payments, or the child support recovery unit when the unit is providing enforcement services pursuant to chapter 252B, has been provided ten days' notice and an opportunity to object.

(4) As used in this paragraph, *"license"* means any license or renewal of a license, certification, or registration issued by an agency to a person to conduct a trade or business, including but not limited to a license to practice a profession or occupation or to operate a commercial motor vehicle.

92 Acts, ch 1195, §510; 93 Acts, ch 79, §27 – 29; 94 Acts, ch 1101, §9, 10
Referred to in §85.59, 252B.21, 252J.2, 669.2, 815.11

598.24 Costs if party is in default or contempt.

When an action for a modification, order to show cause, or contempt of a dissolution, annulment, or separate maintenance decree is brought on the grounds that a party to the decree is in default or contempt of the decree, and the court determines that the party is in default or contempt of the decree, the costs of the proceeding, including reasonable attorney's fees, may be taxed against that party.

[C71, 73, 75, 77, 79, 81, §598.24]

84 Acts, ch 1133, §2

598.25 Parties and court granting marriage dissolution decree — notice.

Whenever a proceeding is initiated in a court for adoption involving the children of parents or guardians whose marriage has been dissolved, or for modification of a judgment of alimony, child support, or custody granted in an action for dissolution of marriage, the following requirements must be met if such proceedings are initiated in a court other than the court which granted the dissolution decree.

1. The party initiating such proceedings must present to the court the names and addresses of the parties to the dissolution decree if known, as well as the name and place of the court which granted the dissolution decree and the date of the decree.

2. The court in which the proceedings are initiated shall cause notice of such proceedings to be served upon the parties to the original action unless either or both parties are deceased.

Such court, or either of the parties to the dissolution decree, may request that a copy of the transcript of the proceedings of the court which granted the dissolution decree be made available for consideration in the new proceedings.

[C71, 73, 75, 77, 79, 81, §598.25]

598.26 Record — impounding — violation indictable.

The record and evidence in each case of marriage dissolution shall be kept pursuant to the following provisions:

1. Until a decree of dissolution has been entered, the record and evidence shall be closed to all but the court, its officers, and the child support recovery unit of the department of human services pursuant to section 252B.9. However, the payment records of a temporary support order maintained by the clerk of the district court are public records and may be released upon request. Payment records shall not include address or location information. No other person shall permit a copy of any of the testimony, or pleading, or the substance of any testimony or pleading, to be made available to any person other than a party to the action or a party's attorney. Nothing in this subsection shall be construed to prohibit publication of the original notice as provided by the rules of civil procedure.

2. The court shall, in the absence of objection by another party, grant a motion by a party to require the sealing of an answer to an interrogatory or of a financial statement filed pursuant to section 598.13. The court may in its discretion grant a motion by a party to require the sealing of any other information which is part of the record of the case except for court orders, decrees and any judgments. If the court grants a motion to require the sealing of information in the case, the sealed information shall not thereafter be made available to any person other than a party to the action or a party's attorney except upon order of the court for good cause shown.

3. If the action is dismissed, judgment for costs shall be entered in the judgment docket and lien index. The clerk shall maintain a separate docket for dissolution of marriage actions.

4. Violation of the provisions of this section shall be a serious misdemeanor.

[C71, 73, 75, 77, 79, 81, §598.26]

91 Acts, ch 177, §8; 98 Acts, ch 1170, §13; 2012 Acts, ch 1033, §11

[T] Subsection 1 amended

598.27 Repealed by 76 Acts, ch 1228, § 10.

598.28 Separate maintenance and annulment.

A petition shall be filed in separate maintenance and annulment actions as in actions for dissolution of marriage, and all applicable provisions of this chapter in relation thereto shall apply to separate maintenance and annulment actions.

[C73, §2232; C97, §3183; C24, 27, 31, 35, 39, §**10487;** C46, 50, 54, 58, 62, 66, §598.20; C71, 73, 75, 77, 79, 81, §598.28]

598.29 Annulling illegal marriage — causes.

Marriage may be annulled for the following causes:

1. Where the marriage between the parties is prohibited by law.

2. Where either party was impotent at the time of marriage.

3. Where either party had a husband or wife living at the time of the marriage, provided they have not, with a knowledge of such fact, lived and cohabited together after the death or marriage dissolution of the former spouse of such party.

