

1994

Vance Thomas v. Laurretta Thomas (Allred) : Brief of Appellant

Utah Court of Appeals

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In the Utah Court of Appeals
In and for the State of Utah

VANCE THOMAS,

Plaintiff and Appellant,

vs.

LAURETTA THOMAS (ALLRED),

Defendant and Appellee

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Case No. 940064-CA

Priority 15

On Appeal From the
Fourth Judicial District Court of Utah County,
Judge Ray M. Harding

Brief for Appellant

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In the Utah Court of Appeals
In and for the State of Utah

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|---------------------------|---|--------------------|
| VANCE THOMAS, | : | |
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| Plaintiff and Appellant, | : | |
| | : | |
| vs. | : | Case No. 940064-CA |
| | : | |
| | : | Priority 15 |
| | : | |
| LAURETTA THOMAS (ALLRED), | : | |
| | : | |
| Defendant and Appellee | : | |

On Appeal From the
Fourth Judicial District Court of Utah County,
Judge Ray M. Harding

Brief for Appellant

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JURISDICTION

The Memorandum Decision of the Fourth Judicial District Court of Salt Lake County, Judge Ray M. Harding presiding, was entered on December 2, 1993 and is found in the Addendum and in the Record at pp. 60-61. The Findings of Fact and Order Modifying Decree of the Fourth Judicial District Court, was signed by the Court on January 5, 1994 and is found in the Addendum and in the Record at pp. 62-64. The jurisdiction of this Court is invoked under section 78-2a-3(2)(a), Utah Code (1993).

ISSUES FOR REVIEW

Child Support Issues:

- a. Did the trial court err in determining that a substantial and material change in circumstances had not occurred to justify reducing Mr. Thomas's child support obligation?
- b. Did the trial court err in using the parties' base incomes for comparison purposes when in fact the California support order was based upon Mr. Thomas's overtime income as well as base income?
- c. Is a 25% difference in the child support award from the California order and the Utah child support guidelines a prima facie case for modification in child support?
- d. Did the trial court err when it failed to make specific findings that following the child support guidelines would result in inequity?

- e. Did the trial court err in determining that the financial circumstances of the parties were unchanged since the entry of the California Order?
- f. If the child support order is modified by this appeal, should the reduction in child support be retroactive to the filing of the Petition for Modification?

2. Visitation Issues:

- a. Did the trial court err in failing to modify the California order of visitation further than merely adjusting the transportation arrangements?
- b. Specifically, should the trial court have entered Findings of Facts regarding the remaining visitation issues?

STANDARD OF REVIEW

1. Standard of review on child support:

Ordinarily the appellate court accords the trial court considerable discretion while adjusting the financial interests of divorced parties and trial court orders are "entitled to a presumption of validity." Allred v. Allred, 797 P.2d 1108, 1111 (Utah App. 1990) (quoting Hansen v. Hansen, 736 P.2d 1055, 1056 (Utah Ct. App. 1987)). However, in cases where the trial court has abused its discretion in apportioning the parties' financial responsibilities, the higher court cannot affirm that decision. Allred, 797 P.2d at 1111. A trial court's failure to enter specific, detailed findings supporting each of the factors which must be

considered when making a child support award, is in itself an abuse of discretion. Allred, 797 P.2d at 1111 (citing Stevens v. Stevens, 754 P.2d 952, 958-59 (Utah Ct. App. 1988)). Detailed findings are necessary to assist the appellate court in determining whether the trial court exercised its discretion rationally. Sukin v. Sukin, 842 P.2d 922, 924 (Utah App. 1992).

Modification of a divorce decree is an equitable matter. An appellate court may review both the facts and the law, Christensen v. Christensen, 628 P.2d 1297, 1299 (Utah, 1981), however, typically courts afford "considerable deference to the judgment of the trial court due to its advantaged position and will not disturb the action of that court unless the evidence clearly preponderates to the contrary, or the trial court abuses its discretion or misapplies principles of law. *Id.* Accord, e.g. Openshaw v. Openshaw, Utah, 639 P.2d 177 (Utah, 1982).

A trial court's apportionment of financial responsibilities will typically be upheld "in the absence of manifest injustice or inequity that indicates a clear abuse of discretion." Hagan v. Hagan 810 P.2d at 83 (quoting Maughan v. Maughan, 770 P.2d 156, 161 (Utah Ct. App. 1989) (citation omitted)).

. Standard of review on visitation:

An appellate court should reverse a trial court's findings of fact in a divorce proceeding if such findings are clearly erroneous. Hagan v. Hagan 810 P.2d 478, 481 (Utah App. 1991) (citing Jense v. Jense 784 P.2d 1249, 1251 (Utah Ct. App. 1989)). The court should not disturb the trial court's decision as to modification of a divorce decree absent an abuse

of discretion. Hagan v. Hagan 810 P.2d at 481 (quoting Myers v. Myers, 968 P.2d 979, 984 (Utah Ct. App. 1989) (citation omitted)). However, the appellate court may set aside a trial court order if there are no specific findings to support the trial court's conclusions. Sanderson v. Tryon, 739 P.2d 623, 626-27 (Utah 1987).

DETERMINATIVE STATUTES

The texts of the following statutes relevant to the determination of the present case are set forth in the Addendum: Utah Code §§ 30-3-35, 30-3-37, 30-3-5(4), 78-45-7.2, 78-45-7.7, 78-45-7.10, 78-45-7.11 (1993).

STATEMENT OF FACTS

Vance Thomas and Laretta Thomas Allred were originally separated in August, 1991. (Transcript at 12.) Mr. Thomas filed for divorce in December of 1991 (Transcript at 13.) and were divorced in the Superior Court of California, County of Santa Clara. (Transcript at 13.) Subsequent thereto, the issues of child support, visitation and custody were transferred from the State of California to the State of Utah as the result of an agreement between the parties in accordance with a Stipulation and Order Pending Trial entered in the Superior Court of California, County of Santa Clara, dated December 8, 1992. (R. at 1-6.) At the time, and currently, Mr. Thomas resides in Freemont, California, and Mrs. Allred in Lehi, Utah. (Transcript at 11, 47.) In June of 1992, early in the proceedings, a Minute Order of the California court awarded

total family support of \$1672 was based upon an income of \$3501 per month for Mr. Thomas and \$0 per month for Mrs. Thomas. (R. at 70, exhibit 10 at 2.) On October 30, 1992, Mrs. Thomas remarried and the alimony portion of the support award terminated. In reassessing the child support award, the Stipulation and Order which California court issued, but which was filled-out by the parties with the endorsement of the court, reported the parties' incomes as \$0 for Mrs. Thomas and \$3000 for Mr. Thomas. The court allowed Mr. Thomas a \$260 per month hardship reduction for child support for a child not of the present marriage. (R. at 70 exhibit 1 at 2) It is unclear which figures the California Superior Court applied when it ordered support in the amount of \$300 for Nicole, \$300 for Brett and \$313 for Ashley due each month to Lauretta Allred by wage assignment effective November 1, 1992. (R. at 63; transcript at 48.)

With respect to visitation, Mr. and Mrs. Thomas participated in a mediation session on June 19, 1992, in California, and agreed on several specific visits during the 1992 and 1993 holiday seasons. The parties also agreed that after 1993 the children would spend four weeks in the summer and even-numbered Christmases (including one week during the Christmas holiday period yearly) with their father. Telephone visitation was arranged for Saturdays, Mondays and Thursdays at 6:30 p.m. California time and 7:30 p.m. Utah time. Finally, the parties agreed that the children should be exchanged at the home of the paternal grandparents in St. George, Utah. (R. at 70 exhibit 2 at 1-2.) The visitation agreement was modified by the California court to slightly shorten Christmas 1992 visits, and modify telephone visitation to Thursday evenings, providing

that if the children missed they phone the would call their father on Fridays. The modification also allowed Mr. Thomas to call at other times if he so desired. Finally, the court ordered that Mr. Thomas may upon 48 hours notice to Mrs. Thomas, exercise other visitation in addition to those ordered, subject to agreement with Mrs. Thomas. (R. at 1-2.) Despite the agreement and order Mr. Thomas experienced extreme difficulty in effecting his visitation privileges.

Mr. Thomas domesticated the California order in the Fourth Judicial District Court of Utah County, State of Utah, on or about January 12, 1993. Mr. Thomas then pursued an Order to Show Cause as well as a Petition for Modification of Decree, alleging a change in circumstances and requesting the Court to reduce his child support obligation, modify visitation and address the issue of attorney's fees. The matter came to trial before the Honorable Judge Ray M. Harding of the Fourth Judicial District Court on November 29, 1993. The trial court determined that there was no change in circumstances to justify modifying Mr. Thomas's child support obligation, alleging that the parties' base incomes had not changed since the entry of the California order, and that a 25% difference in a child support based upon the Utah guidelines and the existing California order did not constitute a material change in circumstances. The Court did modify a portion of the order pertaining to visitation as it related to transportation arrangements, but did not address any other visitation issues.

SUMMARY OF ARGUMENT

Although it is unclear exactly which figures the California Superior Court used in computing its Child Support Order, a \$20,000 decrease in early gross income is sufficient to justify a modification in a Child Support Order even when the obligor's base income is unchanged. Not only is the change enough to establish a substantial material change in circumstances, but the resulting difference between the Order and the Utah Child Support Obligations Guidelines of in excess of 25 percent establishes a prima facie case for modification.

