

VERMONT STATUTES
TITLE 15 DOMESTIC RELATIONS
CHAPTER 11. ANNULMENT AND DIVORCE (CS PORTION ONLY)

§ 650. Legislative findings and purpose

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

History. Added 1985, No. 181 (Adj. Sess.), § 1; amended 2003, No. 159 (Adj. Sess.), § 5; 2009, No. 3, § 12a, eff. Sept. 1, 2009.

§ 651. Repealed

History. Repealed. 1985, No. 180 (Adj. Sess.), § 14, eff. April 1, 1987.

§ 652. Repealed

History. Repealed. 1985, No. 181 (Adj. Sess.), § 10.

§ 653. Definitions

As used in this subchapter:

- (1) "Available income" means gross income, less
- (A) the amount of spousal support or preexisting child support obligations actually paid;
- (B) the actual cost to a parent of providing adequate health insurance coverage for the children who are the subject of the order;
- (C) FICA taxes (7.65 percent for regular wage earners and 15.3 percent for self-employed, or any amount subsequently set by federal law as FICA tax);
- (D) state and federal income taxes, calculated as follows:
- (i) for custodial parents, using the standard deduction, head of household filing status and exemptions for the parent and for each of the children who are the subject of the order (not to exceed five children), plus earned income tax credits if applicable;
- (ii) for noncustodial parents, using the standard deduction, single filing status and one exemption;

(iii) for parents who share custody as defined in section 657 of this title, using the standard deduction, head of household filing status and one exemption for the parent and an equal share of the exemptions attributable to the children who are the subject of the order, plus earned income tax credits if applicable.

(E) in cases where a child is in the custody of the department for children and families:

(i) the additional housing costs necessary to allow for the child's return where the department for children and families plan is for reunification with the parents;

(ii) family court or department for children and families mandated out-of-pocket expenses necessary to comply with the child's case plan.

(2) "Child care costs" means the actual child care costs reasonably incurred by a parent on behalf of the children due to employment or employment related education. Monthly child care costs shall be calculated based on an annualized amount. Child care costs shall not include the amount of child care subsidies or child care tax credits if available.

(3) "Court" means the court with jurisdiction over a child support proceeding.

(4) "Extraordinary expenses" means any extraordinary medical or education expenses, including expenses related to the special needs of a child, incurred on behalf of involved children. Extraordinary medical expenses shall include but not be limited to uninsured annual medical expenses in excess of \$200.00.

(5) "Gross income" means actual gross income of a parent.

(A) Gross income shall include:

(i) income from any source, including, but not limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and spousal support actually received. Income at the current rate for long-term United States Treasury Bills shall be imputed to nonincome producing assets with an aggregate fair market value of \$10,000.00 or more, other than a primary residence and not more than \$15,000.00 of the value of a motor vehicle;

(ii) expense reimbursements or in-kind payments received by a parent in the course of employment or self-

employment or operation of a business if they reduce personal living expenses;

(iii) the potential income of a parent who is voluntarily unemployed or underemployed, unless:

(I) the parent is physically or mentally incapacitated; or

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

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

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

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

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

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

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

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

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

(B) child care costs; and

(C) extraordinary expenses.

History. Added 1985, No. 180 (Adj. Sess.), § 1, eff.

April 1, 1987; amended 1987, No. 54, § 4, eff. May 15, 1987; 1989, No. 220 (Adj. Sess.), § 16; 1991, No. 204 (Adj. Sess.), § 8; 1993, No. 106 (Adj. Sess.), § 16; 1995, No. 63, § 139c; 1999, No. 147 (Adj. Sess.), § 4; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; No. 174 (Adj. Sess.), § 32.

§ 654. Support guideline

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

History. Added 1985, No. 180 (Adj. Sess.), § 2, eff. April 1, 1987; amended 1989, No. 220 (Adj. Sess.), § 17.

§ 655. Total child support obligation

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

History. Added 1985, No. 180 (Adj. Sess.), § 3, eff. April 1, 1987.

§ 656. Computation of parental support obligation

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

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

title and shall require payment of a nominal support amount.

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

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

History. Added 1985, No. 180 (Adj. Sess.), § 4, eff. April 1, 1987; amended 1987, No. 54, § 5, eff. May 15, 1987; 1989, No. 220 (Adj. Sess.), § 18; 2003, No. 159 (Adj. Sess.), § 1.

