CHAPTER 14-09
PARENT AND CHILD

14-09-00.1. Definitions.

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

1. "Decisionmaking responsibility" means the responsibility to make decisions concerning the child. The term may refer to decisions on all issues or on specified issues, but not child support issues.
2. "Harm" means negative changes in a child's health which occur when an individual responsible for the child's welfare:
   a. Inflicts, or allows to be inflicted, upon the child, physical or mental injury, including injuries sustained as a result of excessive corporal punishment; or
   b. Commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20.
3. "Parental rights and responsibilities" means all rights and responsibilities a parent has concerning the parent's child.
4. "Parenting plan" means a written plan describing each parent's rights and responsibilities.
5. "Parenting schedule" means the schedule of when the child is in the care of each parent.
6. "Parenting time" means the time when the child is to be in the care of a parent.
7. "Primary residential responsibility" means a parent with more than fifty percent of the residential responsibility.
8. "Residential responsibility" means a parent's responsibility to provide a home for the child.

14-09-01. Legitimacy of children born in wedlock.

Repealed by S.L. 2005, ch. 135, § 11.

14-09-02. Children born after dissolution of marriage or before wedlock - Legitimacy.

Repealed by S.L. 2005, ch. 135, § 11.

14-09-03. Who may dispute presumption of legitimacy.

Repealed by S.L. 2005, ch. 135, § 11.

14-09-04. Custody of legitimate child.

Repealed by S.L. 2009, ch. 149, § 12.

14-09-05. Custody of illegitimate child.

Repealed by S.L. 2009, ch. 149, § 12.

14-09-05.1. Grandparental rights of visitation to unmarried minor child - Mediation or arbitration.

Repealed by S.L. 2019, ch. 131, § 2.

14-09-06. Priority of custody of father and mother.

Repealed by S.L. 2009, ch. 149, § 12.

14-09-06.1. Awarding custody - Best interests and welfare of child.

Repealed by S.L. 2009, ch. 149, § 12.

14-09-06.2. Best interests and welfare of child - Court consideration - Factors.

1. For the purpose of parental rights and responsibilities, the best interests and welfare of the child is determined by the court's consideration and evaluation of all factors

affecting the best interests and welfare of the child. These factors include all of the following when applicable:

a. The love, affection, and other emotional ties existing between the parents and child and the ability of each parent to provide the child with nurture, love, affection, and guidance.
b. The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
c. The child's developmental needs and the ability of each parent to meet those needs, both in the present and in the future.
d. The sufficiency and stability of each parent's home environment, the impact of extended family, the length of time the child has lived in each parent's home, and the desirability of maintaining continuity in the child's home and community.
e. The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.
f. The moral fitness of the parents, as that fitness impacts the child.
g. The mental and physical health of the parents, as that health impacts the child.
h. The home, school, and community records of the child and the potential effect of any change.
i. If the court finds by clear and convincing evidence that a child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature child. The court also shall give due consideration to other factors that may have affected the child's preference, including whether the child's preference was based on undesirable or improper influences.
j. Evidence of domestic violence. In determining parental rights and responsibilities, the court shall consider evidence of domestic violence. If the court finds credible evidence that domestic violence has occurred, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, this combination creates a rebuttable presumption that a parent who has perpetrated domestic violence may not be awarded residential responsibility for the child. This presumption may be overcome only by clear and convincing evidence that the best interests of the child require that parent have residential responsibility. The court shall cite specific findings of fact to show that the residential responsibility best protects the child and the parent or other family or household member who is the victim of domestic violence. If necessary to protect the welfare of the child, residential responsibility for a child may be awarded to a suitable third person, provided that the person would not allow access to a violent parent except as ordered by the court. If the court awards residential responsibility to a third person, the court shall give priority to the child's nearest suitable adult relative. The fact that the abused parent suffers from the effects of the abuse may not be grounds for denying that parent residential responsibility. As used in this subdivision, "domestic violence" means domestic violence as defined in section 14-07.1-01. A court may consider, but is not bound by, a finding of domestic violence in another proceeding under chapter 14-07.1.
k. The interaction and inter-relationship, or the potential for interaction and inter-relationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.
l. The making of false allegations not made in good faith, by one parent against the other, of harm to a child.
m. Any other factors considered by the court to be relevant to a particular parental rights and responsibilities dispute.

2. In a proceeding for parental rights and responsibilities of a child of a service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interests of the child but may consider any significant impact on the best interests of the child of the parent's past or possible future deployment.
3. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

14-09-06.3. Parenting investigations and reports - Costs.

1. In contested proceedings dealing with parental rights and responsibilities the court, upon the request of either party, or, upon its own motion, may appoint a parenting investigator and order an investigation and report concerning parenting rights and responsibilities regarding the child. The supreme court shall adopt rules establishing the minimum qualifications of a parenting investigator and maintain and make available to the public a roster of individuals eligible to serve as a parenting investigator. The roster must include each individual's name, address, and telephone number. The parenting investigator appointed must be on the public roster of those eligible to serve as a parenting investigator.
2. The investigator may consult any person who may have information about the child and any potential arrangements for parenting rights and responsibilities, and upon order of the court may refer the child to any professional personnel for diagnosis.
3. The parenting investigator shall file the investigator's report with the court and serve the report on counsel and any party not represented by counsel at least thirty days before the hearing. The investigator shall make available to any such counsel or party the complete file of data and reports underlying the investigator's report and the names and addresses of all persons whom the investigator has consulted. A party may call the investigator and any person whom the investigator has consulted for cross-examination at the hearing. A party may not waive the party's right of cross-examination before the hearing.
4. If the parties are indigent, the court shall enter an order stating the expenses of any such investigation must be borne by the county where the child resided at the time the action was commenced or if a modification of parental rights and responsibilities, at the time the motion to modify is served.
5. Following the decision by the court regarding parenting rights and responsibilities, the parenting investigator must be discharged of the investigator's duties as investigator.
6. A parenting investigator appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the parenting investigator is a disputable presumption.

14-09-06.4. Appointment of attorney guardian ad litem for child in proceedings involving parental rights and responsibilities - Immunity.

1. In any action for an annulment, divorce, legal separation, or other action affecting marriage, when either party has reason for special concern as to the future of the minor child, and in any action when the parenting rights and responsibilities concerning the child is contested, the court, upon motion of the court or by motion or agreement of the parties, may appoint an attorney guardian ad litem to represent the child concerning parenting rights and responsibilities.
2. If appointed, an attorney guardian ad litem shall serve as an advocate of the child's best interests.
3. The court may direct either or both parties to pay the attorney guardian ad litem fee established by the court. If neither party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the county where the child resided at the time the

action was commenced. The court may direct either or both parties to reimburse the county, in whole or in part, for such payment.

4. An attorney guardian ad litem appointed under this section who acts in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the attorney guardian ad litem is a disputable presumption.

14-09-06.5. Allegation of harm to child - Effect.

If the court finds that an allegation of harm to a child by one parent against the other is false and not made in good faith, the court shall order the parent making the false allegation to pay court costs and reasonable attorney's fees incurred by the other parent in responding to the allegation.

14-09-06.6. Limitations on postjudgment modifications of primary residential responsibility.

1. Unless agreed to in writing by the parties, or if included in the parenting plan, no motion for an order to modify primary residential responsibility may be made earlier than two years after the date of entry of an order establishing primary residential responsibility, except in accordance with subsection 3.
2. Unless agreed to in writing by the parties, or if included in the parenting plan, if a motion for modification has been disposed of upon its merits, no subsequent motion may be filed within two years of disposition of the prior motion, except in accordance with subsection 5.
3. The time limitation in subsections 1 and 2 does not apply if the court finds:
   a. The persistent and willful denial or interference with parenting time;
   b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
   c. The primary residential responsibility for the child has changed to the other parent for longer than six months.
4. A party seeking modification of an order concerning primary residential responsibility shall serve and file moving papers and supporting affidavits and shall give notice to the other party to the proceeding who may serve and file a response and opposing affidavits. The court shall consider the motion on briefs and without oral argument or evidentiary hearing and shall deny the motion unless the court finds the moving party has established a prima facie case justifying a modification. The court shall set a date for an evidentiary hearing only if a prima facie case is established.
5. The court may not modify the primary residential responsibility within the two-year period following the date of entry of an order establishing primary residential responsibility unless the court finds the modification is necessary to serve the best interests of the child and:
   a. The persistent and willful denial or interference with parenting time;
   b. The child's present environment may endanger the child's physical or emotional health or impair the child's emotional development; or
   c. The residential responsibility for the child has changed to the other parent for longer than six months.
6. The court may modify the primary residential responsibility after the two-year period following the date of entry of an order establishing primary residential responsibility if the court finds:
   a. On the basis of facts that have arisen since the prior order or which were unknown to the court at the time of the prior order, a material change has occurred in the circumstances of the child or the parties; and
   b. The modification is necessary to serve the best interests of the child.
7. The court may modify a prior order concerning primary residential responsibility at any time if the court finds a stipulated agreement by the parties to modify the order is in the best interests of the child.