The trial court should have modified the California visitation order to come into accordance with the Utah statute. If it did not, it was required to enter specific Findings of Fact justifying its departure from the statute. Failure to do so is an abuse of discretion that cannot be upheld.

ARGUMENT

I. CHILD SUPPORT

- A. The trial court erred in determining that a substantial and material change in circumstances had not occurred to justify reducing Mr. Thomas's child support obligation, and specifically that the financial circumstances of the parties were unchanged since the entry of the California Order.**

Utah Code § 78-45-7 (1993) states that "support shall be equal to the amount granted by prior court order unless there has been a material change of circumstance on the part of the obligor or obligee." If a material change in circumstances has occurred, the court "shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted."

In order to justify modification of a child support order there must be a substantial change in circumstances of the parties involved. This change must be one not contemplated at the time the initial award was set. Craven v. Craven, 229 P.2d 301 (Utah 1951). The party requesting modification has the burden of showing that a material, substantial change in circumstances has occurred. See Christensen v. Christensen, 628 P.2d 1297 (Utah, 1981), Kessimakis v. Kessimakis, 258 P.2d 986 (Utah, 1953), and Gale v. Gale, 580 P.2d 1090 (Utah, 1978). Thus, "if the rights of the parties have already been adjudicated on the basis of facts shown to exist at the time of the divorce, there can be no justification for changing the decree unless there is a showing of substantial change in circumstances" Ring v. Ring, 511 P.2d 155 (Utah).

Utah case law is clear that the party seeking modification of a child support order has the burden of showing a substantial change in circumstances, not merely a change in circumstances. Lord v. Shaw, 682 P.2d 853, 856 (Utah 1984). A relative change in the income and expenses of the parties, if comparatively significant, can amount to a substantial change in circumstances. Jeppson v. Jeppson, 684 P.2d 69, 70 (Utah 1984).

The trial court erred in ruling that Mr. Thomas's income had not changed his circumstances significantly. There was substantial evidence in the record which would support that Mr. Thomas's income had changed substantially since the original California order. Mr. Thomas has been employed by United Technology, Chemical Systems Division since June of 1984. (Transcript at 15.) Mr. Thomas's 1991 W-2 tax form showed his income at \$53,100.40. (R. at 70 exhibit 4; Transcript at 16.) However,

pay slips from United Technologies for September and October 1993, show that for a 40-hour week Mr. Thomas's base pay was \$661.20. In the six-week period displayed Mr. Thomas earned .5 hours of overtime. (R. at 70 Exhibit 5.) Based on a 40-hour week with two weeks vacation, Mr. Thomas is currently earning \$33,060.00 annually, which computes to a gross monthly income of \$2755.00. (Transcript at 16-17, 21.) Despite the nearly \$20,000 decrease in salary, Mr. Thomas's per-hour wage has not decreased. In fact, his per-hour base pay has increased between 10 and 20 cents per hour. (Transcript at 35.) The discrepancy is attributable to overtime compensation. The majority of United Technology's work is government contracted manufacturing of a rocket propellant. During the Gulf War there was considerable overtime available, thus leading to Mr. Thomas's 1991 income. However, with cuts in the defense industry overtime is almost nonexistent and Mr. Thomas has been limited to working 40 hours a week without possibility of overtime. (Transcript at 17-18.) The decrease of \$20,000 in income over a two-year period can only be viewed as significant--especially when Mr. Thomas is left with less than \$200 per week to pay his bills.

Since the trial court erroneously found that there was not a substantial change in circumstances, it did not address the question of whether that change, combined with attendant circumstances, warranted the modification requested. An employee's base pay rarely changes unless there is a change in employment. However, a change in income can occur without a change in base pay. A father's ability to pay child support depends more upon his total income than his base pay. The court should address this issue in its findings.

B. The trial court erred in using the parties' base incomes for comparison purposes when, in fact, the California support order was based upon Mr. Thomas's overtime income as well as base income.

Although the California court claimed to base its order on Mr. Thomas's base income, examination of the figures discloses that overtime income was also included. As such, the trial court erred in using the parties' base income for comparison purposes to determine change in circumstances on the modification request. In its Minute Order dated June 29, 1992 the California court found Mr. Thomas's gross income to be \$3501 per month, and Mrs. Thomas's gross income to be \$0 per month. (R. at 70 exhibit 10.) Later, in formulating its order the California court reported the parties' total gross monthly incomes as \$0 for Laretta Thomas and \$3000 for Vance Thomas. The court allowed Mr. Thomas a \$260 per month hardship deduction for child support for a child not of the present marriage. (R. at 5.) However, figuring base income at \$661.20 per week (See R. at 70 exhibit 5; Transcript at 35.) without overtime, Mr. Thomas's base monthly income would be only \$2644.80. The additional \$400 - \$900 the court cites must be overtime income.

As it is clear the California court defined gross monthly income to include overtime earnings when using that figure to determine its support award, it was an abuse of discretion for the Utah trial court to merely compare base incomes without regard for the strict decline in overtime income. The trial court states in its findings of fact that "the financial circumstances of the parties, that is the Plaintiff's base income and the Defendant's base income, are unchanged since the entry of the California order." (R. at 5.) Because it did not take into account the actual figures relied upon by the California Court the trial court

as in error when it determined that a change of circumstances sufficient to warrant modification of the Child Support Order had not occurred.

C. A 25% difference in the child support award from the California order and the Utah child support guidelines establishes a prima facie case for modification of child support.

By stipulating and ordering that the issue of child support would be determined in Utah, the California court intended the case to be transferred and for Utah law to apply. In its Stipulation and Order the California court ordered that "Venue for child support, visitation, and custody shall lie in the State of Utah. . . . Venue for property division and establishment of any arrearages shall remain in Santa Clara County." (R. at 70 exhibit 1, attachment A) In its supplemental judgment, the superior court of California, county of Santa Clara, dissolving the Thomas marriage as of June 18, 1992, the court stated that "venue and jurisdiction over child custody and visitation [and child support] issues . . . was transferred from California to Utah pursuant to a stipulation and order Pending Trial . . . Any future orders or modification of current orders shall be subject to the jurisdiction of the State of Utah." (R. at 70 exhibit 3, Attachment to Judgment.) Although the trial court alleges Mr. Thomas was forum shopping, (R. at 63) the transfer to the Utah court was pursuant to an agreement and stipulation by both Mr. and Mrs. Thomas and was approved by the California court. (Transcript at 10.)

Under Utah law the court must look at the child support guidelines and apply them as a rebuttable presumption. Utah Code § 78-45-7.2 (1993).

In order to rebut the presumption the trial court must enter written, specific finding on the record "supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child." Utah Code § 78-45-7.2(3) (1993).

Enacting the guidelines "constitutes a substantial or material change of circumstances as a ground for modification of a court order, if there is a difference of at least 25% between the existing order and the guidelines." Utah Code § 78-45-7.2(6) (1993).

Applying the California court's \$3000 base income (assuming that is the figure it used), the Utah guidelines would set the child support order for three children at \$728. Applying the current income of \$2644.80 and subtracting the previously awarded child support of \$260 as provided in Utah Code § 78-45-7.6 (1993) to find the adjusted gross income of \$2384.80, the guidelines would set the child support award for three children at \$595. Utah Code § 78-45-7.14 (1993). Subtracting the children's medical insurance payments of \$6 per week, or gross of \$25.80 a month, the guidelines would set the support award at \$569.20 per month, or \$189.73 per child. (See Child Support Obligation Worksheet attached.) The difference between \$913 and \$569.20 exceeds 25 percent and should be a sufficient basis for modification of the support award.

D. The trial court erred when it failed to make specific findings that following the child support guidelines would result in inequity.

Utah Code § 78-45-7(3) (1993) provides that if a trial court finds sufficient evidence to rebut the presumptory child support guidelines, it

shall establish support after considering all relevant factors,"

Utah Code § 78-45-7 (1993) has been interpreted by the Utah Court of Appeals to require the trial court to consider at least the seven factors outlined in section 78-45-7(3) and to enter findings on all of the factors. Jeffries v. Jeffries, 752 P.2d 909, 911 (Utah Ct. App. 1988). In order for findings to be adequate they must be "sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." Stevens v. Stevens, 754 P.2d 952, 958 (Utah Ct. App. 1988) (quoting Acton v. Meliran, 737 P.2d 996, 999 (Utah 1987)). If a court fails to enter adequate findings on each relevant factor, it commits reversible error unless the undisputed evidence clearly establishes the factor or factors in which findings are missing." Allred, 797 P.2d at 1111 (citing Ostler v. Ostler, 789 P.2d 713, 715 (Utah Ct. App. 1990)).

In Hill v. Hill, 841 P.2d 722 (Utah App. 1992), the court reversed the modification of child support and remanded for recalculation pursuant to the guidelines or for findings that justified deviation from them because the trial court acted without reference to the guidelines that applied to any "order establishing or modifying an award of child support." Hill 841 P.2d at 724, (citing Utah Code § 78-45-7.2(1) 1992)). In that case the trial court did not enter detailed findings to rebut the statutory presumption by showing that application of the guidelines would be unjust, inappropriate or not in the best interest of the child as required in section 78-45-7.2(2)(a). In Hill the monthly combined gross income of the parents, as found by the court, would have resulted in a greater reduction of the father's support obligation under

the guidelines than that ordered by the court. Hill 841 P.2d at 724. The Court ruled that the trial court committed reversible error when it "failed to apply the presumptive guidelines and determined the child support outside the guidelines without finding there were special circumstances that justified deviation." Hill 841 P.2d at 724. See Jeffries v. Jeffries, 752 P.2d 909, 911 (Utah App. 1988).

