

House Research Act Summary

CHAPTER: 196

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TOPIC: Child Support

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Overview

On January 28, 1999, the Minnesota Supreme Court issued a decision in the case Holmberg v. Holmberg holding that Minnesota's administrative child support process is unconstitutional. The court held that the administrative process violated separation of powers by: (1) infringing on the district court's original jurisdiction, (2) creating a tribunal not inferior to the district court, and (3) permitting child support officers to practice law. This bill repeals the unconstitutional laws and creates an expedited process under the judicial branch.

- 1 Part-time referees.** Repeals obsolete reference to certain part-time referees.
- 2 Expedited child support hearing process.** Establishes a new expedited child support hearing process.

Subd. 1. Creation; scope. Requires the Supreme Court to establish an expedited child support hearing process. The process must be designed to handle child support and paternity matters in compliance with federal law. All IV-D cases must be conducted in the process. Non-IV-D cases may not use the process. A party in a IV-D case would not be prohibited from going to district court if other issues related to domestic abuse, custody or visitation, or property were involved. The process may include contempt or paternity actions. Goals are specified.

Subd. 2. Administration. Provides that the state court administrator will provide for the administration of the process in each judicial district. Until June 30, 2000, the office of administrative hearings may contract with the Supreme Court to provide one or more administrative law judges to serve as child support magistrates and for administrative and case management support.

Subd. 3. Appointment of child support magistrates. Provides for appointment of child support magistrates. The chief judge of each judicial district may appoint one or more persons to act as magistrates, with the confirmation of the Supreme Court. Magistrates may be hired on a

full-time, part-time, or contract basis. Provides that magistrates are judicial officers and grants them related immunity.

Subd. 4. Training and qualification of child support magistrates. Deals with training and qualifications of magistrates. The Supreme Court may provide training; establish minimum qualifications; and establish a policy for evaluating and removing child support magistrates.

Subd. 5. Rules. Requires the Supreme Court, in consultation with the conference of Chief Judges, to adopt rules to implement the expedited child support hearing process.

3 Expedited child support process. Provides that expedited child support process hearings may be recorded electronically (as opposed to stenographically) if done in accordance with the standards of the state court administrator.

4 Visitation and support review hearing. Requires the court to conduct a review of child support or visitation compliance upon a parent's request. Requires pro se forms to be prepared and available to parents. Provides that remedies under existing law may be used if a party is not complying with a support or visitation order.

5 IV-D case. Adds a definition of "IV-D case."

6 Assignment of rights; judgment. Provides that the public agency responsible for child support enforcement is a real party in interest in IV-D cases involving an assignment of support and specifies the interests and rights of the public authority in other IV-D cases.

7 Public authority procedures for child and medical support orders and parentage orders. Outlines roles and powers of nonattorney employees and county attorneys.

Subd. 1. General. Provides the two instances when the public authority becomes involved in child support actions: (1) when a party receives public assistance, and (2) when a party applies for child support services from the county.

Subd. 2. Role of nonattorney employees; general provisions. Requires the county attorney to review and approve all legal documents prepared by nonattorney employees for use in the expedited child support process. Outlines the role of nonattorney employees (a/k/a child support officers). Delineates certain duties that must be performed under the direction and supervision of the county attorney (generally duties tending to be somewhat legal in nature). Delineates other duties that may be performed independently (generally duties tending to be organizational, fact-finding, or clerical in nature). States that the performance of duties by nonattorney employees under this section does not constitute the unauthorized practice of law under state statute.

Subd. 3. Preparation of financial worksheet. Requires nonattorney employees to prepare financial worksheets for the parties involved in a child support action that contain specified information. Requires nonattorney employees to provide income information obtained from the department of economic security to the parties and the court.

Subd. 4. Noncontested matters. In uncontested cases, provides for the preparation of a stipulated agreement with review by the county attorney and a judge or judicial officer.

Subd. 5. Administrative authority. Provides that the public authority may take certain actions to establish paternity, or establish, modify, or enforce support without court order. Provides certain requirements before a genetic test may be requested or ordered. Provides certain requirements for the service of subpoenas. Provides for objection to, and enforcement of, subpoenas. States that the actions allowed under this subdivision are subject to due process safeguards, including appeal. Many aspects of this subdivision relate to federal mandates.

Subd. 6. Sharing of information. Authorizes the public authority to share information on the parties in order to perform its duties as part of the expedited process and related administrative functions.

- 8 **Forms.** Requests the Supreme Court to develop forms for use in summary execution of support judgments, instead of requiring the Commissioner of Human Services to do the forms.
- 9 **Transitional provisions.** Encourages judicial districts to appoint current administrative law judges as child support magistrates.
- 10 **Evaluation and recommendations.** Requires the Supreme Court to evaluate the expedited process, and report to the legislature by December 15, 2000. The Supreme Court would have access to private data on the parties for purposes of doing the evaluation.

Article 2

Corrects references to administrative law judges and the current administrative process in other statutory sections related to child support. Repeals sections 518.5511 and 518.5512 (pertaining to the administrative process that was held unconstitutional in Holmberg.)