8. Upon a motion to modify primary residential responsibility under this section, the burden of proof is on the moving party.

14-09-07. Residence of child.

1. A parent with primary residential responsibility for a child may not change the primary residence of the child to another state except upon order of the court or with the consent of the other parent, if the other parent has been given parenting time by the decree.
2. A parent with equal residential responsibility for a child may not change the residence of the child to another state except with consent of the other parent or order of the court allowing the move and awarding that parent primary residential responsibility.
3. A court order is not required if the other parent:
   a. Has not exercised parenting time for a period of one year; or
   b. Has moved to another state and is more than fifty miles [80.47 kilometers] from the residence of the parent with primary residential responsibility.

14-09-08. Mutual duty to support children.

Parents shall give their children support and education suitable to the child's circumstances. The court may compel either or both of the parents to provide for the support of their children.

14-09-08.1. Support payments - Payment to state disbursement unit - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the state disbursement unit for remittance to the obligee.
2. a. Each party subject to the order shall immediately inform the state disbursement unit of the party's:
      (1) Social security number;
      (2) Residential and mailing addresses and any change of address;
      (3) Telephone number;
      (4) Motor vehicle operator's license number;
      (5) Employer's name, address, and telephone number;
      (6) Electronic mail address; and
      (7) Change of any other condition which may affect the proper administration of this chapter.
   b. Each order for payment of child support must notify each party of the requirements in subdivision a and require the party to provide the information within ten days from the date of the order or ten days after any change in the information.
   c. In any subsequent child support enforcement or modification action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the court shall deem due process requirements for notice and service to have been met, with respect to the noticed party, by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
   d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
3. Whenever there is failure to make the payments as required, the clerk of court, upon request of the obligee or any employee of the child support agency, shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district to issue a citation for contempt of court against the person who has failed to make the payments. The citation may be served on that person by first-class mail with affidavit of service to the person's last-known address.

4. The court of its own motion or on motion of the child support agency or the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, this section applies as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a support order under this section.

14-09-08.2. Support for children after majority - Retroactive application.

1. A judgment or order requiring the payment of child support until the child attains majority continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
   a. The child is enrolled and attending high school and is eighteen years of age before the date the child is expected to be graduated; and
   b. The child resides with the person to whom the duty of support is owed.
2. A judgment or order may require payment of child support after majority under substantially the circumstances described in subsection 1.
3. The person to whom the duty of support is owed under either subsection 1 or 2 may file a declaration with the child support agency stating that the requirements of subsection 1 are met, the school in which the child is enrolled, and the anticipated date of the child's graduation. Upon filing of the declaration, the child support resumes pursuant to subsection 1 or pursuant to the terms of a judgment or order described in subsection 2. A fee may not be charged for filing the declaration.
4. The child support agency shall serve the declaration by first-class mail upon the person owing the duty of support. If at any time thereafter the person owing the duty of support files a motion with the court, supported by that person's declaration that the child is no longer enrolled in or attending high school or is no longer residing with the person to whom the duty of support is owed, the court shall determine if the child is enrolled in and attending high school and residing with the person to whom the duty of support is owed and shall enter an order accordingly. The duty of support terminates by operation of law if the person to whom the duty is owed files a declaration with the child support agency confirming the requirements of subsection 1 are no longer met.
5. This section applies to child support orders concerning children described in subsection 1 or 2, regardless of the date of entry of the order.
6. This section does not preclude the entry of an order for child support which continues after the child reaches age eighteen, if the parties agree, or if the court determines the support to be appropriate.
7. For purposes of this section:
   a. A child is treated as being in school during summer vacation if the child was enrolled in and attending school and did not graduate from high school at the end of the school period immediately preceding the summer vacation; and
   b. A child is not considered to have graduated, even if all required coursework and examinations have been completed, until the ceremony is held by the school to commemorate the child's graduation. For good cause shown by the individual owing the duty of support, the court may determine the child graduated upon completion of all required coursework and examinations if the time between completion of coursework and examinations and the ceremony exceeds ninety days.

14-09-08.3. Duration of child support obligations.

Unless dates for the commencement or termination of a child support obligation are specified by the court's order, a judgment or order requiring the payment of child support is effective as to the child in the month in which the order is signed and continues until the end of the month in which the support obligation terminates.

14-09-08.4. Periodic review of child support orders.

1. Each child support order being enforced by the child support agency must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:
   a. In the case of an order with respect to which there is in effect an assignment under chapter 50-09, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review;
   b. In the case of any other order neither the obligor nor the obligee has requested review; or
   c. In the case of a review requested by the obligor, the obligor failed to provide information required under subsection 1 of section 14-09-08.6 with the request for review.
2. Each child support order, in which there is in effect an assignment under chapter 50-09 or with respect to which either the obligor or the obligee has requested review, must be reviewed by the child support agency if:
   a. More than twelve months have passed since the establishment of the order or the most recent amendment or review of that order by the court or child support agency, whichever is later; and
   b. The order provides for no child support and was based on a finding that the obligor has no ability to pay child support.
3. If, upon review, the child support agency determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required by those guidelines, the child support agency shall seek an amendment of the order.
4. If a child support obligation sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the court shall order the amendment of the child support obligation to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support obligation, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the obligation sought to be amended, the party seeking amendment must also show a material change of circumstances.
5. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection 16 or 18 of section 50-06-05.1 or chapter 50-09 or 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances.

14-09-08.5. Notice of review of child support orders.

1. The child support agency shall provide written notice, including notice through electronic means, to the obligee and the obligor that a review under section 14-09-08.4 is commencing.
2. Unless sufficient information was previously provided by the obligor with a request for review, the notice to the obligor must inform the obligor of the duty to furnish the information required by section 14-09-08.6 and that a failure to furnish the required information may result in the entry of an order compelling the furnishing of the

information. The notice must be accompanied by an income report form, together with instructions for the accurate completion of the income report form.

14-09-08.6. Obligor's duties upon review.

Unless sufficient information was previously provided by the obligor with a request for review, the obligor shall provide information to the child support agency concerning the obligor's income, which is sufficient to accomplish the review, by the date required by the child support agency. The information must be furnished by providing:

1. An income report, in the form and manner required by the child support agency, accurately completed and attested to by the obligor;
2. Earnings statements secured from the obligor's current income payer if the obligor changed employment after the end of the latest income tax year for which the obligor filed a return; and
3. A verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review.

14-09-08.7. Notice of review determination.

1. Following review, the child support agency shall promptly provide notice of its review determination.
2. If the child support agency has made a determination not to seek an amendment to the amount of child support, the notice must inform the obligor and the obligee of the right of each to challenge that determination by seeking an amendment to the amount of child support, from the court, at any time before the termination of the support order.
3. If the child support agency has made a determination to seek an amendment to the amount of child support, the notice must inform the obligor and the obligee of the opportunity of each to consent to the proposed amendment and the right of each to challenge that determination by opposing that amendment before the court.

14-09-08.8. Motion for amendment of child support order - How made - Presumption when obligor's income unknown.

Repealed by S.L. 2015, ch. 126, § 14.

14-09-08.9. Request for review - Notice of right to request review.

An obligor or an obligee may request review under section 14-09-08.4, by applying to the child support agency for child support services, and indicating, in the manner there provided, a desire to have a child support order reviewed. Each judgment or order issued by a court in this state which includes an order for child support must include a statement advising of the right to request a review under this section. If a party to a child support matter is receiving services from the child support agency and an order for current child support has issued out of that matter, the child support agency shall provide notice of the right to request a review or further review of that child support order, to the obligor and obligee, not more than three years after the most recent child support order, review of that child support order, or notice of right to request a review of that child support order.

14-09-08.10. Order. (Contingent effective date - See note)

Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for health insurance coverage for that child.

1. Except as provided in subsection 2, the order must require the obligor to provide satisfactory health insurance coverage whenever that coverage is available at reasonable cost or becomes available at reasonable cost.

2. If the obligee is an individual with physical custody of the child, the obligee must be required to provide satisfactory health insurance whenever that coverage is available at no or nominal cost.

Order. (Contingent effective date - See note) Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for the child's health insurance coverage or other medical support. Responsibility for the child's health insurance coverage or other medical support must be established according to rules adopted by the child support agency. To the extent permitted by federal law and rules promulgated by the secretary of the United States department of health and human services, the rules adopted under this section must include a reasonable cost standard which considers the income of the obligated parent and the cost of health insurance coverage.