§ 656a. Adjustment for additional dependents

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

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

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

(d) A motion for modification may not be dismissed or

denied solely because the adjustment for additional dependents results in an increase of child support of ten percent or less if the increase without the adjustment is greater than ten percent.

History. Added 1989, No. 220 (Adj. Sess.), § 19.

§ 657. Shared or split physical custody

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

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

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

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

(e) When each parent has physical custody of at least one of the children, a theoretical support payment shall be determined for each parent for the children in the custody of the other, prorating the obligations among all children in the household. The obligations shall then be offset, with the parent owing the larger amount being required to pay the difference between the two amounts to the other parent.

History. Added 1985, No. 180 (Adj. Sess.), § 5, eff. April 1, 1987; amended 1989, No. 220 (Adj. Sess.), § 20.

§ 658. Support

(a) In an action under this chapter or under chapter 21 of this title, the court shall order either or both parents owing a duty of support to a child to pay an amount for

the support of the child in accordance with the support guidelines as set forth in this subchapter, unless otherwise determined under section 659 of this title.

(b) A request for support may be made by either parent, a guardian, or the department for children and families or the office of Vermont health access, if a party in interest. A court may also raise the issue of support on its own motion.

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

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

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

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

(f)(1) The court shall order either or both parents owing a duty of support to provide a cash contribution or medical coverage for a child, provided that medical coverage is available to the parent at a reasonable cost. Medical coverage is presumed to be available to a parent at a reasonable cost only if the amount payable for the individual's contribution to the insurance or health benefit plan premium is five percent or less of the parent's gross income. The court, in its discretion, retains the right to order a parent to obtain medical coverage even if the cost exceeds five percent of the parent's gross income if the cost is deemed reasonable under all the circumstances after considering the factors pursuant to section 659 of this title.

(2) If private health insurance or an employer-sponsored health benefit plan is not available at a reasonable cost, the court may order one or both parents owing a duty of support to contribute a cash contribution of up to five percent of gross income toward the cost of health care coverage of a child under public or private health insurance or a health benefit plan. A cash contribution under this section shall be considered child support for tax purposes. When calculating the contribution of a parent whose child receives coverage under Medicaid, a Medicaid waiver program, or Dr. Dynasaur, the court shall not order a contribution greater than the premium amount charged by the agency of human services for the child's coverage.

[Repealed effective 7/1/2012] (g) Upon motion, the court may extend child support up to the age of 22 for an individual found by the court to have significant physical, mental, or developmental disabilities. The court shall consider the factors identified in section 659 of this title in making its decision. The parent seeking the order shall provide the court with documentation of the child's disability.

History. Added 1985, No. 180 (Adj. Sess.), § 6, eff. April 1, 1987; amended 1989, No. 220 (Adj. Sess.), § 21; 1993, No. 228 (Adj. Sess.), § 7; 1995, No. 59, § 5; 1995, No. 161 (Adj. Sess.), § 3; 1997, No. 63, § 7, eff. Sept. 1, 1997; 2003, No. 159 (Adj. Sess.), § 6; 2005, No. 174

(Adj. Sess.), § 33; No. 215 (Adj. Sess.), § 131; 2007, No. 118 (Adj. Sess.), § 1, eff. July 1, 2012.

§ 659. Child support order

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

- (1) The financial resources of the child.
- (2) The financial resources of the custodial parent.
- (3) The standard of living the child would have enjoyed had the marital relationship not been discontinued.
- (4) The physical and emotional condition of the child.
- (5) The educational needs of the child.
- (6) The financial resources and needs of the noncustodial parent.
- (7) Inflation.
- (8) The costs of meeting the educational needs of either parent, if the costs are incurred for the purpose of increasing the earning capacity of the parent.
- (9) Extraordinary travel and other travel-related expenses incurred in exercising the right to parent-child contact.
- (10) Any other factors the court finds relevant.

(b) If the parties agree, the court may include in the child support order an additional amount designated for the purpose of providing for postsecondary education.

History. Added 1985, No. 180 (Adj. Sess.), § 7, eff. April 1, 1987; amended 1989, No. 220 (Adj. Sess.), § 22; 1995, No. 59, § 6.

§ 660. Modification

(a) On motion of either parent or any other person to whom support has previously been granted, or any person previously charged with support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the child support order has not been modified by the court for at least three years, the court may waive the requirement of a showing of a real, substantial and unanticipated change of circumstances.

(b) A child support order, including an order in effect prior to adoption of the support guideline, which varies

more than ten percent from the amounts required to be paid under the support guideline, shall be considered a real, substantial and unanticipated change of circumstances.