4. Where either party was a ward under a guardianship and was found by the court to lack the capacity to contract a valid marriage.

[C73, §2231; C97, §3182; C24, 27, 31, 35, 39, §**10486;** C46, 50, 54, 58, 62, 66, §598.19; C71, 73, 75, 77, 79, 81, §598.29]

91 Acts, ch 93, §3

598.30 Validity determined.

When the validity of a marriage is doubted, either party may file a petition, and the court shall decree it annulled or affirmed according to the proof.

[C73, §2233; C97, §3184; C24, 27, 31, 35, 39, §**10488;** C46, 50, 54, 58, 62, 66, §598.21; C71, 73, 75, 77, 79, 81, §598.30]

598.31 Children — legitimacy.

Children born to the parties, or to the wife, in a marriage relationship which may be terminated or annulled pursuant to the provisions of this chapter shall be legitimate as to both parties, unless the court shall decree otherwise according to the proof.

[C73, §2234, 2235; C97, §3185, 3186; C24, 27, 31, 35, 39, §**10489, 10490;** C46, 50, 54, 58, 62, 66, §598.22, 598.23; C71, 73, 75, 77, 79, 81, §598.31]

598.32 Annulment — compensation.

In case either party entered into the contract of marriage in good faith, supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the decree, and the court may decree such innocent party compensation as in case of dissolution of marriage.

[C73, §2236; C97, §3187; C24, 27, 31, 35, 39, §**10491;** C46, 50, 54, 58, 62, 66, §598.24; C71, 73, 75, 77, 79, 81, §598.32]

598.33 Order to vacate.

Notwithstanding section 561.15, the court may order either party to vacate the homestead pending entry of a decree of dissolution upon a showing that the other party or the children are in imminent danger of physical harm if the order is not issued.

[C81, §598.33]

598.34 Recipients of public assistance — assignment of support payments.

1. If public assistance is provided by the department of human services to or on behalf of a dependent child or a dependent child's caretaker, there is an assignment by operation of law to the department of any and all rights in, title to, and interest in any support obligation, payment, and arrearages owed to or for the child or caretaker not to exceed the amount of public assistance paid for or on behalf of the child or caretaker as follows:

a. For family investment program assistance, section 239B.6 shall apply.

b. For foster care services, section 234.39 shall apply.

c. For medical assistance, section 252E.11 shall apply.

2. The department shall immediately notify the clerk of court by mail when such a child or caretaker has been determined to be eligible for public assistance. Upon notification by the department, the clerk of court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of the assignment. For public assistance approved and provided on or after July 1, 1997, if the applicant for public assistance is a person other than a parent of the child, the department shall send a notice by regular mail to the last known addresses of the obligee and obligor. The clerk of court shall forward support payments received pursuant to section 598.22, to which the department is entitled, to the department, which may secure support payments in default through other proceedings.

3. The clerk shall furnish the department with copies of all orders or decrees and

temporary or domestic abuse orders addressing support when the parties are receiving public assistance or services are otherwise provided by the child support recovery unit pursuant to chapter 252B. Unless otherwise specified in the order, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order or judgment for purposes of an assignment under this section.

[C71, 73, 75, 77, 79, 81, §598.34; 82 Acts, ch 1237, §4]

83 Acts, ch 96, §157, 159; 97 Acts, ch 175, §198; 2008 Acts, ch 1019, §5, 7

598.35 Grandparent — great-grandparent — visitation rights. Repealed by 2007 Acts, ch 218, § 208. See § 600C.1.

598.36 Attorney fees in proceeding to modify order or decree.

In a proceeding for the modification of an order or decree under this chapter the court may award attorney fees to the prevailing party in an amount deemed reasonable by the court.

84 Acts, ch 1211, §1

598.37 Name change.

Either party to a marriage may request as a part of the decree of dissolution or decree of annulment a change in the person's name to either the name appearing on the person's birth certificate or to the name the person had immediately prior to the marriage. If a party requests a name change other than to the name appearing on the person's birth certificate or to the name the person had immediately prior to the marriage, the request shall be made under chapter 674.