14-09-08.11. Eligible child - Employer to permit enrollment - Employer duties and liabilities - Obligor contest. (Contingent effective date - See note)

1. When an obligor is required to cover a child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor. If health insurance coverage required under section 14-09-08.10 is available through an employer, the employer must:
   a. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions;
   b. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee;
   c. Upon receipt of the national medical support notice issued under section 14-09-08.20:
      (1) Comply with the provisions of the national medical support notice; and
      (2) Transfer the national medical support notice to the insurer that provides any such health insurance coverage for which the child is eligible, within twenty business days after the date of the national medical support notice;
   d. Not disenroll or eliminate coverage for any child unless the employer has eliminated family health coverage for all of its employees or the employer is provided satisfactory written evidence that:
      (1) The order issued under section 14-09-08.10 is no longer in effect; or
      (2) The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment;
   e. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the insurer;
   f. If the amount required to be withheld under subdivision e, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income;
   g. In the case of an obligor contest under subsection 2, initiate and continue withholding until the employer receives notice that the contest is resolved; and
   h. Promptly notify the child support agency, in the same manner as required under subsection 9 of section 14-09-09.16, whenever the obligor's employment is terminated.
2. The obligor may contest the withholding provided for in subdivision e of subsection 1 by filing a request for a hearing within ten days of the date of the national medical support notice issued under section 14-09-08.20. If the obligor contests that withholding, the court shall confirm the withholding in the absence of a finding:
   a. Of a mistake of fact; or
   b. The obligee is required to provide health insurance coverage pursuant to section 14-09-08.10.
3. The withholding provided in subdivision e of subsection 1 has priority over any other legal process against the same income except that withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the

insurer. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the employer must promptly inform the child support agency of the insufficiency.

4. An employer receiving a national medical support notice under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.
5. For purposes of this section:
   a. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization; and
   b. "Insurer" has the meaning provided in section 26.1-36.5-01.

Eligible child - Employer to permit enrollment - Employer duties and liabilities - Obligor contest. (Contingent effective date - See note)

1. When an obligor is required to cover a child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor. If health insurance coverage required under section 14-09-08.10 is available through an employer, the employer must:
   a. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions;
   b. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee;
   c. Upon receipt of the national medical support notice issued under section 14-09-08.20:
      (1) Comply with the provisions of the national medical support notice; and
      (2) Transfer the national medical support notice to the insurer that provides any such health insurance coverage for which the child is eligible, within twenty business days after the date of the national medical support notice;
   d. Not disenroll or eliminate coverage for any child unless the employer has eliminated family health coverage for all of its employees or the employer is provided satisfactory written evidence that:
      (1) The order issued under section 14-09-08.10 is no longer in effect; or
      (2) The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment;
   e. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the insurer;
   f. If the amount required to be withheld under subdivision e, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income;
   g. In the case of an obligor contest under subsection 2, initiate and continue withholding until the employer receives notice that the contest is resolved; and
   h. Promptly notify the child support agency, in the same manner as required under subsection 9 of section 14-09-09.16, whenever the obligor's employment is terminated.
2. The obligor may contest the withholding provided for in subdivision e of subsection 1 by filing a request for a hearing within ten days of the date of the national medical support notice issued under section 14-09-08.20. If the obligor contests that withholding, the court shall confirm the withholding in the absence of a finding:
   a. Of a mistake of fact; or
   b. The obligee is required to provide health insurance coverage pursuant to section 14-09-08.10.
3. Unless otherwise provided by the child support agency in compliance with rules promulgated by the secretary of the United States department of health and human

services, the withholding provided in subdivision e of subsection 1 has priority over any other legal process against the same income, except that withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the insurer. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the employer must promptly inform the child support agency of the insufficiency.

4. An employer receiving a national medical support notice under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.
5. For purposes of this section:
   a. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization; and
   b. "Insurer" has the meaning provided in section 26.1-36.5-01.

14-09-08.12. Authorization to insurer.

The signature of the custodial parent of the insured dependent, the obligee, or the obligee's assignee is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services, for the release of information concerning the insured dependent or coverage available to the insured dependent, and otherwise for purposes of verifying coverage and payment for the insured dependent, in the same manner and to the same extent as the signature of the insured.

14-09-08.13. Application for service.

The child support agency shall take the appropriate steps to implement, modify, and enforce an order for dependent health insurance or other medical support whenever the children receive benefits through temporary assistance for needy families or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or whenever application is made and accepted for services provided by the child support agency.

14-09-08.14. Child support agency to establish criteria.

The child support agency shall establish criteria to identify cases involving children who received benefits through temporary assistance for needy families or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or when an application to the child support agency has been completed by an obligee and when there is a high potential for obtaining medical support based on:

1. Evidence that health insurance may be available to the obligor at reasonable cost; and
2. Facts that are sufficient to warrant modification of the existing court order to include health insurance coverage for a dependent child.

14-09-08.15. Reasonable cost of health insurance. (Contingent repeal - See note)

For purposes of this chapter, health insurance is considered reasonable in cost if it is available to the obligor on a group basis or through an employer or union, regardless of service delivery mechanism, or as otherwise defined by the child support agency in compliance with rules promulgated by the secretary of the United States department of health and human services.

Reasonable cost of health insurance. (Contingent effective date - See note) For purposes of this chapter, health insurance is considered reasonable in cost if it is available to the obligor on a group basis or through an employer or union, regardless of service delivery mechanism, or as otherwise defined by the child support agency in compliance with rules promulgated by the secretary of the United States department of health and human services. The definition of reasonable cost established by the child support agency under this section

must consider the scope of covered services, the cost of coverage, and the amount of any copayments or deductibles.

14-09-08.16. Requests for information from income payer.

1. The child support agency may mail a request for information to the income payer in any matter in which it secures reliable information that the income payer may be indebted to an obligor. The request must identify the obligor by name, and, if known, address and social security number.
2. Within ten days after receipt of a request for information issued under subsection 1, an income payer shall provide the requester with a written statement informing the requester whether or not the income payer is, or within the one hundred eighty days immediately preceding receipt of the request has been, an income payer with respect to that obligor. If the income payer is, or within the previous one hundred eighty days has been, an income payer with respect to that obligor, the income payer shall furnish information to the requester, including:
   a. The amount of any income currently paid to the obligor, calculated on a monthly basis;
   b. The total amount of income paid to the obligor in the twelve months preceding the month in which the request is received;
   c. Information regarding any health insurance that may be made available to the obligor's children through the income payer;
   d. The social security number under which payment of any income by the income payer to the obligor is reported;
   e. The obligor's address; and
   f. If the income payer is no longer an income payer with respect to that obligor, the date of last payment and any forwarding address.
3. Any income payer failing to comply with any requirements of this section may be punished for contempt of court. The court shall first afford such income payer a reasonable opportunity to purge itself of contempt.
4. A proceeding against an income payer under this section may be commenced upon motion by the child support agency and must be commenced within ninety days after the income payer's act or failure to act upon which such proceeding is based.

14-09-08.17. Delinquent obligor may not renounce claims.

An obligor whose child support obligation is delinquent may not renounce, waive, assign, transfer, or disclaim any interest that obligor might otherwise claim in a decedent's estate, a trust, or a similar device, to the extent necessary to satisfy the delinquency. Any attempt to renounce, waive, assign, transfer, or disclaim such an interest is void if attempted after notice of the delinquency is furnished to the person administering the estate, trust, or similar device, and is otherwise voidable.

14-09-08.18. Health insurance reimbursements received by but not owed to obligor to be paid over - Finding of contempt - Treatment as delinquent child support.

1. A payment for services rendered by a medical provider to an obligor's dependent which is directed to the obligor in the form of reimbursements from health insurance must be paid to the medical provider, custodial parent, or child support agency when the reimbursement is not owed to the obligor.
2. Any child support order that requires an obligor to provide health insurance is deemed to include the requirements of this section. An obligor retaining insurance reimbursement not owed to the obligor may be found in contempt of a child support order that requires the obligor to provide health insurance.
3. Any insurance reimbursement received by the obligor, but not owed to the obligor, may be treated as delinquent child support thirty days after receipt by the obligor if not sooner paid to the medical provider, custodial parent, or child support agency, as their

interests may appear, and is subject to all remedies available under this code for the collection of delinquent child support.

14-09-08.19. Child support order - Required interest statement.

Each judgment or order requiring the payment of child support must include a statement that the child support obligation will accrue interest if not timely paid. Accrual of interest and validity of the order are not affected by a failure to include the statement required by this section.

14-09-08.20. National medical support notice - Child support agency duties.