- E. If the child support order is modified by this appeal, the reduction in child support should be retroactive to the filing of the Petition for Modification.**

The Child Support Obligation Guidelines are clear and if this Court chooses to modify the order issued by the trial court it should do so retroactive to the filing of the Petition for Modification. Mr. Thomas' financial circumstances had changed, leaving him unable to pay the high child support ordered by the California court, prior to the filing of the Petition for Modification. Modifying the Child Support Order prospectively would be inequitable to Mr. Thomas. (See Utah Code § 30-3-10.6(2) (1993)).

- II. After modifying transportation arrangements in visitation, the trial court erred by not implementing the statutory visitation found in Utah Code § 30-3-35 (1993), or in the alternative, by failing to provide specific Findings of Fact on the remaining visitation issues.**

The trial court did not address the modification of visitation to bring it in line with the statutory provisions of Utah Code § 30-3-35 (1993) as requested in Mr. Thomas' Petition. This was an abuse of the trial court's discretion. In the alternative, the court failed to enter specific findings of fact on the remaining visitation issues to justify

ts departure from the statutory guidelines. The California order leaves the matter of visitation open to Mrs. Thomas' discretion. In exercising that discretion she has made it nearly impossible for Mr. Thomas to see his children. In order to uphold this order, the trial court is obligated to enter specific findings of fact.

Failure to enter adequate findings on each relevant factor in a divorce order modification, is reversible error unless the "undisputed evidence clearly establishes the factor or factors on which findings are missing." Allred, 797 P.2d at 1111 (citing Ostler v. Ostler, 789 P.2d 13, 715 (Utah Ct. App. 1990)). In order for findings to be adequate they must be "sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue was reached." Stevens v. Stevens, 754 P.2d 952, 958 (Utah Ct. App. 1988) (quoting Acton v. Deliran, 737 P.2d 996, 999 (Utah 1987)).

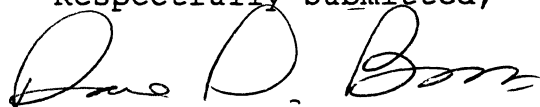
In its Findings of Fact and Order Modifying Decree, the trial court found that "the existing order of visitation is not functioning as it should and imposes a substantial burden upon both parties. The order should be modified to change the pickup and delivery points of the children." (R. at 63.) The evidence is clear that the visitation order as it stood was not functioning as expected, however, the trial court's superficial findings fail to meet the requirement of being detailed enough to point to the conclusions reached. The court's findings of fact are extremely generic, but are supported by evidence that the parties are both dissatisfied with the distances they were required to travel to accomplish the transfer in St. George, Utah. (Transcript at 28-29, 52.) The court should have at least addressed the other visitation issues,

rather than ignoring them completely and focusing solely on the transportation arrangement. Because the court's findings of fact were inadequate, this Court should remand for an order in compliance with the Utah Visitation statutes or for findings of fact adequate to support departure therefrom.

CONCLUSION

For the foregoing reasons the decision of the Fourth District Court should be reversed and the Court of Appeals should recalculate the support award in accordance with the Utah Child Support Guidelines retroactive to the filing of the Petition for Modification. The Court should also adopt a visitation order in accordance with Utah Code 30-3-35 (1993) or remand for the trial court to address departure from the guidelines.

Respectfully Submitted,

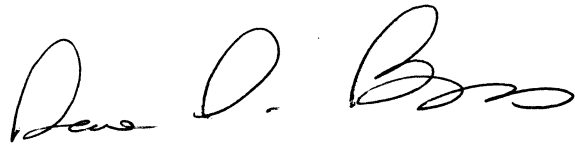
A handwritten signature in cursive script, appearing to read "D. D. Bone".

Counsel for Plaintiff and Appellant

June 29, 1994

CERTIFICATE OF MAILING

I hereby certify that on the 30 day of June, 1994, I did mail two true and correct copies of the foregoing to Michael D. Esplin, Attorney or Defendant/Appellee, 43 East 200 North, P.O. Box "L," Provo, Utah 4603-0200; postage prepaid.

A handwritten signature in cursive script, appearing to read "David D. Brown".

ADDENDUM

(See Attachments)

IN THE FOURTH DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

| | | |
|---------------------------|---|------------------------------------|
| VANCE THOMAS, | : | CHILD SUPPORT OBLIGATION |
| | : | WORKSHEET (SOLE CUSTODY AND |
| Plaintiff, | : | PATERNITY) |
| vs. | : | |
| LAURETTA THOMAS (ALLRED), | : | Civil No. 940064-CA |
| Defendant. | : | |

| BASE AWARD CALCULATION | Mother | Father | Combined |
|--|--------|-----------|-----------|
| 1. Enter the combined number of natural and adopted children of this mother and father. | | | 3 |
| 2a. Enter the father's and mother's gross monthly income. | \$0 | \$2644.80 | |
| 2b. Enter previously ordered alimony that is actually paid. | \$0 | \$0 | |
| 2c. Enter previously ordered child support. | \$0 | \$260 | |
| 2d. OPTIONAL: Enter the amount from line 12 of the Children in Present Home Worksheet for either parent. | N/A | N/A | |
| 3. Subtract lines 2b, 2c and 2d from 2a. This is the Adjusted Monthly Gross for child support purposes. | \$0 | \$2384.80 | \$2384.80 |
| 4. Take the COMBINED figure in line 3 and the number of children in line 1 to the Support Table. Find the Base Combined Support Obligation. Enter it here. | | | \$595 |
| 5. Divide each parent's adjusted monthly gross in line 3 by the COMBINED adjusted monthly gross in line 3. | 0% | 100% | |

| | | | |
|--|-----|----------|-----|
| 6. Multiply line 4 by line 5 for each parent to obtain each parent's share of the Base Support Obligation. | \$0 | \$595 | |
| 7. Enter the children's portion of monthly medical and dental insurance premiums paid to insurance company. | \$0 | \$25.80 | |
| 8. Enter the monthly work or training related child care expense for the children in line 1. | | | \$0 |
| 9. BASE CHILD SUPPORT AWARD Bring down the amount in line 6 for the Obligor parent. | | \$595 | |
| 10. Adjusted Base Child Support Award Subtract the Obligor's line 7 from line 9. | | \$569.20 | |
| 11. Adjusted Base Child Support Award per child Divide line 10 by line 1. | | \$189.73 | |
| 12. CHILD CARE AWARD Multiply line 8 by .50 to obtain obligor's share of child care expense. Add to line 10 only when expense is actually incurred. | | \$0 | |

FILED
4TH DISTRICT COURT
STATE OF UTAH

JAN 5 1 15 PM '94

Jm

MICHAEL D. ESPLIN (1009)
ALDRICH, NELSON, WEIGHT & ESPLIN
Attorney for Defendant
43 East 200 North
P.O. Box "L"
Provo, Utah 84603-0200
Telephone: (801) 373-4912

IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY

STATE OF UTAH

| | | |
|--------------------------|---|---|
| VANCE THOMAS, | : | |
| Plaintiff, | : | FINDINGS OF FACT AND ORDER |
| | : | MODIFYING DECREE |
| vs. | : | |
| LORETTA THOMAS (ALLRED), | : | Civil No. ⁹³⁴⁴⁰⁰⁰⁷⁵ 9300075 |
| Defendant. | : | (Judge Ray M. Harding) |

This matter came on for trial upon plaintiff's Petition to Modify the decree and plaintiff's order to show cause which had been consolidated for trial. Plaintiff was present in person and was represented by counsel, Dana Burrows. Defendant was present in person and was represented by counsel, Michael D. Esplin. The court having heard the testimony of the parties, having received evidence, having heard and considered argument of counsel, having taken the matter under advisement, and being fully advised in the premises, now makes the following:

FINDINGS

1. The Court finds that the previous order entered in the State of California regarding child support was a "final order" until modified by the further order of a Utah Court.

2. In order to modify any condition of the California order, the moving party must a) file a petition to modify; and b) establish a material change of circumstances.

3. The Court finds that a transfer from one jurisdiction (and its different applicable support guidelines) to another does not constitute a material change of circumstances even though there may be a change of more than 25% according to the applicable guidelines. Forum shopping is not a basis for showing a material change of circumstances.

4. The Court finds that the financial circumstances of the parties, that is Plaintiff's base income and Defendant's base income, are unchanged since the entry of the California order.

5. The Court finds that the existing order of visitation is not functioning as it should and imposes a substantial burden upon both parties. The order should be modified to change the pickup and delivery points of the children.

6. Each party should pay their own attorneys fees and costs.

WHEREFORE, having made the foregoing Findings, the Court now makes the following:

ORDER

1. Plaintiff's petition to modify the support obligation is denied.

2. The order of visitation is hereby modified to provide that the point of pick up for the plaintiff shall be the Defendant's residence, and Defendant's place of pick up for return of the children shall be the Plaintiff's place of residence. Both parties may alter this place of pick up by providing the other with an airplane ticket for each of the children for flights between Salt Lake City, Utah, and San Francisco, San Jose or Oakland, California, which ever has the lowest fares.

3. Each party is to pay their own attorneys fees and costs.

DATED this 5 day of June, 1994.