88 Acts, ch 1142, §2

598.38 through 598.40 Reserved.

598.41 Custody of children.

1. *a.* The court may provide for joint custody of the child by the parties. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent.

b. Notwithstanding paragraph *"a"*, if the court finds that a history of domestic abuse exists, a rebuttable presumption against the awarding of joint custody exists.

c. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Just cause may include a determination by the court pursuant to subsection 3, paragraph *"j"*, that a history of domestic abuse exists between the parents.

d. If a history of domestic abuse exists as determined by a court pursuant to subsection 3, paragraph *"j"*, and if a parent who is a victim of such domestic abuse relocates or is absent from the home based upon the fear of or actual acts or threats of domestic abuse perpetrated by the other parent, the court shall not consider the relocation or absence of that parent as a factor against that parent in the awarding of custody or visitation.

e. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. *a.* On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody.

b. If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed.

c. A finding by the court that a history of domestic abuse exists, as specified in subsection 3, paragraph *"j"*, which is not rebutted, shall outweigh consideration of any other factor specified in subsection 3 in the determination of the awarding of custody under this subsection.

d. Before ruling upon the joint custody petition in these cases, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph *"j"*, or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parties to participate in custody mediation to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation insofar as the court determines the child's participation is advisable.

e. The costs of custody mediation shall be paid in full or in part by the parties and taxed as court costs.

3. In considering what custody arrangement under subsection 2 is in the best interest of the minor child, the court shall consider the following factors:

a. Whether each parent would be a suitable custodian for the child.

b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.

c. Whether the parents can communicate with each other regarding the child's needs.

d. Whether both parents have actively cared for the child before and since the separation.

e. Whether each parent can support the other parent's relationship with the child.

f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.

g. Whether one or both the parents agree or are opposed to joint custody.

h. The geographic proximity of the parents.

i. Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.

j. Whether a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to commencement of an action pursuant to section 236.3, the issuance of a protective order against the parent or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a parent in contempt pursuant to section 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

k. Whether a parent has allowed a person custody or control of, or unsupervised access to a child after knowing the person is required to register or is on the sex offender registry as a sex offender under chapter 692A.

4. Subsection 3 shall not apply when parents agree to joint custody.

5. *a.* If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent. Prior to ruling on the request for the award of joint physical care, the court may require the parents to submit, either individually or jointly, a proposed joint physical care parenting plan. A proposed joint physical care parenting plan shall address how the parents will make decisions affecting the child, how the parents will provide a home for the child, how the child's time will be divided between the parents and how each parent will facilitate the child's time with the other parent, arrangements in addition to court-ordered child support for the child's expenses, how the parents will resolve major changes or disagreements affecting the child including changes that arise due to the child's age and developmental needs, and any other issues the court may require. If the court denies the request for joint physical care, the determination shall be accompanied by specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child.

b. If joint physical care is not awarded under paragraph *"a"*, and only one joint custodial parent is awarded physical care, the parent responsible for providing physical care shall support the other parent's relationship with the child. Physical care awarded to one parent does not affect the other parent's rights and responsibilities as a joint legal custodian of the

child. Rights and responsibilities as joint legal custodian of the child include but are not limited to equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

6. If the parties have more than one minor child, and the court awards each party the physical custody of one or more of the children, upon application by either party, and if it is reasonable and in the best interest of the children, the court shall include a provision in the custody order directing the parties to allow visitation between the children in each party's custody.

7. When a parent awarded legal custody or physical care of a child cannot act as custodian or caretaker because the parent has died or has been judicially adjudged incompetent, the court shall award legal custody including physical care of the child to the surviving parent unless the court finds that such an award is not in the child's best interest.

8. If an application for modification of a decree or a petition for modification of an order is filed, based upon differences between the parents regarding the custody arrangement established under the decree or order, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph *"j"*, or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parents to participate in mediation to attempt to resolve the differences between the parents.