1. When an obligor is required to provide health insurance coverage for a child as a beneficiary under section 14-09-08.10, the order is being enforced under title IV-D, and the obligor's employer has been identified, the child support agency shall use the national medical support notice, when appropriate, to enforce the provision of health insurance coverage for the child. The child support agency shall:
   a. Serve the national medical support notice on the employer by first-class mail or in any other manner agreed to by the employer:
      (1) Within two business days after the date of entry in the state directory of new hires of an employee who is an obligor of an order being enforced under title IV-D if the employer was identified based upon that entry; or otherwise
      (2) Within a reasonable time;
   b. Serve notice of the national medical support notice on the obligor by first-class mail at the obligor's last-known address;
   c. If the insurer notified the child support agency of more than one available health insurance coverage option, select:
      (1) The option chosen by the state Medicaid agency if an assignment under chapter 50-24.1 is in effect for the child;
      (2) The option timely chosen by the obligee if paragraph 1 does not apply;
      (3) The option that provides basic coverage, that is reasonably accessible to the child, and for which the obligor's share of the premium is lowest if paragraphs 1 and 2 do not apply; or
      (4) The option that is reasonably accessible to the child and for which the obligor's share of the premium is lowest if paragraphs 1, 2, and 3 do not apply; and
   d. Promptly notify the employer when a current order for medical support for which the child support agency is responsible is no longer in effect.
2. If the child support agency does not select an option under subdivision c of subsection 1 within twenty business days, the insurer shall enroll the child, and the obligor if necessary, in the insurer's default plan, if any.
3. The child support agency, the state Medicaid agency, and any official, employee, or agent of either agency are immune from any liability arising out of the selection of, or failure to select, an option under subdivision c of subsection 1.
4. For purposes of this section:
   a. "Basic coverage" means health insurance that includes coverage for the following medically necessary services: preventive care, emergency care, inpatient and outpatient hospital care, physician services whether provided within or outside a hospital setting, diagnostic laboratory, and diagnostic and therapeutic radiological services;
   b. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization;
   c. "Insurer" has the meaning provided in section 26.1-36.5-01;
   d. "National medical support notice" means the notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 [Pub. L. 105-200; 112 Stat. 645] and regulations adopted thereunder; and

e. "Title IV-D" has the meaning provided in section 50-09-01.

14-09-08.21. Termination of parental rights - Duty of support.

Notice of a proposed termination or relinquishment of parental rights must be given to the department of health and human services in the manner appropriate for the service of process in a civil action in this state. A termination of parental rights terminates a monthly support obligation but does not relieve a parent of the duty to pay any unpaid child support.

14-09-08.22. Enforcement of health insurance coverage from an obligee.

When an obligee is required to provide health insurance coverage for a child as a beneficiary under section 14-09-08.10, the order is being enforced under title IV-D, and the obligee's employer has been identified, the child support agency may use the national medical support notice to enforce the provision of health insurance coverage for the child. When the national medical support notice is used under this section, sections 14-09-08.11, 14-09-08.20, and 26.1-36.5-03 apply unless the context indicates otherwise.

14-09-09. Liability of stepparent for support.

A stepparent is not bound to maintain the spouse's dependent children, as defined in section 50-09-01, unless the child is received into the stepparent's family. If the stepparent receives them into the family, the stepparent is liable, to the extent of the stepparent's ability, to support them during the marriage and so long thereafter as they remain in the stepparent's family. Such liability may be enforced against the stepparent by any person furnishing necessaries to such children. If an order issued under section 14-09-08.10 requires an obligee to provide health insurance coverage, any coverage that is available to the stepparent for the obligee's dependent children is considered to be available to the obligee and is enforceable against the stepparent by a child support agency. If the children are received into the stepparent's family and supported by the stepparent, it is presumed that the stepparent does so as a parent, in which case the children are not liable to the stepparent for their support, nor the stepparent to them for their services. The legal obligation of a natural or adoptive parent to support that person's children is not affected by the liability imposed upon their stepparent by this section.

14-09-09.1. Child support - Wage assignment - Procedures.

Repealed by S.L. 1987, ch. 183, § 16.

14-09-09.2. Child support - Alternative procedure to withhold and transmit earnings.

Repealed by S.L. 1987, ch. 183, § 16.

14-09-09.3. Child support - Duties and liabilities of income payer under income withholding order.

1. Any failure of an income payer to comply with this section or section 14-09-09.16 may be sanctioned as a contempt of court. The court shall first afford such income payer a reasonable opportunity to purge itself of the contempt.
2. Any income payer who fails or refuses to withhold or deliver income pursuant to an income withholding order, when such income payer has had in its possession such income, is personally liable for the amount of such income which the income payer failed or refused to withhold or deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to withhold or deliver income for more than fourteen business days after the date an obligor is paid, the court shall award damages in an amount equal to two hundred dollars or actual damages caused by the violation, whichever is greater, in addition to the amount of income that should have been withheld or delivered, costs, interest, late fees, and reasonable attorney's fees. Any damages awarded under this subsection must be allocated by the court between each affected obligor and obligee, or made payable on behalf of an obligor to

the state disbursement unit for distribution under section 14-09-25. Each remedy authorized in this subsection is a remedial sanction as defined in section 27-10-01.1.

3. Any employer who refuses to employ, dismisses, demotes, disciplines, or in any way penalizes an obligor on account of any proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, on account of the employer's compliance with such order or orders, or on account of an income withholding order, is liable to the obligor for all damages, together with costs, interest thereon, and reasonable attorney's fees resulting from the employer's action. The employer may be required to make full restitution to the aggrieved obligor, including reinstatements and backpay.
4. An income payer may be enjoined by a court of competent jurisdiction from continuing any action in violation of section 14-09-09.16.
5. Any contempt proceeding against an income payer under this section must be commenced within one year after the income payer's act or failure to act upon which such proceeding is based.
6. Compliance by an income payer with an income withholding order operates as a discharge of the income payer's liability to the obligor as to that portion of the obligor's income so affected.
7. In considering an income withholding order issued by a court or administrative tribunal in a state other than the state of the obligor's principal place of employment, the income payer shall apply the law of the state of the obligor's principal place of employment in determining any withholding terms and conditions not specified in the income withholding order or in section 14-12.2-33.1.
8. An employer who complies with an income withholding order that is regular on its face is not subject to civil liability to any individual or agency for conduct in compliance with the order.
9. An income payer who fails to withhold or deliver income for more than seven business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five dollars per obligor for each additional business day the payment is delinquent or seventy-five dollars for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be sanctioned as a contempt of court. Any late fee assessed by the child support agency under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to withhold or deliver income for more than one obligor, any late fees collected under this section must be divided equally among all affected obligors.
10. If an income payer makes an error in the remittal information the income payer provides to the state disbursement unit, the income payer has not complied with this section and is responsible for the error, but has a cause of action for reimbursement against any person that receives funds from the disbursement unit as a result of the error and refuses to return the funds upon request.

14-09-09.4. Child support - Order for wage assignment or to withhold and transmit earnings - Dissolution, revocation or modification.

Repealed by S.L. 1987, ch. 183, § 16.

14-09-09.5. Child support - Judgment or order as lien on property - Duration - Effect.

Repealed by S.L. 1981, ch. 172, § 1.

14-09-09.6. Voluntary income withholding for support - Limitations.

An obligor may execute a document voluntarily authorizing income withholding from current or future income due the obligor from an income payer in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An income withholding authorization made

under this section is binding on the income payer one week after service upon the income payer by first-class mail, or in any other manner agreed to by the income payer, of a true copy of the executed income withholding authorization. The income payer shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payer may deduct a fee of three dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payer with an income withholding authorization issued under this section discharges the income payer's liability to the obligor for that portion of the obligor's income. The income payer may not use the income withholding authorization as a basis for any disciplinary action against the obligor.

14-09-09.7. Child support guidelines.

1. The department of health and human services shall establish child support guidelines to assist courts in determining the amount a parent should be expected to contribute toward the support of the child under this section. The guidelines must:
   a. Include consideration of gross income. For purposes of the guidelines, gross income does not include an employee benefit over which the employee does not have significant influence or control over the nature or amount unless:
      (1) That benefit may be liquidated; and
      (2) Liquidation of that benefit does not result in the employee incurring an income tax penalty.
   b. Authorize an expense deduction for determining net income.
   c. Designate other available resources to be considered.
   d. Specify the circumstances that should be considered in reducing support contributions on the basis of hardship.
   e. Include consideration of extended periods of time a minor child spends with the child's obligor parent.
   f. Authorize a rebuttal of the presumption provided in subsection 4 based on the proportionate net income of the obligor and the obligee when the net income of the obligee is at least three times higher than the net income of the obligor.
   g. Include consideration of an obligated party's responsibility for health insurance coverage or other medical support under section 14-09-08.10.
2. The guidelines may not take into consideration cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.
3. The department shall accept and compile pertinent and reliable information from any available source in order to establish the child support guidelines. Copies of the guidelines must be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.
4. There is a rebuttable presumption that the amount of child support that would result from the application of the child support guidelines is the correct amount of child support. The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes, applying criteria established by the child support agency which take into consideration the best interests of the child, that the child support amount established under the guidelines is not the correct amount of child support. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted. The finding must:
   a. State the child support amount determined through application of the guidelines;
   b. Identify the criteria that rebut the presumption of correctness of that amount; and
   c. State the child support amount determined after application of the criteria that rebut the presumption.
5. The department shall institute a new rulemaking proceeding under section 28-32-02 relating to the child support guidelines to ensure that the application of the guidelines results in the determination of appropriate child support award amounts. The initial rulemaking proceeding must be commenced with a notice of proposed adoption,

amendment, or repeal by August 1, 1998, and subsequent rulemaking proceedings must be so commenced at least once every four years thereafter. Before commencing any rulemaking proceeding under this section, the department shall convene a drafting advisory committee that includes two members of the legislative assembly appointed by the chairman of the legislative management.