BY THE COURT:


RAY M. HARDING
District Judge

Approved as to form:


DANA BURROWS
Attorney for Plaintiff

FILED 12-2-93
Fourth Judicial District Court of
Utah County, State of Utah.

CARMA E. SMITH, Clerk

 Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

| | |
|------------------|--|
| VANCE THOMAS, | MEMORANDUM DECISION CASE NO. 934400075 DATE: December 2, 1993 JUDGE: RAY M. HARDING LAW CLERK: Joe Morton DEPUTY CLERK: Georgia Snyder |
| Plaintiff, | |
| vs. | |
| LAURETTA THOMAS, | |
| Defendant. | |

This matter came before the Court for trial on November 29, 1993. Having heard the evidence and argument of counsel the court hereby finds as follows:

The order entered in California is a "final order" until modified by further order of a Utah Court. In order to modify any condition of the California decree the moving party must 1) file a petition for modification and 2) establish a material change in circumstances.

A transfer from one jurisdiction (and its applicable support guidelines) to another jurisdiction (and its different applicable support guidelines) does not constitute a material change in circumstances even though there may be a change of more than 25% according to the applicable guidelines. Forum shopping for guidelines is not a basis for showing a material change in circumstances. The financial considerations of the parties, that is Plaintiff's base income and Defendant's base income, are unchanged since the entry of the California order was entered. The petition for modification as to the support obligation is denied.

As to visitation the court finds that the existing order is not functioning as it should, and imposes a substantial burden on both parties. Therefore the Court will modify the order to provide that the point of pick up for the Plaintiff will be the Defendant's place of residence and Defendant's place of pick up for return of the children will be the Plaintiff's

place of residence. Both parties may alter this place of pick up by providing the other with an airplane ticket for each of the children for flights between Salt Lake City and San Francisco (or San Jose or Oakland which ever provides the lowest fares).

Each party is to pay their own costs and attorney's fees.

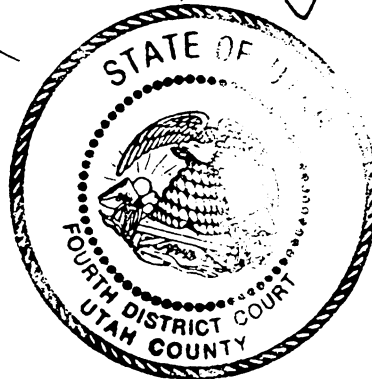
Counsel for Defendant is to prepare an order within 15 days of this decision consistent with the terms of this memorandum and submit it to opposing counsel for approval as to form prior to submission to the Court for signature. This memorandum decision has no effect until such order is signed by the Court.

Dated this 2th day of December, 1993.

BY THE COURT:


RAY M. HARDING, JUDGE

cc: Dana D. Burrows, Esq.
Michael Esplin, Esq.



PRINT CLEARLY IN INK
CHECK ALL BOXES THAT APPLY
EACH PARTY MUST INITIAL EACH PAGE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

| | | | |
|--|---|---|--|
| Hearing, date: <u>12/8/92</u> | Department: <u>19</u> | <div>FILED</div> <div>DEC 8 4 14 PM '92</div> <div>CW</div> | |
| Judge: <u>BLACKFORD STEWART</u> | <input checked="" type="checkbox"/> Temporary | | |
| Petitioner/Plaintiff: <u>VANCE THOMAS</u> | | | |
| Respondent/Defendant: <u>LAURETTA THOMAS</u> | | | |
| Claimant: _____ | | Case Number: <u>FL017857</u> | |

STIPULATION AND ORDER

☒ Pending Trial ☐ Modification

- ☐ CHILD CUSTODY
☒ VISITATION
☒ CHILD SUPPORT
☒ SPOUSAL OR FAMILY SUPPORT

- ☐ INJUNCTIVE ORDER
☐ ATTORNEY FEES & COSTS
☐ HEARING CONTINUED TO _____
☒ OTHER Venue Transferred

- 1.a. ☒ Petitioner present in court
 ☒ Attorney present in court: JERALYN SPADLIN
b. ☒ Respondent present in court
 ☒ Attorney present in court: EDISON MILLER
c. ☐ Claimant present in court
 ☐ Attorney present in court: _____
d. On the Order to Show Cause/Motion filed
Date: 9/11/92 By: Petitioner

***ANY RESTRAINING ORDERS CONTAINED HEREIN SHALL EXPIRE ON:**
(Date)

THE PARTIES AGREE THAT THE COURT MAKE ORDERS AS TO THOSE ITEMS CHECKED BELOW:

2. Previous Orders:
Pending trial or until further order of this court, existing orders shall continue in effect, except as modified by this order.
3. Custody & Visitation: ☐ Not Applicable ☒ See Attachment
4. Child Support: ☐ Not Applicable ☒ See Attachment
5. Spousal/Family Support: ☐ Not Applicable ☒ See Attachment
6. Attorney Fees & Costs: ☐ Not Applicable ☐ See Attachment
7. Injunctive Orders: ☐ Not Applicable ☐ See Attachment
8. Other Orders: ☐ Not Applicable ☐ See Attachment
 ☒ Motion on Contempt Continued to day of trial.
9. Other Issues:
☒ All other issues are reserved until further order of Court.

se Name:

Thomas

Case Number:

FLC17857

CHILD SUPPORT ATTACHMENT

FACTS ARE:

Net Income:

☐ a. The parties' income and deductions are:

| Total Gross Monthly Income | Total Monthly Deductions | Total Hardship Deductions | Net Monthly Disposable Income |
|----------------------------|--------------------------|---------------------------|-------------------------------|
| 3000 | | | |
| \$ 3000 | | | |

er: ☐ on AFDC

er: ☐ on AFDC

OR

☐ b. A printout of a computer calculation of the parties' financial circumstances is attached.

Hardship Deductions: ☐ Not Applicable

a. The hardship deductions requested by

☐ Mother for \$

☒ Father for \$ 260.00

justifiable expenses that have caused an extreme financial hardship for the following reasons: Child support
1 child not of this marriage

Parents' Time With Children: ☐ Not Applicable

Custody of the children listed below is shared by the parties in the following percentages:

Mother ~~10~~ % Father 10 %

☐ The support agreed to by the parties is below the minimum mandated by the Agnos Act, the parties have been informed of r rights under said Act, and the needs of the children will be adequately met.

Other Factors: Mother has remarried and Family Support
is terminated effective Oct 31, 1992.

Court Orders:

Support of the minor children of the parties, including child care and health care expenses, is fixed as follows beginning on:

November 1, 1992

a. Child Support:

| Child's Name | Amount Monthly | Payable by (name) | Payable-to (name) | Due as Follows |
|--------------|----------------|-------------------|-------------------|---|
| Nicole | \$ 300 | Vance Thomas | Loretta | <input type="checkbox"/> 1st/mo |
| Brett | \$ 300 | Vance Thomas | Adrian | <input type="checkbox"/> 50/50% |
| Ashley | \$ 313 | Vance Thomas | Loretta | <input checked="" type="checkbox"/> Other |
| | | | | Wage Assignment |

| | |
|-----------------------------|----------------------------------|
| Case Name: <u>Thomas</u> | Case Number: <u>FL 017857</u> |
|-----------------------------|----------------------------------|

b. Child Care Expenses: ☒ Not Applicable

| Child's Name | Amount Monthly | Payable by (name) | Payable to (name) | Due as Follows |
|--------------|-------------------|----------------------|----------------------|--|
| _____ | _____ | _____ | _____ | <input type="checkbox"/> 1st/mo <input type="checkbox"/> 50/50% semi-mo. each mo. <input type="checkbox"/> Other |
| _____ | _____ | _____ | _____ | |
| _____ | _____ | _____ | _____ | |

OR

Child care expenses shall be paid:

Mother _____% Father _____% on _____ to: _____

☐ 2. The hardship deduction is allowed for the period beginning: _____ and ending _____

☒ 3. A wage assignment for the foregoing child support shall issue forthwith.

☐ 4. In the event payment of an amount equal to the amount of the foregoing child support payable for one month is in arrears, a wage assignment will be issued without notice, and include an order for \$_____ attorney fees.

☐ 5. The parties shall promptly inform each other of any change of employment, including the employer's name, address and telephone number.

6. Health Care Expenses: ☐ Not Applicable

a. Health insurance coverage for the supported children shall be maintained by both parties, if available at reasonable or no cost. Both parties are ordered to cooperate in the presentation, collection, and reimbursement of any medical claims. The coverages and party or parties providing it are:

| | |
|---------------|--|
| Medical | <input type="checkbox"/> Mother <input checked="" type="checkbox"/> Father |
| Dental | <input type="checkbox"/> Mother <input checked="" type="checkbox"/> Father |
| Orthodontia | <input type="checkbox"/> Mother <input type="checkbox"/> Father |
| Mental Health | <input type="checkbox"/> Mother <input type="checkbox"/> Father |

☒ b. The party providing coverage shall assign the right of reimbursement to the other party.

☒ c. The employer of the party providing coverage shall be ordered to enroll the minor child(ren) as employee's dependents under the plan provided.