9. All orders relating to custody of a child are subject to chapter 598B.

[82 Acts, ch 1250, §2]

84 Acts, ch 1088, §2, 3, 4, 5; 85 Acts, ch 67, §57, 58; 86 Acts, ch 1179, §5, 6; 95 Acts, ch 182, §22 – 24; 95 Acts, ch 183, §2; 97 Acts, ch 175, §199, 200; 99 Acts, ch 115, §1; 2004 Acts, ch 1169, §1; 2005 Acts, ch 69, §51 – 53; 2006 Acts, ch 1101, §4; 2012 Acts, ch 1138, §37

Referred to in §598.7, 598.21C, 598.41A, 598.41B, 600B.40, 600B.41A

[T] Subsection 3, NEW paragraph k

598.41A Visitation — history of crimes against a minor.

Notwithstanding section 598.41, the court shall consider, in the award of visitation rights to a parent of a child, the criminal history of the parent if the parent has been convicted of a sex offense against a minor as defined in section 692A.101.

98 Acts, ch 1070, §2; 2009 Acts, ch 119, §42

598.41B Visitation — restrictions — murder of parent.

1. Notwithstanding section 598.41, the court shall not do either of the following:

a. Enforce an existing order awarding visitation rights to a child's parent, which was obtained prior to that parent's conviction for first degree murder in the murder of the child's other parent, unless such enforcement is in the best interest of the child.

b. Award visitation rights to a child's parent who has been convicted of murder in the first degree of the child's other parent, unless the court finds that such visitation is in the best interest of the child.

2. In determining whether visitation would be in the best interest of the child pursuant to subsection 1, the court shall consider all of the following:

a. The age and level of maturity of the child.

b. If the child is developmentally mature enough to provide assent and whether the child does assent.

c. The recommendation of the child's custodian or legal guardian.

d. The recommendation of a child counselor or mental health professional following evaluation of the child.

e. The recommendation of a guardian ad litem for the child if one has been appointed to represent the child in the proceeding.

f. Any other information which the court deems to be relevant.

3. Until such time as an order regarding visitation rights under subsection 1 is entered, the child of a parent who has been convicted of murder in the first degree of the child's other parent shall not visit the parent who has been convicted.

99 Acts, ch 38, §1

598.41C Modification of child custody or physical care — active duty.

1. *a.* If an application for modification of a decree or a petition for modification of an order regarding child custody or physical care is filed prior to or during the time a parent is serving active duty in the military service of the United States, the court may only enter an order or decree temporarily modifying the existing child custody or physical care order or decree if there is clear and convincing evidence that the modification is in the best interest of the child.

b. If the active duty of a parent affects the parent's ability or anticipated ability to appear at a regularly scheduled hearing, the court shall provide for an expedited hearing in matters instituted under this section.

c. If the active duty or anticipated active duty of a parent prevents the parent from appearing in person at a hearing, the court shall provide, upon reasonable advance notice, for the parent to present testimony and evidence by electronic means in matters instituted under this section. For the purposes of this paragraph, "*electronic means*" includes communication by telephone, video teleconference, or the internet.

d. Upon the parent's completion of active duty, the court shall reinstate the custody or physical care order or decree that was in effect immediately preceding the period of active duty. If an application for modification of a decree or a petition for modification of an order is filed after a parent completes active duty, the parent's absence due to active duty does not constitute a substantial change in circumstances, and the court shall not consider a parent's absence due to that active duty in making a determination regarding the best interest of the child.

2. As used in this section, "*active duty*" means active military duty pursuant to orders issued under Tit. 10 of the United States Code. However, this section shall not apply to active guard and reserve duty or similar full-time military duty performed by a parent when the child remains in actual custody of the parent.

2008 Acts, ch 1060, §1; 2010 Acts, ch 1168, §1, 3

598.41D Assignment of visitation or physical care parenting time — parent serving active duty — family member.

1. Notwithstanding any provision to the contrary, a parent who has been granted court-ordered visitation with the parent's minor child may file an application for modification of a decree or a petition for modification of an order regarding child visitation, prior to or during the time the parent is serving active duty in the military service of the United States, to temporarily assign that parent's visitation to a family member of the minor child, as specified by the parent. The application or petition shall be accompanied by an affidavit from the family member indicating the family member's knowledge of the application or petition and willingness to exercise the parent's visitation during the parent's absence. The application or petition shall also request any change in the visitation schedule necessitated by the assignment.