6. The guidelines established under this section may include a separate amount of child support for the child's health insurance coverage, reimbursement for public health coverage provided under chapter 50-29, and other medical support.

14-09-09.8. Out-of-state wage withholding orders - Filing requirements.

Repealed by S.L. 1987, ch. 183, § 16.

14-09-09.9. Effect of filing out-of-state wage withholding order.

Repealed by S.L. 1987, ch. 183, § 16.

14-09-09.10. Definitions.

For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Arrears registry" means the registry maintained under section 50-09-02.7.
2. "Business day" means every day that is not a Saturday or legal holiday.
3. "Child support" means payments for the support of a child, including payments for health insurance coverage or other medical support, and payments for the support of spouses or former spouses with whom the child is living as long as the spousal support payment is owed to the spouse or former spouse under the same order as the payments for the child, if the payment is required by the order of a court or other governmental agency having authority to issue such orders, and includes past-due support.
4. "Child support agency" means the department of health and human services in execution of its duties pursuant to the state plan submitted under chapter 50-09 in conformance with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.].
5. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
6. "Disposable income" means gross income less deductions required by law for taxes and social security.
7. "Employer" means income payer.
8. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 99-272; 100 Stat. 281; 29 U.S.C. 1167(1)], and other types of coverage under which major medical coverage may be provided in a policy, plan, or contract which may legally be sold or provided in this state.
9. "Income" means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
10. "Income payer" means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
11. "Monthly support obligation" means an amount of child support ordered by a court or administrative tribunal in a proceeding to establish or modify a child support obligation,

including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court. If an amount of past-due support has been ordered as a lump sum rather than determined on a monthly basis, "monthly support obligation" means one hundred sixty-eight dollars.

12. "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed.
13. "Obligor" means any person owing a duty of support.
14. "Past-due support" means child support that is not paid by the earlier of:
    a. The date a court order or an order of an administrative process established under state law requires payment to be made; or
    b. The last day of the month or other period the payment was intended to cover.
15. "Payday" means the day upon which the income payer pays or otherwise credits the obligor.

14-09-09.11. Income withholding order.

When a judgment or order requires the payment of child support, it may be enforced by an income withholding order, as provided in this chapter, in addition to any other remedies provided by law.

14-09-09.12. Provision of notice of impact of income withholding law to obligors.

Each judgment or order issued by a court in this state which includes an order for support of minor children, but which does not require immediate income withholding, must include a statement that a delinquency in payment of the support due or the approved request of the obligee will result in an income withholding order being issued in accordance with this chapter.

14-09-09.13. Procedure - Notice to obligor.

If immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, if an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding, the child support agency shall serve the notice required under this section upon the obligor whenever issuing an income withholding order. The notice must state:

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by the child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income payer from the obligor's income in each month as determined under section 14-09-09.30.
4. That the income payer may withhold an additional sum of three dollars to cover the income payer's expenses.
5. That the income withholding order has been issued without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.
7. That if the obligor contests the income withholding order pursuant to section 14-09-09.14, a hearing will be held and the court will determine and issue an order consistent with the requirements of section 14-09-09.14.
8. That the income withholding order applies to any current or subsequent income payer or period of employment.

14-09-09.14. Hearing upon obligor's request.

1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 14-09-09.13, the court shall hold a hearing within ten working days after the date of the request.
   a. The court may order that the income withholding order be withdrawn if at the hearing the obligor establishes:
      (1) In a case where withholding would be based on an alleged delinquency, that there has been a mistake in the identity of the obligor; or
      (2) In a case where an approved request for withholding has been made by the obligee, that the approval of the request constituted an abuse of discretion.
   b. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld.
   c. In the absence of a finding of a mistake of fact in a case in which withholding would be based on an alleged delinquency, or in the absence of an abuse of discretion in the approval of an obligee's request for withholding, the court shall confirm the income withholding order. Payment of past-due support after issuance of notice under section 14-09-09.13 may not be the basis for an order that the income withholding order be withdrawn.
2. An obligor is not precluded by subsection 1 from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the court precluded from granting such relief. An obligor's request for such relief, whether made by motion under rule 60(b) of the North Dakota Rules of Civil Procedure or otherwise, may not be considered during the hearing described in subsection 1.

14-09-09.15. Form - Effect of income withholding order.

The income withholding order must be issued in the name of the state of North Dakota in the standard format for notice of the order prescribed by the secretary of the United States department of health and human services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for the income payer to comply with the income withholding order, and be directed to all current and subsequent income payers of the obligor. The income withholding order is binding on the income payer until further notice by the child support agency and applies to all current and subsequent periods in which income is owed the obligor by the income payer. The income withholding order has priority over any other legal process against the same income.

14-09-09.16. Service of income withholding order on income payer.

1. The child support agency shall serve the income withholding order on the income payer by first-class mail or in any other manner agreed to by the income payer, and upon the obligor by first-class mail to the obligor's last-known address.
2. If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order must be served on any known income payer within two business days of the date of receipt of information necessary to carry out income withholding. Subject to the provisions of section 14-09-09.17, if service of an income withholding order has been or may have been properly made under this section, an income withholding order must be served on any subsequently identified income payer within two business days of the date of receipt of information necessary to carry out income withholding.
3. An income withholding order may also be issued and served at the request of the obligor.
4. The income payer shall withhold a stated amount, determined under section 14-09-09.30, from the obligor's income at the time the obligor is paid for transmittal to the child support agency within seven business days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.

5. The income payer may also withhold and retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
6. The amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payer, but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payer.
7. The income payer shall begin withholding no later than the first payday that occurs after service of the income withholding order.
8. If the income payer is served with more than one income withholding order issued under this chapter on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income, the income payer shall withhold the maximum amount permitted and transmit to the child support agency that portion thereof which the obligee's claim bears to the combined total of all claims.
9. The income payer shall notify the child support agency in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payer, if known.
10. If the income payer is subject to income withholding orders for more than one obligor, the income payer may combine in a single payment the amounts for all obligors who have been ordered to pay the child support agency with identification of the amount attributed to each obligor.

14-09-09.17. Amendment - Termination of income withholding order.

Upon amendment or termination of an income withholding order, the child support agency shall send appropriate notice to the income payer. An income withholding order is to be amended by the child support agency when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income payers have been subjected to income withholding orders with respect to a child support obligation, the child support agency shall suspend the income withholding order directed to one or more income payers, provided that the amount of child support withheld by the remaining income payer or payers equals the amount determined under section 14-09-09.30. The child support agency shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The child support agency shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income payer.

14-09-09.18. Interstate income withholding - Initiation by this state to other state.

On application of a resident of this state, an obligee or an obligor of a support order issued by this state, or an agency to which an obligee has assigned support rights, the child support agency shall request the child support enforcement agency of another state in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The child support agency shall make that request within twenty days of the later of the date income withholding is determined appropriate or the date of receipt of any information necessary to carry out withholding. The child support agency shall compile and transmit to the child support agency of the other state all documentation required to enter an order for this purpose. The child support agency shall also transmit to the child support agency of the other state certified copies of any subsequent modifications of the support order. If the child support agency receives notice that the obligor is contesting the income withholding in another state, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

14-09-09.19. Interstate income withholding - Duties of the public authority upon receipt of request from another state.

Repealed by S.L. 1995, ch. 157, § 4.

14-09-09.20. Interstate income withholding - Notice to obligor.

Repealed by S.L. 1995, ch. 157, § 4.

14-09-09.21. Interstate income withholding - Hearing upon request of obligor.

Repealed by S.L. 1995, ch. 157, § 4.

14-09-09.22. Interstate income withholding - Form - Service on income payor - Termination of order.

Repealed by S.L. 1995, ch. 157, § 4.

14-09-09.23. Administration of income withholding.

Repealed by S.L. 1997, ch. 404, § 77.

14-09-09.24. Immediate income withholding.

1. Except as provided in subsection 2 or 3, each judgment or order which requires the payment of child support, issued or modified on or after January 1, 1990, subjects the income of the obligor to income withholding, regardless of whether the obligor's support payments are delinquent.
2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1, demonstrates, and the court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the court need not subject the income of the obligor to immediate withholding.
3. If an obligor, who would otherwise be subject to immediate income withholding under subsection 1 in at least one case in which services are being provided by a child support agency under title IV-D, demonstrates, and a child support agency finds there is good cause not to require immediate income withholding, the child support agency may enter into a written agreement with an obligor that provides for an alternate payment arrangement in lieu of immediate income withholding. Notwithstanding section 14-09-09.13, any failure to comply with an agreement under this subsection subjects the income of the obligor to income withholding under this section. Any obligee aggrieved by a finding of a child support agency under this subsection may seek review of the finding under subsection 2 of section 50-09-14.
4. A finding that there is good cause not to require immediate income withholding under subsection 2 or 3 must be based on at least:
   a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
   b. Proof of timely payment of previously ordered support, if any; and
   c. A requirement that the obligor keep the child support agency informed of any employment-related health insurance to which the obligor has access.
5. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:
   a. Provides that the obligor shall keep the child support agency informed of any employment-related health insurance to which the obligor has access;
   b. Describes the provisions by which regular payment of child support is assured; and
   c. Is reviewed and approved by the court and entered into the court's records.