☒ d. All uninsured health care expenses for emergency services will be paid as follows:

Mother 50% Father 50%

☒ e. Only when the parties have a prior agreement for the performance of such services will uninsured health care expenses for non-emergency services be paid as follows:

Mother 50% Father 50%

7. Visitation Travel Expenses: ☒ Not Applicable

Travel expenses for visitation shall be paid or provided by:

Mother _____% Father _____%

8. Family Support Trustee: ☒ Not Applicable

All child support payments shall be made to the FAMILY SUPPORT TRUSTEE, 2645 Zanker Road, San Jose, CA 95134. A copy of this order shall be served on the Trustee. The District Attorney's file number is #_____

9. Termination of Support: ☐ Not Applicable

Child support payments shall continue until further order of the court, or until the child marries, dies, is emancipated, reaches 19, or reaches 18 and is not a full time high school student residing with a parent, whichever occurs first.

Thomas

Case Number: FL017857

ATTACHMENT A

1) Venue for Child Support, Visitation, and custody shall lie in the State of Utah. The Clerk of the Superior Court is ordered to provide three certified copies of this order to Petitioner and is further ordered to transfer said case to the Containing Court in Utah upon said court's request.

2. Fees for property division and establishment of any encroachages shall remain in Santa Clara County.

Christmas visitation shall be as set forth in the Family Court Services Memo dated 7/20/92 except for the following modification:

1. Ashley shall visit with father from 12:00pm to 2:00pm on December 23rd, 1999 and from 10:00 Am to 12:00 pm on December 30th, 1999. Sister vacation shall than be a full visit.

2. Nicole shall have the option of remaining with her father for the entire Christmas visit or returning with Ashley. Nicole and her father will decide. Father shall respect Nicole's wishes in this matter.

Case Name:

Thomas

Case Number:

FL017857

ATTACHMENT A(2)

3.) Telephone visitation with the minors shall be at 7:30 Utah time on Thursdays. If children miss phone call they shall call ~~call~~ on Friday at 6:30 California time. If Father wishes to call at other times, he shall have that option ~~but~~ Father's telephone number is (510) 438-0708

4) Father may, upon 48 hours notice to Mother, exercise other visitation with children in addition to the Family Court Services memo, subject to agreement between Mother and Father.

Case Name:

THOMAS

Case Number:

FL 017857

I have read the entire stipulation and agreement, including all attachments. We understand it fully and request the court to make stipulation and agreement the Court's order. We waive all further notice of this Order.

d: 12/8/92

d: 12/8/92

d: 12/8/92

d: 12/8/92

d: _____

d: _____

Vance Thomas
Petitioner

[Signature]
Attorney for Petitioner

Lauretta Allred (Thomas)
Respondent

Elison W. Miller
Attorney for Respondent

Claimant

Attorney for Claimant

ORDER

THE COURT APPROVES THE TERMS STIPULATED AND AGREED TO BY THE PARTIES AND HEREBY ISSUES THE ORDERS SET FORTH ABOVE

d: 12-8-92

Sandra Bischofford
Judge of the Superior Court

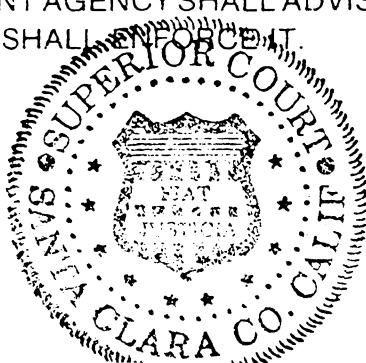
NOTICES

VIOLATION OF THIS ORDER IS A MISDEAMOR PUNISHABLE BY A FINE, JAIL OR BOTH.

THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA.

ASSIGNMENT OF YOUR WAGES WILL BE OBTAINED WITHOUT FURTHER NOTICE TO YOU (A) IF YOU FAIL TO PAY ANY COURT-ORDERED CHILD SUPPORT, OR SPOUSAL SUPPORT, OR (B) IF AN ASSIGNMENT IS REQUESTED BY THE DISTRICT ATTORNEY.

THIS ORDER IS EFFECTIVE WHEN MADE. IT IS ENFORCEABLE ANYWHERE IN CALIFORNIA BY ANY LAW ENFORCEMENT AGENCY THAT HAS RECEIVED THE ORDER OR BY ANY OFFICER WHO IS IN POSSESSION OF A COPY OF THE ORDER. IF PROOF OF SERVICE ON THE RESTRAINED PERSON HAS NOT BEEN RECEIVED, THE LAW ENFORCEMENT AGENCY SHALL ADVISE THE RESTRAINED PERSON OF THE TERMS OF THE ORDER AND THEN SHALL ENFORCE IT.



This foregoing instrument is a correct copy of the original on file in this office
ATTEST:

DEC 08 1992

STEPHEN V. LOVE

County Clerk - Santa Clara County
County Clerk and Registrar of the Superior Court of the State of California in and for the County of Santa Clara

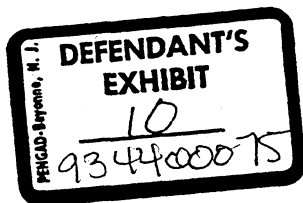
| | |
|--|--|
| IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA | |
| PLAINTIFF | RECORDED INDEXED JUN 29 1992 CLERK'S OFFICE SANTA CLARA COUNTY |
| VANCE GLENN THOMAS | |
| DEFENDANT | CASE NUMBER FL017857 |
| LAURETTA DAWN THOMAS | |
| PROOF OF SERVICE BY MAIL OF: | |
| <input type="checkbox"/> TRIAL SETTING CONFERENCE ORDER | |
| <input type="checkbox"/> PRE-TRIAL CONFERENCE ORDER | |
| <input type="checkbox"/> ADDENDUM TO PRE-TRIAL/TRIAL SETTING | |
| <input type="checkbox"/> MEMORANDUM OF TENTATIVE DECISION | |
| <input checked="" type="checkbox"/> OTHER <u>MINUTE ORDER</u> | |

CLERK'S CERTIFICATE OF MAILING
 CERTIFY THAT I AM NOT A PARTY TO THIS CAUSE AND THAT A TRUE
 COPY OF THIS DOCUMENT WAS MAILED FIRST CLASS POSTAGE PREPAID
 IN A SEALED ENVELOPE ADDRESSED AS SHOWN BELOW AND
 THE DOCUMENT WAS MAILED AT

GRACE K. YAMAKAWA, COUNTY CLERK

SAN JOSE, CALIFORNIA ON June 29, 1992

BY A. COMANDA DEPUTY



JERALYN K. SPRADLIN, ATTORNEY AT LAW
 500 East Calaveras Blvd., Suite 203
 Milpitas, Ca. 95035

EDISON W. MILLER, ATTORNEY AT LAW
 2292 Lincoln Ave.
 San Jose, Ca. 95125

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

TIFF: VANCE GLENN THOMAS

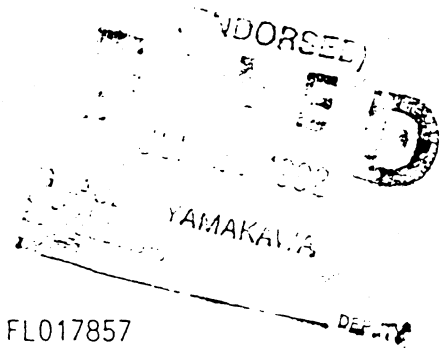
IDANT: LAURETTA DAWN THOMAS

June 29, 1992

CASE NUMBER: FL017857

ENT: HONORABLE MARY JO LEVINGER, JUDGE

CLERK: ADRIENNE COMANDA



TE ORDER

Court finds Father's gross income to be \$3501 per month, Mother's gross income to be \$0 month and Father's time-share to be 10%. The Court makes other findings as set forth he attached computer printout which is incorporated by reference herein. The Court rs Father to pay to Mother \$1672 family support per month effective April 15, 1992. payments shall be made in two equal installments on the first and fifteenth of the h. Wage assignment shall issue in accordance herewith.

er shall release to Father three dependency exemptions on January 1 of each year provided er is current with the support payments on December 31 of the preceding year.

past medical and dental bills shall be shared equally between the parties. Any uninsured cal, dental or health costs shall be shared equally between the parties.

er shall pay \$40.00 per month child care expenses of Mother provided Mother is a full- e college student in pursuit of a college degree or is employed or in employment training.

er shall pay to Mother \$750 attorney's fees as and for spousal support.

ysel for Mother to prepare order.

File:THOMAS

DissoMaster(tm) V.92-2

| | | | | | | |
|-----------|--------|--------|-----------------|------------------------|---------|-------|
| MAS | H | W | DissoMaster(tm) | V.92-2 | (c)1992 | CFLR |
| kids | 0 | 3 | Input: MONTHLY | 00:13:14 | GDLN | PROP |
| me w/NCP | 10% | 0% | Tactic: 8(a) | COMBINED | | |
| status | SINGLE | HH/MLA | Year: 1992 | Comb net spendable | 2057 | 2384 |
| d exempt | 1 | 4 | | Percent change | 0% | 16% |
| s+salary | 3501 | 0 | Settings changd | HUSBAND pays GDLNCS&SS | PROPSS | |
| -emp inc | 0 | 0 | CA:S Clara | Paymt cost/benefit | -1143 | -1023 |
| r taxabl | 0 | 0 | Rule 1274 CS /U | Net spendable inc | 751 | 871 |
| +CS recd | 0 | 0 | Guideline SS /A | Change from GDLN | 0 | 120 |
| nontaxbl | 0 | 0 | Nets:Adjusted | % of combined net | 37% | 37% |
| sps inc | 0 | 0 | Husb 2046 | % increase ovr GDLN | 0% | 37% |
| -Keogh | 0 | 0 | Wife 11 | Total taxes | 938 | 441 |
| od prev m | 0 | 0 | Comb 2057 | Dep exemption value | 165 | 90 |
| od prev m | 260 | 0 | AGNOS 691 | # withhold allows | 4 | 13 |
| lth insur | 0 | 0 | ChCare 26 | Net wage paycheck | 2527 | 2940 |
| med exp | 0 | 0 | GDL CS 860 | WIFE | | |
| p tax exp | 0 | 0 | GDL SS 410 | Paymt cost/benefit | 1296 | 1503 |
| erest exp | 0 | 0 | Total 1296 | Net spendable inc | 1306 | 1513 |
| trib exp | 0 | 0 | | Change from GDLN | 0 | 208 |
| c itemizd | 0 | 0 | PROP: | % of combined net | 63% | 63% |
| on dues | 29 | 0 | NonDed 0 | % increase ovr GDLN | 0% | 63% |
| d retrmnt | 0 | 0 | Deduct 1672 | Total taxes | -10 | 159 |
| dship ded | 227* | 0* | Total 1672 | Dep exemption value | 0 | 90 |
| GDL deds | 0 | 0 | Saving 327 | # withhold allows | 6 | 3 |
| expenses | 0 | 40 | Release 3 | Net wage paycheck | 0 | 0 |

e: 06/26/92 Time: 15:01:09 Tax year:1992 Tactic: 8(a)

SANTA CLARA COUNTY SUPERIOR COURT

ly provision for separate maintenance previously granted.

