

HOUSE RESEARCH

Bill Summary

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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.

Section

- 1 Part-time referees.** Repeals obsolete reference to certain part-time referees.
- 2 Expedited child support hearing process.** Requires the supreme court to establish an expedited child support hearing process that meets federal time requirements. Provides for administration of the process by the state court administrator. Provides for appointment of child support magistrates by the chief judges of the judicial districts, with supreme court confirmation. Provides that the supreme court may: (1) provide training, (2) establish qualifications, and (3) establish a removal policy, for child support magistrates. Requires the supreme court to adopt rules to implement the child support hearing process.
- 3 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.
- 4 Public authority involvement.** Clarifies that the public authority becomes a party when a parent applies for support enforcement services from the public authority.
- 5 Powers and duties of public authority in expedited process.** Outlines roles and powers of nonattorney employees and county attorneys. (Note: this section addresses the supreme court's holding in the Holmberg case relating to the unauthorized practice of law by nonattorney

employees of the public authority.)

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. Provides that the nonattorney employees act under the direction of the county attorney. Provides that they may, on behalf of the public authority:

- gather information;
- negotiate settlements;
- prepare pleadings, proposed orders, stipulations, and related documents;
- meet and communicate with the parties.

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. Calculation of support amount. Provides that the public authority shall tentatively calculate the proper amount of support based on the statutory guidelines and may use the calculation to try to reach settlement.

Subd. 5. Uncontested cases. In uncontested cases, provides for the preparation of a stipulated agreement with review by the county attorney and a judge or judicial officer.

Subd. 6. Specific public authority powers. Provides that if a court has not yet obtained jurisdiction over a matter, the public authority may:

- recognize and enforce out-of-state orders
- order blood or genetic tests to establish paternity
- issue subpoenas to obtain financial or other relevant information
- change the payee
- order income withholding
- secure assets including lump sum payments from a government entity, bank accounts, or retirement funds to satisfy past due support
- impose liens pursuant to section 548.091 (relating to child support judgments) and force property sales to satisfy past due support
- increase the monthly support payment to satisfy past due support
- order employers to provide employment, compensation, and benefit information and request sanctions for failure to comply pursuant to law

Paragraph (b) provides requirements for the service of subpoenas.

Paragraph (c) provides that a party may object to the subpoena to the public authority or to the court. It also provides that the public authority must pay the reasonable costs of document production.

Paragraph (d) provides that subpoenas are enforceable in the same manner as subpoenas of the district court and that failure to comply may result in civil or criminal contempt.

Paragraph (e) provides that the procedures under this subdivision are subject to due process including notice, opportunity to contest, and opportunity to seek court review.

Paragraph (f) provides that the county attorney must approve and sign orders and subpoenas.

6 Transitional provisions. Encourages judicial districts to appoint current administrative law

judges as child support magistrates. Clarifies that child support magistrates are state employees in the judicial branch.

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Appropriation.

Article 2

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