14-09-09.25. Requests by obligee for income withholding - Approval - Procedures and standards.

1. An obligee may apply to the child support agency for approval of an income withholding request. The income of the obligor becomes subject to income withholding on the date an approved request is made.
2. The child support agency shall establish procedures and standards for the approval of obligee requests for income withholding. The standards established must include consideration of:
   a. An obligor's threat to discontinue child support payments; and
   b. An obligor's having made child support payments sufficient to avoid a delinquency but insufficient to conform to the ordered amount.
3. Upon application of an obligee requesting income withholding, the child support agency shall promptly approve or disapprove the request. The child support agency may not approve the obligee's request in a case where the court has determined that there is good cause not to require immediate income withholding unless the court first changes its determination.

14-09-09.26. State is real party in interest.

The state is a real party in interest for purposes of establishing paternity and securing repayment of benefits paid, future support, and costs in action brought to establish, modify, or enforce an order for support of a child in any of the following circumstances:

1. Whenever aid under chapter 50-09 or 50-24.1 is provided to a dependent child.
2. Whenever application is made and accepted for services provided by the child support agency.
3. Whenever duties are imposed on the state or its public officials under chapter 14-12.2.

14-09-09.27. Attorney represents people's interest in the enforcement of child support obligations.

In any action brought to establish paternity, secure repayment of governmental benefits paid, secure current or future support of children, or establish, enforce, or modify a child support obligation, the child support agency may employ or contract with a licensed attorney. An attorney so employed or contracted represents the interest of the people of the state of North Dakota in the enforcement of child support obligations. Nothing in this section may be construed to modify confidentiality required of the child support agency. Representation by the employed or contracted attorney may not be construed to create an attorney-client relationship between the attorney and any party or witness to the action, other than the people of the state of North Dakota, regardless of the name in which the action is brought.

14-09-09.28. Application to existing cases.

Sections 14-09-09.26, 14-09-09.27, 14-12.2-19, and 14-12.2-20 apply to actions filed prior to July 7, 1991.

14-09-09.29. Coordination of income withholding activities and child support case management.

The child support agency is responsible for administration of income withholding, managing accrual and termination dates and payment ledger adjustments on the automated system established under section 50-09-02.1, and the receipt and disbursement of child support payments. This section also applies to an order that does not require the payment of child support but requires the payment of spousal support, if the court orders the spousal support be paid through the state disbursement unit or be enforced through income withholding.

14-09-09.30. Monthly amount due.

1. If there is a current monthly support obligation, the total amount of child support due in each month for purposes of income withholding is the sum of the obligor's current monthly support obligation; and

a. The amount the obligor is ordered to pay toward any outstanding arrearage; or
b. If no order to repay an arrearage exists, an amount for application to any arrearage equal to twenty percent of the obligor's current monthly support obligation; or

2. If there is no current monthly support obligation, the total amount of child support due in each month for purposes of income withholding is:
   a. Unless either subdivision b or c applies, an amount equal to the greater of:
      (1) The amount the obligor is ordered to pay toward any outstanding arrearage; or
      (2) The sum of the obligor's most recent monthly support obligation and twenty percent of the obligor's most recent monthly support obligation;
   b. An amount the obligor is ordered to pay toward an arrearage or, if no order to repay an arrearage exists, an amount equal to twenty percent of the obligor's most recent monthly support obligation, if the supported child resides with the obligor pursuant to a court order; or
   c. An amount the obligor is ordered to pay toward an arrearage if that amount is included in an order issued when there is no current monthly support obligation.
3. The total amount of child support due in each month under this section for purposes of income withholding may be increased at the request of the obligor to repay an arrearage or by agreement with the child support agency.

14-09-09.31. Child support exempt from process.

A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation. This section does not prohibit the child support agency from authorizing the state disbursement unit to apply a payment of past-due support owed to an obligee to a child support obligation owed by the same obligee or to another debt being enforced by the North Dakota department of health and human services that arises out of a public assistance program.

14-09-09.32. Agreements to waive child support.

1. An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction. A copy of the order of approval must be provided to the state disbursement unit. As used in this section, "child support" does not include spousal support.
2. In a judgment for divorce or other relief under this title in any matter in which the child and both of the child's parents do not reside together, a court shall establish a child support obligation unless the child support agency requests the issue of child support be reserved. Notwithstanding subsection 1, the court may issue a stay of any further accruals under a child support order if the court finds the stay would be in the best interests of the child. Avoidance of income withholding or the requirement to make any child support payment through the state disbursement unit is not a proper basis to stay a child support obligation under this subsection. A child support obligation that is stayed under this subsection may be reinstated on a prospective basis as provided under the terms of the stay or at any time by order of the court or upon declaration of any party. The party filing the declaration shall provide a copy of the declaration to any other party to the action and to the state disbursement unit.

14-09-09.33. Offsets of child support.

1. Notwithstanding section 14-09-09.31, a court may order that a specific amount of child support owed by an obligor to an obligee be offset by an equal amount of child support or other debts owed to the obligor by the obligee. An order for an offset is permitted under this subsection as long as the proposed offset does not apply to child support

owed in the current month or owed in any future month, except as authorized in subsection 4, and the proposed offset does not include any child support that has been assigned.

2. The child support agency may offset child support if neither party objects after being notified of the proposed offset.
3. Child support owed by an obligor to an obligee may not be offset except as permitted in this section.
4. Notwithstanding anything to the contrary in section 14-09-09.24 or 14-09-09.30, an obligor's child support obligation for the current month or for a future month may not be offset unless the court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation, or as authorized by the child support agency under subsection 2, or as permitted in the child support guidelines established under section 14-09-09.7.
5. An offset of child support under this section is considered a payment of child support. A copy of the order for an offset must be provided to the state disbursement unit.

14-09-09.34. Lump sum payments.

1. An income payer who has been served with an income withholding order issued under section 14-09-09.15 for an obligor which includes an amount for past-due support shall notify the child support agency before making any lump sum payment of one thousand dollars or more to the obligor and may report a lump sum payment of an amount less than one thousand dollars or of an amount yet to be determined. "Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services, severance pay, or advances, and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.
2. An income payer who provides notice of a lump sum payment to the child support agency under subsection 1 may not make more than one-half of the payment to the obligor for thirty days from the date of the notice to the child support agency or until the income payer receives written authorization from the child support agency to make the lump sum payment to the obligor, whichever occurs first.
3. Notwithstanding subsection 2, an income payer who provides notice of a lump sum payment to the child support agency under subsection 1 may not make a lump sum payment to an obligor if the income payer has been notified that an execution, garnishment, attachment, or other process has been initiated regarding the lump sum payment to satisfy a child support obligation of the obligor.
4. An income payer who owes a lump sum payment under this section is subject to the duties and liabilities in section 14-09-09.3 unless the context indicates otherwise.
5. This section does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under section 14-09-09.15.

14-09-09.35. Transfers of funds for payment of child support.

If a court determines that income withholding under this chapter is inapplicable, ineffective, or insufficient to ensure monthly payment of child support as determined under section 14-09-09.30, a court may, and upon request of a child support agency shall, order an obligor to identify or establish a deposit account that allows for periodic transfers of funds for payment of child support and to execute any necessary agreement for preauthorized transfers of funds from the account to the state disbursement unit for the payment of child support. An obligor who fails to comply with this section or make sufficient funds available to satisfy any preauthorized transfer, or who stops payment or revokes authorization for any preauthorized transfer, may be punished for contempt of court.

14-09-09.36. Fee for child support services.

Any annual fee for child support services imposed by the child support agency under section 50-06.3-02 to conform with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.] shall be imposed on the obligee. The amount of the fee in a case which is being enforced under title IV-D must be less, on an annual basis, than the fee in a case which is not being enforced under title IV-D. Upon order of a court, the amount of the fee paid by the obligee may be collected from the obligor as past-due support.

14-09-09.37. Allocation of tax exemption for the child.

Repealed by S.L. 2019, ch. 127, § 8.

14-09-09.38. Child support obligation of incarcerated parents.