(5) (a) A divorce may not be granted on the grounds of insanity unless: (i) the defendant has been adjudged insane by the appropriate authorities of this or another state prior to the commencement of the action; and (ii) the court finds by the testimony of competent witnesses that the insanity of the defendant is incurable.

(b) The court shall appoint for the defendant a guardian ad litem, who shall protect the interests of the defendant. A copy of the summons and complaint shall be served on the defendant in person or by publication, as provided by the laws of this state in other actions for divorce, or upon his guardian ad litem, and upon the county attorney for the county where the action is prosecuted.

(c) The county attorney shall investigate the merits of the case and if the defendant resides out of this state, take depositions as necessary, attend the proceedings, and make a defense as is just to protect the rights of the defendant and the interests of the state.

(d) In all actions the court and judge have jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor children, as the courts and judges possess in other actions for divorce.

(e) The plaintiff or defendant may, if the defendant resides in this state, upon notice, have the defendant brought into the court at trial, or have an examination of the defendant by two or more competent physicians, to determine the mental condition of the defendant. For this purpose either party may have leave from the court to enter any asylum or institution where the defendant may be confined. The costs of court in this action shall be apportioned by the court. 1987

3-2. Right of husband to divorce.

The husband may in all cases obtain a divorce from wife for the same causes and in the same manner he wife may obtain a divorce from her husband. 1953

3-3. Award of costs, attorney and witness fees — Temporary alimony.

(1) In any action filed under Title 30, Chapter 3, 4, 5, and in any action to establish an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may order a party to pay the costs, attorney fees, and witness fees, including expert witness fees, of the other party to enable the other party to prosecute or defend the action. The order may include provision for costs of the action.

(2) In any action to enforce an order of custody, visitation, child support, alimony, or division of property in a domestic case, the court may award costs and attorney fees upon determining that the party substantially prevailed upon the claim or defense. The court, in its discretion, may award no fees or costs against a party if the court finds the party is impecunious or enters in the record the reason for not awarding fees.

(3) In any action listed in Subsection (1), the court may order a party to provide money, during the pendency of the action, for the separate support and maintenance of the other party and of any children in custody of the other party.

ing the course of the action or in the final order or judgment. 1993

30-3-4. Pleadings — Findings — Decree — Sealing.

(1) (a) The complaint shall be in writing and signed by the plaintiff or plaintiff's attorney.

(b) A decree of divorce may not be granted upon default or otherwise except upon legal evidence taken in the cause.

(c) If the plaintiff and the defendant have a child or children and the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program shall be administered, a decree of divorce may not be granted until both parties have attended a mandatory course provided in Section 30-3-11.3 and have presented a certificate of course completion to the court. The court may waive this requirement, on its own motion or on the motion of one of the parties, if it determines course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties.

(d) All hearings and trials for divorce shall be held before the court or the court commissioner as provided by Section 78-3-31 and rules of the Judicial Council. The court or the commissioner in all divorce cases shall make and file findings and decree upon the evidence.

(2) The file, except the decree of divorce, may be sealed by order of the court upon the motion of either party. The sealed portion of the file is available to the public only upon an order of the court. The concerned parties, the attorneys of record or attorney filing a notice of appearance in the action, the Office of Recovery Services if a party to the proceedings has applied for or is receiving public assistance, or the court have full access to the entire record. This sealing does not apply to subsequent filings to enforce or amend the decree. 1992

30-3-4.1 to 30-3-4.4. Repealed.

1990

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Termination of alimony — Nonmeritorious petition for modification — Meritorious petition for modification [Effective until January 1, 1994].

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children; and

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide the day care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property and obligations for debts as is reasonable and necessary.

(4) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.

(5) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact, payment of alimony shall resume.

(7) If a petition for modification of child custody or visitation provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorney's fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(8) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation. 1993

Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Termination of alimony — Nonmeritorious petition for modification [Effective January 1, 1994].

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children,

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to respect creditors or obligees, regarding the court's division of debts, obligations, and liabilities and regarding the parties' rate, current addresses; and

(iii) provisions for the enforcement of these orders;

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5;

(e) with regard to child support orders issued or modified on or after January 1, 1994, the subject to income withholding, an order assessing against the obligor an additional \$7 per month check processing fee to be included in the amount withheld and paid to the Office of Recovery Services within the Department of Human Services for the purposes of income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide day care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, dental care, or the distribution of the property and obligations for debts as is reasonable and necessary.

(4) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.

(5) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact, payment of alimony shall resume.

(7) If a petition for modification of child custody or visitation provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorney's fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(8) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation. 1993

30-3-5.1. Provision for income withholding in child support order.

Whenever a court enters an order for child support, it shall include in the order a provision for withholding income as a means of collecting child support as provided in Title 62A, Chapter 11, Part 4. 1993

30-3-5.2. Allegations of child abuse or child sexual abuse — Investigation.

When, in any divorce proceeding or upon a request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court shall order that an investigation be conducted by the Division of Family Services within the Department of Human Services in accordance with Title 62A, Chapter 4, Part 5. A final award of custody or visitation may not be rendered until a report on that investigation is received by the court. That investigation shall be conducted by the Division of Family Services within 30 days of the court's notice and request for an investigation. In reviewing this report, the court shall comply with Section 78-7-9. 1992

30-3-5.5, 30-3-6. Repealed. 1991, 1993

30-3-7. When decree becomes absolute.

- (1) The decree of divorce becomes absolute:
- (a) on the date it is signed by the court and entered by the clerk in the register of actions if both the parties who have a child or children and the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program is administered and have completed attendance at the mandatory course provided in Section 30-3-11.3 except if the court waives the requirement, on its own motion or on the motion of one of the parties, upon determination that course attendance and completion are not necessary, appropriate, feasible, or in the best interest of the parties;
 - (b) at the expiration of a period of time the court may specifically designate, unless an appeal or other proceedings for review are pending, or
 - (c) when the court, before the decree becomes absolute, for sufficient cause otherwise orders.
- (2) The court, upon application or on its own motion for good cause shown, may waive, alter, or extend a designated period of time before the decree becomes absolute, but not to exceed six months from the signing and entry of the decree. 1992

30-3-8. Remarriage — When unlawful.

Neither party to a divorce proceeding which dissolves their marriage by decree may marry any person other than the spouse from whom the divorce was granted until it becomes absolute. If an appeal is taken, the divorce is not absolute until after affirmation of the decree. 1988

30-3-10. Custody of children in case of separation or divorce — Custody consideration.

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. The court may inquire of the children and take into consideration the children's desires regarding the future custody, but the expressed desires are not controlling and the court may determine the children's custody otherwise.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent. 1993

30-3-10.1. Joint legal custody defined.

In this chapter, "joint legal custody":

- (1) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;
- (2) may include an award of exclusive authority by the court to one parent to make specific decisions;
- (3) does not affect the physical custody of the child except as specified in the order of joint legal custody;
- (4) is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and
- (5) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child. 1988

30-3-10.2. Joint legal custody order — Factors for court determination — Public assistance.

- (1) The court may order joint legal custody if it determines that joint legal custody is in the best interest of the child and:
- (a) both parents agree to an order of joint legal custody; or
 - (b) both parents appear capable of implementing joint legal custody.
- (2) In determining whether the best interest of a child will be served by ordering joint custody, the court shall consider the following factors:
- (a) whether the physical, psychological, and emotional needs and development of the child will benefit from joint legal custody;
 - (b) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;
 - (c) whether each parent is capable of encouraging and accepting a positive relationship between the child and the other parent;

(e) the geographical proximity of the homes of the parents;

(f) the preference of the child if the child is of sufficient age and capacity to reason so as to form an intelligent preference as to joint legal custody.

(g) the maturity of the parents and their willingness and ability to protect the child from conflict that may arise between the parents; and

(h) any other factors the court finds relevant.

(3) The determination of the best interest of the child shall be by a preponderance of the evidence.

(4) The court shall inform both parties that an order for joint custody may preclude eligibility for public assistance in the form of aid to families with dependent children, and that if public assistance is required for the support of children of the parties at any time subsequent to an order of joint legal custody, the order may be terminated under Section 30-3-10.4.

