

**598.21B ORDERS FOR CHILD SUPPORT AND MEDICAL SUPPORT.**

1. *Child support guidelines.*

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

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

c. It is the intent of the general assembly that, to the extent possible within the requirements of federal law, the court and the child support recovery unit consider the individual facts of each judgment or case in the application of the guidelines and determine the support obligation accordingly. It is also the intent of the general assembly that in the supreme court's review of the guidelines, the supreme court shall do both of the following:

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

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

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

2. *Child support orders.*

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

b. *Calculating amount of support.*

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

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

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

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

awarded.

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

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

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

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

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

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

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

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

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

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

## **Section History: Recent Form**

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

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

## **Footnotes**

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

**598.21C MODIFICATION OF CHILD, SPOUSAL, OR MEDICAL SUPPORT ORDERS.**

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

- a. Changes in the employment, earning capacity, income, or resources of a party.
- b. Receipt by a party of an inheritance, pension, or other gift.
- c. Changes in the medical expenses of a party.
- d. Changes in the number or needs of dependents of a party.
- e. Changes in the physical, mental, or emotional health of a party.
- f. Changes in the residence of a party.
- g. Remarriage of a party.
- h. Possible support of a party by another person.
- i. Changes in the physical, emotional, or educational needs of a child whose support is governed by the order.
- j. Contempt by a party of existing orders of court.
- k. Entry of a dispositional or permanency order in juvenile court pursuant to chapter 232 placing custody or physical care of a child with a party who is obligated to pay support for a child. Any filing fees or court costs for a modification filed or ordered pursuant to this paragraph are waived.

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

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

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

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

3. *Applicable law.* Unless otherwise provided pursuant to 28

U.S.C. § 1738B, a modification of a support order entered under chapter 234, 252A, 252C, 600B, this chapter, or any other support chapter or proceeding between parties to the order is void unless the modification is approved by the court, after proper notice and opportunity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 234.39, 239B.6, or 252E.11, or if services are being provided pursuant to chapter 252B, the department is a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598B. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 598.41.

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

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

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

support obligation under both the prior and the modified orders.

7. *Modification by child support recovery unit.*

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

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

9. *Duty of clerk of court.* If the court modifies an order, and the original decree was entered in another county in Iowa, the clerk of court shall send a copy of the modification by regular mail, electronic transmission, or facsimile to the clerk of court for the county where the original decree was entered.

## **Section History: Recent Form**

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

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

## **Footnotes**

2006 amendment to subsection 1, paragraph k, applies to permanency orders entered by the juvenile court on or after July 1, 2006; 2006 Acts, ch 1119, §10

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

### **598.21D RELOCATION OF PARENT AS GROUNDS TO MODIFY ORDER OF CHILD CUSTODY.**

If a parent awarded joint legal custody and physical care or sole legal custody is relocating the residence of the minor child to a location which is one hundred fifty miles or more from the residence of the minor child at the time that custody was awarded, the court may consider the relocation a substantial change in circumstances. If the court determines that the relocation is a substantial change in circumstances, the court shall modify the custody order to, at a minimum, preserve, as nearly as possible, the existing relationship between the minor child and the nonrelocating parent. If modified, the order may include a provision for extended visitation during

summer vacations and school breaks and scheduled telephone contact between the nonrelocating parent and the minor child. The modification may include a provision assigning the responsibility for transportation of the minor child for visitation purposes to either or both parents. If the court makes a finding of past interference by the parent awarded joint legal custody and physical care or sole legal custody with the minor child's access to the other parent, the court may order the posting of a cash bond to assure future compliance with the visitation provisions of the decree. The supreme court shall prescribe guidelines for the forfeiting of the bond and restoration of the bond following forfeiting of the bond.

## **Section History: Recent Form**

2005 Acts, ch 69, §42  
Referred to in § 598.20

### **598.21E CONTESTING PATERNITY TO CHALLENGE CHILD SUPPORT ORDER.**

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

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

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

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

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

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

action, the provisions of section 600B.41A apply. Overcoming paternity under subsection 1, paragraph "c", does not bar subsequent actions to establish paternity. A subsequent action to establish paternity against the previously established father is not barred if it is subsequently determined that the written statement attesting that the established father is not the biological father of the child may have been submitted erroneously, and that the person previously determined not to be the child's father during the dissolution action may actually be the child's biological father.

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

## **Section History: Recent Form**

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

### **598.21F POSTSECONDARY EDUCATION SUBSIDY.**

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

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

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

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

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

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

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

5. *Obligations of child.* The child shall forward, to each parent, reports of grades awarded at the completion of each academic session within ten days of receipt of the reports. Unless otherwise

specified by the parties, a postsecondary education subsidy awarded by the court shall be terminated upon the child's completion of the first calendar year of course instruction if the child fails to maintain a cumulative grade point average in the median range or above during that first calendar year.

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

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

### **Section History: Recent Form**

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