1. A monthly support obligation established under any provision of this code and in effect after December 31, 2017, expires by operation of law upon incarceration of the obligor under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.
2. Notwithstanding subsection 1, a monthly support obligation may be established for an obligor incarcerated under a sentence of one hundred eighty days or longer if the obligation is based on actual income of the obligor and the moving party makes a prima facie showing the obligor's income exceeds the minimum amount provided in the guidelines established under section 14-09-09.7.
3. As used in this section, "incarceration" means placement of an obligor in a custodial setting in which the obligor is not permitted to earn wages from employment outside the correctional facility, and does not include probation or work release.
4. The expiration of a monthly support obligation under subsection 1 does not affect any past-due support owed before the expiration of the obligation.
5. The child support agency shall notify the obligor and obligee of the expiration of a monthly support obligation under this section, including a description of how the obligation can be re-established after the obligor is released from incarceration.
6. If a monthly support obligation has expired under this section and the child support case is still open with the child support agency when the obligor is released from incarceration, the child support agency shall re-establish a monthly support obligation as provided in this chapter without requiring a request or application for services.

14-09-09.39. Income withholding - Information provided to obligor.

If a new or amended child support order is issued by a court in a case enforced by a child support agency, the child support agency shall inform the obligor of the possibility the income withholding date may not align with the child support order date and of any affirmative steps the obligor may take to avoid a delinquent payment as a result of this possible misalignment.

14-09-10. Reciprocal duty of support for health services - Support of poor.

1. Each parent and every adult child of an adult who is unable to support oneself shall maintain that adult to the extent of the ability of each.
2. Except as provided under subsection 3, a creditor may not recover under this duty of support unless the:
   a. Recovery sought by a creditor is for the furnishing of necessary health services, which may include medical and long-term care services;
   b. Recovery sought is from a parent or adult child who received a direct benefit from a disqualifying transfer of an asset under section 50-06.2-07 or 50-24.1-02;
   c. Recovery being sought from this parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and
   d. Disqualifying transfer occurred within five years of the receipt of the necessary health services or application for medical assistance.
3. A creditor may recover under this duty to support if the:

a. Recovery is sought by a creditor for the furnishing of necessary health services, which may include medical and long-term care services;
b. Recovery is sought from a parent or adult child who acted in bad faith by misappropriating, misusing, or diverting income or assets of the other adult to prevent or avoid payment for necessary health services;
c. Recovery being sought from the parent or adult child does not exceed the fair market value, including any gain, resulting from the disqualifying transfer; and
d. Bad faith action occurred within five years of the receipt of the necessary health services.

14-09-11. Allowance to parent for support of child.

The district court may direct an allowance to be made to a parent of a child out of its property for its past or future support and education on such conditions as may be proper, whenever such direction is for its benefit.

14-09-12. Support - Liability of parent's estate.

If a parent chargeable with the support of a child dies leaving it chargeable upon the human service zone and leaving an estate sufficient for its support, the department of health and human services, in the name of the human service zone, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate and against the heirs, devisees, and next of kin of the parent.

14-09-13. Neglect of child - Parent liable to third person.

If a parent neglects to provide articles necessary for that parent's child who is under that parent's charge, according to that parent's circumstances, a third person in good faith may supply such necessaries and recover the reasonable value thereof from the parent.

14-09-14. When parent not liable for support of child.

Repealed by S.L. 1999, ch. 141, § 25.

14-09-15. Support of children after majority.

When a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor.

14-09-16. Control of property of child.

The parent, as such, has no control over the property of the child.

14-09-17. Child's earnings - Relinquished by parent.

The parent, whether solvent or insolvent, may relinquish to the child the right of controlling the child and receiving the child's earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

14-09-18. Wages of minors.

The wages of a minor employed in service may be paid to the minor until the parent or guardian entitled thereto gives the employer notice that the parent or guardian claims such wages.

14-09-19. Parental abuse.

The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by relatives of the child within the third degree, or by the human service zone of the county where the child resides, and when the abuse is established the child may be freed from the dominion of the parent and the duty of support and education may be enforced.

14-09-20. When parent's authority ceases.

The authority of a parent ceases:

1. Upon the appointment by a court of a guardian of the person of a child;
2. Upon the marriage of a child; or
3. Upon the child attaining majority.

14-09-21. Parent and child not liable for acts of other.

Neither parent nor child is answerable as such for the act of the other.

14-09-22. Abuse of child - Mandatory sentence - Penalty.

1. Except as provided in subsection 2 or 3, a parent, adult family or household member, guardian, or other custodian of any child, who willfully inflicts or allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 is guilty of a class C felony except if the victim of an offense under this section is under the age of six years in which case the offense is a class B felony. For purposes of this subsection, "mental injury" means an observable and substantial, nontransitory impairment to a child's mental or psychological ability to function within a normal range of performance or behavior.
2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under this section is guilty of a class B felony. Any such person who commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.
3. A person who commits an offense under this section is guilty of a class B felony if the victim suffers permanent loss or impairment of the function of a bodily member or organ, except if the victim of the offense is under the age of six years in which case the offense is a class A felony.
4. A person who has pled guilty or nolo contendere to, or has been found guilty of an offense under this section must be sentenced to a minimum of one year imprisonment.
5. For any person who pleads guilty or is convicted of an offense under this section, the court shall include in the sentence an order for the person to complete a parental capacity evaluation, mental health evaluation, and anger management assessment, and to complete treatment recommendations as ordered by the court as a condition of probation.

14-09-22.1. Neglect of child - Penalty.

A parent, adult family or household member, guardian, or other custodian of any child, who willfully commits any of the following offenses is guilty of a class C felony:

1. Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals.
2. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
3. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.

14-09-23. Full faith and credit for paternity determinations.

In any proceeding in which paternity or nonpaternity of a child is alleged, full faith and credit must be given to a determination of paternity by another state, made before a determination of paternity under the laws of this state, whether established through voluntary acknowledgment or through administrative or judicial process.

14-09-24. Interference with visitation - Attorney's fees - Enforcement remedies and tools.

In any proceeding in which child visitation is properly in dispute between the parents of a child, the court shall award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the child. The court may use any remedy that is available to enforce a child support order and which is appropriate to enforce visitation.

14-09-24.1. Parenting time - Interference - Penalty.

1. Unless a party shows by clear and convincing evidence that additional parenting time should not be ordered, if the court finds one parent intentionally interfered with the other parent's court-ordered parenting time, the court shall order additional parenting time to the parent who lost parenting time due to the interference to indemnify that parent for any lost court-ordered parenting time.
2. The additional parenting time:
   a. Must at least be of the same type and duration of parenting time lost due to the interference and may be up to double the period of time lost, as determined by the court.
   b. May include weekend, holiday, and summer parenting time.
   c. Must occur within two years of the date the court finds the parent intentionally interfered with the other parent's court-ordered parenting time.
3. A court shall:
   a. Give deference to the proposed additional parenting time schedule of the parent entitled to additional parenting time under subsection 1 when determining the schedule of the additional parenting time subject to subsection 2.
   b. Consider ordering the parents to use a co-parenting application to assist with scheduling and communication.
4. The court may sanction a parent who fails to comply with this section as a contempt of court.

14-09-25. State disbursement unit - Duties - Continuing appropriation.

1. The child support agency shall establish a state disbursement unit for the collection and disbursement of payments of child support. The state disbursement unit is responsible for the collection and disbursement of all payments under child support orders.
2. The child support agency may contract with any public or private entity for any service provided by the state disbursement unit. The state disbursement unit may employ technology and agents to allow receipt of child support payments at locations and times when state disbursement unit staff are not available.
3. The state disbursement unit shall use automated procedures, electronic processes, and computer-driven technology, including the statewide automated data processing system established under section 50-09-02.1, to the maximum extent feasible, efficient, and economical, for the collection and distribution of child support payments.
4. The state disbursement unit shall account for and disburse all support payments received by it, maintain necessary records, and develop procedures for providing information to the parties, including the obligor and obligee, regarding actions taken and, at least annually, regarding child support payments collected and distributed. The state disbursement unit shall adopt procedures for the maintenance and retention of records of child support payments and for the storage and destruction of records when the support obligation is satisfied or is terminated.
5. The state disbursement unit shall deposit all child support payments received in the state treasury. All payments so deposited, except those payments assigned to the state, are appropriated to the child support agency as a standing and continuing appropriation for the purpose of making disbursements to obligees entitled to the child support payments collected.