(5) The court may order that where possible the parties attempt to settle future disputes by a dispute resolution method before seeking enforcement or modification of the terms and conditions of the order of joint legal custody through litigation, except in emergency situations requiring ex parte orders to protect the child. 1990

30-3-10.3. Terms of joint legal custody order.

(1) Unless the court orders otherwise, before a final order of joint legal custody is entered when the plaintiff has filed an action in the judicial district as defined in Section 78-1-2.1 where the pilot program is administered as provided under Section 30-3-11.3, both parties shall attend the mandatory course and present a certificate of completion from the course to the court.

(2) An order of joint legal custody shall provide terms the court determines appropriate, which may include specifying:

- (a) either the county of residence of the child, until altered by further order of the court, or the custodian who has the sole legal right to determine the residence of the child;
- (b) that the parents shall exchange information concerning the health, education, and welfare of the child, and where possible, confer before making decisions concerning any of these areas;
- (c) the rights and duties of each parent regarding the child's present and future physical care, support, and education;
- (d) provisions to minimize disruption of the child's attendance at school and other activities, his daily routine, and his association with friends; and
- (e) as necessary, the remaining parental rights, privileges, duties, and powers to be exercised by the parents solely, concurrently, or jointly.

(3) The court shall, where possible, include in the order the terms agreed to between the parties.

(4) Any parental rights not specifically addressed by the court order may be exercised by the parent having physical custody of the child the majority of the time.

(5) (a) The appointment of joint legal custodians does not impair or limit the authority of the court to order support of the child, including payments by one custodian to the other.

(b) An order of joint legal custody, in itself, is not grounds for modifying a support order.

seeking enforcement or modification of the terms and conditions of the order of joint legal custody through litigation, except in emergency situations requiring ex parte orders to protect the child. 1992

30-3-10.4. Modification or termination of order.

(1) On the motion of one or both of the joint legal custodians the court may, after a hearing, modify an order that established joint legal custody if:

- (a) the circumstances of the child or one or both custodians have materially and substantially changed since the entry of the order to be modified, or the order has become unworkable or inappropriate under existing circumstances; and
- (b) a modification of the terms and conditions of the decree would be an improvement for and in the best interest of the child.

(2) The order of joint legal custody shall be terminated by order of the court if both parents file a motion for termination. At the time of entry of an order terminating joint legal custody, the court shall enter an order of sole legal custody under Section 30-3-10. All related issues, including visitation and child support, shall also be determined and ordered by the court.

(3) If the court finds that an action under this section is filed or answered frivolously and in a manner designed to harass the other party, the court shall assess attorney's fees as costs against the offending party. 1990

30-3-10.5. Payments of support, maintenance, and alimony.

Unless the order or decree providing for support, maintenance, or alimony under this chapter or Title 30, Chapter 4, provides a different time for payment, all monthly payments of support, maintenance, or alimony provided for in the order or decree shall be due one-half by the 5th day of each month, and the remaining one-half by the 20th day of that month. 1985

30-3-10.6. Payment under child support order — Judgment.

(1) Each payment or installment of child or spousal support under any child support order, as defined by Subsection 62A-11-401(3), is, on and after the date it is due:

- (a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (2);
- (b) entitled, as a judgment, to full faith and credit in this and in any other jurisdiction; and
- (c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (2).

(2) A child or spousal support payment under a child support order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was given to the obligee, if the obligor is the petitioner, or to the obligor, if the obligee is the petitioner.

(3) For purposes of this section, "jurisdiction" means a state or political subdivision, a territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) The judgment provided for in Subsection (1)(a), to be effective and enforceable as a lien against the real property interest of any third party relying on the public record, shall be docketed in the district

(b) knowledge of resources in the community to which the parties to contested child custody or visitation matters can be referred for assistance; and

(c) knowledge of child development, clinical issues relating to children, the effects of divorce on children, and child custody research. 1992

1-28. Mediation proceedings closed — Information confidential — Records closed.

(1) All mandatory mediation proceedings under Sections 30-3-23 and 30-3-24 shall be held in private, all persons other than mediation services personnel, the parties, their counsel, and children of the parties shall be excluded unless the parties agree otherwise.

(2) All communications, verbal or written, made in mediation proceedings are confidential. A party or other individual present during mediation proceedings may not be examined in any civil or criminal action as to such communications and such communications may not be used in any civil or criminal action without the consent of the parties to the mediation.

(3) All records of the court with respect to mediation proceedings shall be classified private and disclosed only pursuant to Section 63-2-202.

(4) (a) However, a person providing mediation is subject to the child abuse reporting requirements of Section 62A-4-503 and the criminal penalty for failure to report under Section 62A-4-511. The confidentiality provisions of Section 62A-4-513 apply to reports made under this subsection.

(b) If the mediator determines a participant in the procedure has made an immediate threat of physical violence against a readily identifiable victim or against the mediator, communications involving the threat are not confidential. 1992

1-29. Mediation agreement — Order.

(1) Any agreement which resolves issues of permanent legal custody or visitation between the parties reached as a result of mediation under this section shall be prepared in writing, reviewed by the attorney for each party and by any appointed guardian ad litem for the child, if any, and then submitted to the court. Any reviewing attorney or guardian ad litem shall certify in writing that he has reviewed the agreement and shall comment on the agreement based on the best interests of the child or children.

(2) The court may approve or reject the mediation agreement based on the best interests of the child or children. The court shall state its reasons for rejecting all or any part of the mediation agreement. If the court approves the mediated agreement, its terms shall be incorporated in the court's final order.

(3) (a) If after mediation under this section the parties do not reach agreement on child custody or visitation, the mediator shall notify the court of that result.

(b) The court shall, if appropriate, refer the matter for a legal custody or visitation evaluation. If the parties come to agreement on legal custody or visitation after the matter has been referred for an evaluation, the study shall be terminated.

(c) The parties may return to mediation at any time before any trial or final hearing on permanent legal custody or visitation.

(a) a provision for child support; and

(b) a statement that each parent shall have access to records and information pertaining to a minor child, including medical, dental, and school records, whether or not the child resides with the parent, unless that access is found by the court not to be in the best interest of the child or that access is found by the court to be sought for the purpose of causing detriment to the other parent. If access to the records under this subsection is not ordered, the court shall state in the order its reasons for denying that access.

(5) The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's gender or the child's age or gender. 1992

30-3-30. Appropriation to pilot program to cover costs of impecunious parties.

Each party who is unable to pay the costs of mediation may attend mediation without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those instances, the independent contractor shall be reimbursed for its costs from the appropriations for the "Domestic Relations Mandatory Mediation Pilot Program." Before a decree of divorce shall be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined. 1992

30-3-31. Review of pilot program.

(1) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory mediation pilot program. Progress reports shall be provided semi-annually on the date of implementation of this section and on the results beginning July 1, 1994. The results shall be reported to the Judiciary Interim Committee on a bi-annual basis.

(2) The Administrative Office of the Courts may make recommendations to the Judiciary Interim Committee on methods to make the program fiscally solvent, if necessary, including the increase in marriage license fees, divorce filing fees, or mediation fees. 1992

30-3-32. Visitation — Intent — Policy — Definition.

(1) It is the intent of the Legislature to promote visitation at a level consistent with all parties' interests.

(2) Absent a showing by a preponderance of evidence of real harm or substantiated potential harm to the child:

(a) it is in the best interests of the child of divorcing, divorced, or adjudicated parents to have frequent, meaningful, and continuing access to each parent following separation or divorce;

(b) each divorcing, separating, or adjudicated parent is entitled to and responsible for frequent, meaningful, and continuing access with his child consistent with the child's best interests; and

(c) it is in the best interests of the child to have both parents actively involved in parenting the child.

(3) For purposes of Sections 30-3-32 through 30-3-37:

(a) "Child" means the child or children of divorcing, separating, or adjudicated parents.

(b) "Christmas school vacation" means the

until the evening before the child returns to school, except for Christmas Eve, Christmas Day, and New Year's Day.

(c) "Extended visitation" means a period of visitation other than a weekend, holiday as provided in Subsections 30-3-35(2)(f) and (2)(g), religious holidays as provided in Subsections 30-3-33(4) and (16), and "Christmas school vacation." 1993

30-3-33. Advisory guidelines.

In addition to the visitation schedule provided in Section 30-3-35, advisory guidelines are suggested to govern all visitation arrangements between parents. These advisory guidelines include:

(1) visitation schedules mutually agreed upon by both parents are preferable to a court-imposed solution;

(2) the visitation schedule shall be utilized to maximize the continuity and stability of the child's life;

(3) the court may alter this schedule to make shorter visits of greater frequency or other arrangements consistent with the child's best interests for children under age 5; otherwise the visitation schedule as provided in Section 30-3-35 shall apply;

(4) special consideration shall be given by each parent to make the child available to attend family functions including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule;

(5) the noncustodial parent shall pick up the child at the times specified and return the child at the times specified, and the child's regular school hours shall not be interrupted;

(6) the custodial parent shall have the child ready for visitation at the time he is to be picked up and shall be present at the custodial home or shall make reasonable alternate arrangements to receive the child at the time he is returned;

(7) the court may make alterations in the visitation schedule to reasonably accommodate the work schedule of both parents and may increase the visitation allowed to the noncustodial parent but shall not diminish the standardized visitation provided in Section 30-3-35;

(8) the court may make alterations in the visitation schedule to reasonably accommodate the distance between the parties and the expense of exercising visitation;

(9) neither visitation nor child support is to be withheld due to either parent's failure to comply with a court-ordered visitation schedule;

(10) the custodial parent shall notify the noncustodial parent within 24 hours of receiving notice of all significant school, social, sports, and community functions in which the child is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully;

(11) the noncustodial parent shall have access directly to all school reports including preschool and daycare reports and medical records and shall be notified immediately by the custodial parent in the event of a medical emergency;

(12) each parent shall provide the other with

(13) each parent shall permit and encourage liberal telephone contact during recess hours and uncensored mail privileges of the child;

(14) parental care shall be presumed to be in the best interests of the child. The court shall encourage the parties to cooperate allowing the noncustodial parent, if willable, to provide child care;

(15) each parent shall provide all services and care providers with the name, current address, and telephone number of the other parent. The noncustodial parent shall provide the noncustodial parent's name, current address, and telephone number to all surrogate care providers unless the court orders otherwise; and

(16) each parent shall be entitled to a division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not shall have the right to be together with the child on the religious holiday.