(c) Receipt of workers' compensation, unemployment compensation or disability benefits shall be considered a real, substantial and unanticipated change of circumstances.

(d) A motion to modify a support order under subsection (b) of this section shall be accompanied by an affidavit setting forth calculations demonstrating entitlement to modification and shall be served on other parties and filed with the court. Upon proof of service, and if the calculations demonstrate cause for modification, the clerk of the court shall enter an order modifying the support award in accordance with the calculations provided, unless within 15 days of service of, or receipt of, the request for modification, either party requests a hearing. The court shall conduct a hearing within 20 days of the request. No order shall be modified without a hearing if one is requested.

(e) An order may be modified only as to future support installments and installments which accrued subsequent to the date of notice of the motion to the other party or parties. The date the motion for modification is filed shall be deemed to be the date of notice to the opposing party or parties.

(f) [Deleted.]

History. Added 1985, No. 180 (Adj. Sess.), § 8, eff. April 1, 1987; amended 1989, No. 220 (Adj. Sess.), § 23; 1995, No. 59, § 8; 1997, No. 63, §§ 6a, 8, eff. Sept. 1, 1997; 2003, No. 159 (Adj. Sess.), § 7.

§ 661. Child support maintenance supplement

(a) A party may request a child support maintenance supplement to be paid while a child support obligation arising out of an action for support exists. After considering the respective financial circumstances of the parties, including gross income, assets, liabilities, including tax liabilities, and the obligation to pay child support, the court shall order payment of a child support maintenance supplement to the obligee to correct any disparity in the financial circumstances of the parties if the court finds that the disparity has resulted or will result in a lower standard of living for the child than the child would have if living with the noncustodial parent.

(b) Any sum awarded under this section shall be taken into consideration in making an order under section 752 of this title.

(c) On motion of either parent, a person to whom a child support maintenance supplement has previously been granted, a person previously charged with paying a child support maintenance supplement, and upon a showing of

a real, substantial, and unanticipated change of circumstances, the court may annul, vary, or modify a supplement order, whether or not the order is based on a stipulation or agreement. A real, substantial, unanticipated change of circumstances shall be deemed to exist if the proportion of income of the parties varies more than 15 percent from the time the order was issued, or if either parent's gross income changes by more than 15 percent.

(d) This section shall not apply to orders or modifications made prior to April 1, 1987.

History. Added 1985, No. 180 (Adj. Sess.), § 9, eff. April 1, 1987; amended 2003, No. 159 (Adj. Sess.), § 8.

§ 662. Income statements

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

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

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

(2) the gross income indicated by the evidence.

History. Added 1985, No. 180 (Adj. Sess.), § 10, eff. April 1, 1987; amended 1989, No. 220 (Adj. Sess.), § 24; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006.

§ 663. Support orders; required contents

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

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

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

(3) An annualized amount of child support.

(4) Frequency of the child support payment.

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

(6) Any other information which may affect the

obligation to pay child support.

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

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

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

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

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

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

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

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

(e) A child support order shall include the following language: "A PARENT OR ANY OTHER PERSON TO WHOM SUPPORT HAS BEEN GRANTED, OR ANY PERSON CHARGED WITH SUPPORT, MAY FILE A MOTION FOR A MODIFICATION OF A CHILD SUPPORT ORDER UNDER 15 V.S.A. §660. A MODIFICATION MAY BE GRANTED UPON A REAL, SUBSTANTIAL, AND UNANTICIPATED CHANGE OF CIRCUMSTANCES, INCLUDING LOSS OF EMPLOYMENT OR A CONSIDERABLE REDUCTION OR INCREASE IN SALARY OR WAGES. AN OBLIGOR IS RESPONSIBLE FOR ANY REQUIRED PAYMENTS SET FORTH IN AN ORDER UNLESS THE ORDER IS VACATED OR MODIFIED

BY A COURT. THUS, ANY SUBSEQUENT AGREEMENT BETWEEN THE PARTIES THAT DIFFERS FROM THE ORDER IS NOT LEGALLY BINDING, AND THE OBLIGOR IS STILL LEGALLY REQUIRED TO PAY THE AMOUNT ORDERED BY THE COURT."

History. Added 1985, No. 180 (Adj. Sess.), § 11, eff. April 1, 1987; amended 1989, No. 220 (Adj. Sess.), § 25; 1993, No. 231 (Adj. Sess.), § 3; 1995, No. 59, § 9; 2003, No. 159 (Adj. Sess.), § 2.