6. Notwithstanding section 28-20-36, the state disbursement unit shall disburse collected child support payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.]. Any disbursement made in error is not a gift and must be repaid. The child support agency may take any action not inconsistent with law to secure repayment of any disbursement made in error. Interest accrued on an unpaid child support obligation is child support. To the extent consistent with the requirements of title IV-D, a payment received with respect to a child support arrearage must first be applied to accrued interest on the earliest arrearage, and then to the principal of that arrearage. The child support agency may calculate judgment interest accrued on child support obligations that first became arrearages after July 1, 2002. The child support agency shall enter in its records judgment interest on child support obligations that first became arrearages on or before July 1, 2002, for periods before January 1, 2004, only if a court has ordered the interest amount calculated by some individual or entity other than the child support agency and approved the calculated amount. For child support obligations that first became arrearages on or before July 1, 2002, the child support agency may calculate judgment interest accrued only for periods on or after January 1, 2004. For purposes of this subsection, arrearage means an unpaid child support obligation that was due in a month prior to the current month.
7. Unless notice has otherwise been provided, the state disbursement unit shall provide notice to the obligor, the obligee, and any income payer that payment must be made to the state disbursement unit.
8. The child support agency may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the child support agency determines that the judgment interest is not collectible through commercially reasonable efforts. This subsection applies to judgment interest accruing before July 1, 2005, only if the arrearage is assigned to the child support agency under section 50-09-06.1 or 50-24.1-02.1 or if the obligee provides written consent. Any judgment interest that is suspended or waived under this subsection may be reinstated by the child support agency if the obligor has failed to comply with a payment plan.
9. If an obligee is deceased, any past-due child support that is received must be disbursed in the following order:
   a. As specifically provided in a court order in the event of the obligee's death;
   b. To the obligee's estate or as provided in the obligee's will;
   c. To the child or children on whose behalf the payments were made if the child or children are all eighteen years of age or older;
   d. As directed by the court if one or more of the children to whom the child support is owed is under eighteen years old; or
   e. Refunded to the obligor if the court determines that the past-due child support cannot be disbursed under this section.
10. Unless any party to a child support order objects within ten days of the date of a notice sent by first-class mail to the party's last-known address, the child support agency may change the payee of a child support obligation for the current month or a future month upon request of a guardian or other person who has legal custody of the child or children for whom the child support is being paid.

14-09-26. Modification of existing child support orders.

1. A child support order issued under any provision of this code and in effect on October 1, 1998, is deemed to require payment to the state disbursement unit after September 30, 1998.
2. A child support order issued under any provision of this code after September 30, 1998, must require payment to the state disbursement unit.

14-09-27. State disbursement unit fund - Continuing appropriation - Correction of errors.

Repealed by S.L. 1999, ch. 141, § 26.

14-09-28. Parental custody and visitation rights and duties.

Repealed by S.L. 2009, ch. 149, § 12.

14-09-29. Parental rights and responsibilities - Best interests and welfare of child.

1. A court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person, agency, organization, or institution as will, in the opinion of the court, promote the best interests and welfare of the child. Between the mother and father, whether married or unmarried, there is no presumption as to whom will better promote the best interests and welfare of the child.
2. If the court finds that a parent has perpetrated domestic violence and that parent does not have residential responsibility, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, the court shall allow only supervised parenting time with that parent unless there is a showing by clear and convincing evidence that unsupervised parenting time would not endanger the child's physical or emotional health.
3. If any court finds that a parent has sexually abused the parent's child, the court shall prohibit contact between the abusive parent and the child until the court finds that the abusive parent has successfully completed a treatment program designed for such sexual abusers and that supervised parenting time is in the child's best interests. Contact between the abusive parent and the child may be allowed only in a therapeutic setting, facilitated by a therapist as part of a sexual abuse treatment program, and only when the therapist for the abusive parent and the therapist for the abused child agree that contact serves a therapeutic purpose and is in the best interests of the child.
4. In any proceeding dealing with parental rights and responsibilities in which a parent is found to have perpetrated domestic violence, and there exists one incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the proceeding, all court costs, attorney's fees, evaluation fees, and expert witness fees must be paid by the perpetrator of the domestic violence unless those costs would place an undue financial hardship on that parent.

14-09-30. Parenting plans - Contents.

1. In any proceeding to establish or modify a judgment providing for parenting time with a child, the parents shall develop and file with the court a parenting plan to be included in the court's decree. If the parents are unable to agree on a parenting plan, the court shall issue a parenting plan considering the best interests of the child.
2. A parenting plan must include, at a minimum, provisions regarding the following or an explanation as to why a provision is not included:
   a. Decisionmaking responsibility relative to:
      (1) Routine or day-to-day decisions; and
      (2) Major decisions such as education, health care, and spiritual development;
   b. Information sharing and access, including telephone and electronic access;
   c. Legal residence of a child for school attendance;
   d. Residential responsibility, parenting time, and parenting schedule, including:
      (1) Holidays and days off from school, birthday, and vacation planning;
      (2) Weekends and weekdays; and
      (3) Summers;
   e. Transportation and exchange of the child, considering the safety of the parties;

f. Procedure for review and adjustment of the plan; and
g. Methods for resolving disputes.

14-09-31. Decisionmaking responsibility.

Except as provided in subsection 3, in the making of any order relative to decisionmaking responsibility:

1. If the parents have reached an agreement as to decisionmaking responsibility, the court shall accept the agreement unless the court makes written findings that the agreement is not in the best interests of the child.
2. If the parents cannot agree on an allocation of decisionmaking responsibility, the court shall enter an order allocating decisionmaking responsibility in the best interests of the child.
3. An allocation of decisionmaking responsibility is not in the best interests of the child unless the order includes a method of resolving disputes when parents do not agree on an issue.
4. If the court finds that domestic violence as defined in section 14-07.1-01 has occurred, the court shall consider such domestic violence in determining whether joint decisionmaking responsibility is in the best interests of the child. In such cases, the court shall make orders for the allocation of parental rights and responsibilities that best protect the child, the parent, or both. If joint decisionmaking responsibility is granted, even though there is evidence of domestic violence, the court shall provide written findings to support the order.

14-09-32. Parental rights and responsibilities.

1. Each parent of a child has the following rights and responsibilities:
   a. Right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information.
   b. Right to attend educational conferences concerning the child. This right does not require any school to hold a separate conference with each parent.
   c. Right to reasonable access to the child by written, telephonic, and electronic means.
   d. Duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment. The parent shall provide to the other parent a description of the serious accident or serious illness, the time of the serious accident or serious illness, and the name and location of the treating health care provider.
   e. Duty to immediately inform the other parent of residential telephone numbers and address, and any changes to the same.
   f. Duty to keep the other parent informed of the name and address of the school the child attends.
2. The court shall include in an order establishing or modifying parental rights and responsibilities the rights and duties listed in this section; however, the court may restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion. The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.

14-09-32.1. Parent's interest in child's upbringing.

1. As used in this section, a "parent" means parent or legal guardian not including a school or other institution serving in loco parentis.
2. It is the public policy of the state that:
   a. A parent retains the right and duty to exercise primary control over the care, supervision, upbringing, and education of the parent's child;
   b. A child has the right to protection from abuse and neglect; and

c. The state retains a compelling interest in preventing, assessing, investigating, addressing, and prosecuting abuse and neglect.

3. This section may not be interpreted to supersede chapters 27-20.1, 27-20.2, 27-20.3, and 27-20.4.

14-09-33. References to child custody and custodial parent.

Any law that refers to the "custody" of a child means the allocation of parental rights and responsibilities as provided in this chapter. Any law that refers to a "custodial parent" or "primary residential responsibility" means a parent with more than fifty percent of the residential responsibility and any reference to a noncustodial parent means a parent with less than fifty percent of the residential responsibility.

14-09-34. Electronic remittal of funds withheld under an income withholding order.

An income payer that employs more than twenty-four employees at any time and has received more than four income withholding orders under this chapter shall remit any withheld funds by an electronic method approved by the child support agency. An income payer that employs more than twenty-four employees at any time and has received fewer than five income withholding orders under this chapter may choose to opt out of an electronic method approved by the child support agency only through a written request. An income payer that does not comply with this section is deemed to have failed to deliver income under section 14-09-09.3. The child support agency may waive, upon a showing of good cause, the requirement to remit funds electronically.

14-09-35. Missing child - Duty to report - Penalty.

1. For purposes of this section and section 14-09-36, "caretaker" means the individual who is responsible for the physical control of a child and who is the child's biological or adoptive parent, the spouse of the child's biological or adoptive parent, or an individual acting in the stead of a child's parent at the request of the parent or another with authority to make the request. "Caretaker" does not include an individual who is charged with the enforcement of compulsory attendance provisions under section 15.1-20-03.
2. A caretaker who is responsible at that time for the care of a child under the age of thirteen years and who is unable to make contact with or otherwise verify the whereabouts and safety of that child for a period of twenty-four hours after the caretaker knows or reasonably should have known the child is missing is guilty of a class C felony if the caretaker willfully fails to report the child as missing to law enforcement within a reasonable time after this twenty-four-hour period expires.
3. A caretaker who is responsible at that time for the care of a child at least thirteen years of age but under the age of seventeen years and who is unable to make contact with or otherwise verify the whereabouts and safety of that child for a period of forty-eight hours after the caretaker knows or reasonably should have known the child is missing is guilty of a class B misdemeanor if the caretaker willfully fails to report the child as missing to law enforcement within a reasonable time after the forty-eight-hour period expires.

14-09-36. Death of a child - Duty to report - Penalty.

1. A caretaker of a child in the caretaker's care is guilty of a class C felony if the caretaker willfully fails to:
   a. Report the child's death to a law enforcement agency within two hours after learning about the child's death; or
   b. Report the location of the child's corpse to a law enforcement agency within two hours after learning the location of the corpse.
2. This section does not apply to the death of a child which occurs while the child is under the care of a health care professional or emergency medical personnel.