2. Notwithstanding any provision to the contrary, a parent who has been granted court-ordered physical care or joint physical care of the parent's minor child may file an application for modification of a decree or a petition for modification of an order regarding child custody, prior to or during the time the parent is serving active duty in the military service of the United States, to temporarily assign the parent's physical care parenting time to a family member of the minor child, as specified by the parent. The application or petition shall be accompanied by an affidavit from the family member indicating the family member's knowledge of the application or petition and willingness to exercise the parent's physical care parenting time during the parent's absence. The application or petition shall also request any change in the physical care parenting time schedule necessitated by the assignment.

3. *a.* If the active duty of a parent affects the parent's ability or anticipated ability to appear at a regularly scheduled hearing, the court shall provide for an expedited hearing in matters instituted under this section.

b. If the active duty or anticipated active duty of a parent prevents the parent from appearing in person at a hearing, the court shall provide, upon reasonable advance notice, for the parent to present testimony and evidence by electronic means in matters instituted

under this section. For the purposes of this paragraph, *"electronic means"* includes communication by telephone, video teleconference, or the internet.

4. *a.* The court may grant the parent's request for temporary assignment of visitation or physical care parenting time and any change in the visitation or physical care parenting time schedule requested if the court finds that such assignment of visitation or physical care parenting time is in the best interest of the child.

b. In determining the best interest of the child, the court shall ensure all of the following:

(1) That the specified family member is not a sex offender as defined in section 692A.101.

(2) That the specified family member does not have a history of domestic abuse, as defined in section 236.2. In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to commencement of an action pursuant to section 236.3, the issuance of a protective order against the individual or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of an individual in contempt pursuant to section 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of an individual following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

(3) That the specified family member does not have a record of founded child or dependent adult abuse.

(4) That the specified family member has an established relationship with the child and assigning visitation or physical care parenting time to the specified family member will provide the child the opportunity to maintain an ongoing family relationship that is important to the child.

(5) That the specified family member demonstrates an ability to personally and financially support the child and will support the child's relationship with both of the child's parents during the assigned visitation or physical care parenting time.

5. An order granting assignment of visitation or physical care parenting time under this section does not create separate rights to visitation or physical care parenting time for a person other than the parent. An order granting assignment of visitation or physical care parenting time under this section does not grant any custodial or parental rights to any person who is not the parent of the child.

6. An order granted under this section may temporarily assign visitation or physical care parenting time that is equal to or less than the visitation or physical care parenting time awarded to the parent whose visitation or physical care parenting time is assigned.

7. The parent whose visitation or physical care parenting time is temporarily assigned shall provide a copy of the order granting assignment of visitation or physical care parenting time to the school and school district of the child to whom the order applies.

8. An order granting temporary assignment of visitation or physical care parenting time pursuant to this section shall terminate upon notification of the court by the parent or automatically upon the parent's completion of active duty, whichever occurs first.

9. After a parent completes active duty, if an application for modification of a decree or a petition for modification of an order is filed, the parent's absence due to active duty or the assignment of visitation or physical care parenting time does not constitute a substantial change in circumstances, and the court shall not consider a parent's absence due to that active duty or the assignment of visitation or physical care parenting time in making a determination regarding the best interest of the child relative to such an application or petition filed after a parent completes active duty.

10. As used in this section, *"active duty"* means active military duty pursuant to orders issued under Tit. 10 of the United States Code. However, this section shall not apply to active guard and reserve duty or similar full-time military duty performed by a parent when the child remains in actual custody of the parent.

11. As used in this section, *"parenting time"* means actual time spent with the child as specified in a decree or order, but does not include any other element of legal custody, physical care, or joint physical care.

2010 Acts, ch 1168, §2, 3; 2011 Acts, ch 42, §1, 2

598.42 Notice of certain orders by clerk of court.

The clerk of the district court shall provide notice and copies of temporary or permanent protective orders and orders to vacate the homestead entered pursuant to this chapter to the applicable law enforcement agencies and the twenty-four hour dispatcher for the law enforcement agencies, in the manner provided for protective orders under section 236.5. The clerk shall provide notice and copies of modifications or vacations of these orders in the same manner.

91 Acts, ch 218, §20; 92 Acts, ch 1163, §107