30-3-34. Best interests — Rebuttable presumption.

(1) If the parties are unable to agree on a visitation schedule, the court may establish a visitation schedule consistent with the best interests of the child.

(2) The advisory guidelines as provided in Section 30-3-33 and the visitation schedule as provided in Section 30-3-35 shall be presumed to be in the best interests of the child. The visitation schedule shall be considered the minimum visitation to which the custodial parent and the child shall be entitled. A parent can establish otherwise by a preponderance of the evidence. The presumption may be based upon a finding of the court including a following criteria:

(a) visitation would endanger the child's physical health;

(b) visitation would significantly interfere with the child's emotional development;

(c) a substantiated allegation of child abuse exists;

(d) the lack of demonstrated parental involvement;

(e) the financial inability of the noncustodial parent to provide adequate food and shelter for the child during periods of visitation;

(f) the preference of the child if the child is of sufficient age and maturity;

(g) the incarceration of the noncustodial parent in a county jail, secure youth correction facility, or an adult corrections facility;

(h) any other criteria the court determines to be in the best interests of the child.

(3) Once the visitation schedule has been established, the parties may not alter the schedule by mutual consent of the parties or a court order.

30-3-35. Minimum schedule for visitation.

(1) The visitation schedule shall apply to children, ages 5-18, beginning with kindergarten.

(2) If the parties do not agree to a visitation schedule, the following schedule shall be considered the minimum visitation to which the noncustodial parent and the child shall be entitled:

(a) one weekday evening to be specified by the noncustodial parent or the court from 5:30 p.m. to 8:30 p.m.;

each year;

(c) holidays take precedence over the weekend visitation, and changes shall not be made to the regular rotation of the alternating weekend visitation schedule;

(d) if a holiday falls on a regularly scheduled school day, the noncustodial parent shall be responsible for the child's attendance at school for that school day;

(e) if a holiday falls on a weekend or on a Friday or Monday and the total holiday period extends beyond that time so that the child is free from school and the parent is free from work, the noncustodial parent shall be entitled to this lengthier holiday period;

(f) in years ending in an odd number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on the day before or after the actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) Human Rights Day beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(iii) Easter holiday beginning at 6 p.m. on Friday until Sunday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(iv) Memorial Day beginning 6 p.m. on Friday until Monday at 7 p.m., unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(v) July 24th beginning 6 p.m. on the day before the holiday until 11 p.m. on the holiday;

(vi) Veteran's Day holiday beginning 6 p.m. the day before the holiday until 7 p.m. on the holiday; and

(vii) the first portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas Eve and Christmas Day until 1 p.m., so long as the entire holiday is equally divided;

(g) in years ending in an even number, the noncustodial parent is entitled to the following holidays:

(i) child's birthday on actual birthdate beginning at 3 p.m. until 9 p.m.; at the discretion of the noncustodial parent, he may take other siblings along for the birthday;

(ii) New Year's Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(iii) President's Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(iv) July 4th beginning at 6 p.m. the day before the holiday until 11 p.m. on the holiday;

(v) Labor Day beginning at 6 p.m. on Friday until Monday at 7 p.m. unless the holiday extends for a lengthier period of time to which the noncustodial parent is completely entitled;

(vi) the fall school break, if applicable, commonly known as U.E.A. weekend beginning at 6 p.m. on Wednesday until Sunday at

lengthier period of time to which the noncustodial parent is completely entitled;

(vii) Columbus Day beginning at 6 p.m. the day before the holiday until 7 p.m. on the holiday;

(viii) Thanksgiving holiday beginning Wednesday at 7 p.m. until Sunday at 7 p.m.; and

(ix) the second portion of the Christmas school vacation as defined in Subsection 30-3-32(3)(b) plus Christmas day beginning at 1 p.m. until 9 p.m., so long as the entire Christmas holiday is equally divided;

(h) Father's Day shall be spent with the natural or adoptive father every year beginning at 9 a.m. until 7 p.m. on the holiday;

(i) Mother's Day shall be spent with the natural or adoptive mother every year beginning at 9 a.m. until 7 p.m. on the holiday;

(j) extended visitation with the noncustodial parent may be:

(i) up to four weeks consecutive at the option of the noncustodial parent;

(ii) two weeks shall be uninterrupted time for the noncustodial parent; and

(iii) the remaining two weeks shall be subject to visitation for the custodial parent consistent with these guidelines;

(k) the custodial parent shall have an identical two week period of uninterrupted time during the children's summer vacation from school for purposes of vacation;

(l) if the child is enrolled in year-round school, the noncustodial parent's extended visitation shall be 1/2 of the vacation time for year-round school breaks, provided the custodial parent has holiday and phone visits;

(m) notification of extended visitation or vacation weeks with the child shall be provided at least 30 days in advance to the other parent; and

(n) telephone contact shall be at reasonable hours. 1993

30-3-36. Special circumstances.

(1) When visitation has not taken place for an extended period of time and the child lacks an appropriate bond with the noncustodial parent, both parents shall consider the possible adverse effects upon the child and gradually reintroduce an appropriate visitation plan for the noncustodial parent.

(2) For emergency purposes, whenever the child travels with either parent, all of the following will be provided to the other parent:

(a) an itinerary of travel dates;

(b) destinations;

(c) places where the child or traveling parent can be reached; and

(d) the name and telephone number of an available third person who would be knowledgeable of the child's location.

(3) Unchaperoned travel of a child under the age of five years is not recommended. 1993

30-3-37. Relocation.

(1) When either parent decides to move from the state of Utah or 150 miles or more from the residence specified in the court's decree, that parent shall provide reasonable advance written notice of the intended relocation to the other parent.

(2) The court may, upon motion of any party or upon the court's own motion, schedule a hearing with

Section 30-3-35 and make appropriate orders regarding the visitation and costs for visitation transportation.

(3) In determining the visitation schedule and allocating the transportation costs, the court shall consider:

(a) the reason for the parent's relocation;

(b) the additional costs or difficulty to both parents in exercising visitation;

(c) the economic resources of both parents; and

(d) other factors the court considers necessary and relevant.

(4) Upon the motion of any party, the court may order the parent intending to move to pay the costs of transportation for:

(a) at least one visit per year with the other parent; and

(b) any number of additional visits as determined equitable by the court.

(5) Upon the motion of any party, the court may order uninterrupted visitation with the noncustodial parent for a minimum of 30 days during extended visitation, except if the court finds it is not in the best interests of the child. 1993

CHAPTER 4

SEPARATE MAINTENANCE

Section

30-4-1. Action by spouse — Grounds.

30-4-2. Procedure — Venue.

30-4-3. Custody and maintenance of children — Property and debt division — Support payments.

30-4-4. Restraining disposal of property.

30-4-5. Rights and remedies — Imprisonment of husband or wife.

30-4-1. Action by spouse — Grounds.

Whenever a resident of this state:

(1) deserts a spouse without good and sufficient cause;

(2) being of sufficient ability to provide support, neglects or refuses to properly provide for and suitably maintain that spouse;

(3) having property within this state and the spouse being a resident of this state, so deserts or neglects or refuses to provide such support; or

(4) where a married person without that person's fault lives separate and apart from that spouse, the district court shall, on the filing of a complaint, allot, assign, set apart and decree as alimony the use of the real and personal estate or earnings of the deserting spouse as the court may determine appropriate. During the pendency of the action, the court may require the deserting spouse to pay a sum as provided in Section 30-3-3. 1993

30-4-2. Procedure — Venue.

In all actions brought hereunder the proceedings and practice shall be the same as near as may be as in actions for divorce; but the action may be brought in any county where the wife or the husband may be found. 1977

30-4-3. Custody and maintenance of children — Property and debt division — Support payments.

(1) In all actions brought under this chapter the court may by order or decree:

nance of the minor children of the parties may determine with which of the parties the children or any of them shall remain;

(b) (i) provide for support of either spouse; the support of the minor children remain with that spouse;

(ii) provide how and when support payments shall be made; and

(iii) provide that either spouse have upon the property of the other to secure payment of the support or maintenance of tion;

(c) award to either spouse the possession any real or personal property of the other or acquired by the spouses during the marriage or

(d) pursuant to Section 15-4-6.5:

(i) specify which party is responsible the payment of joint debts, obligations liabilities contracted or incurred by the parties during the marriage;

(ii) require the parties to notify respective creditors or obligees regarding the court vision of debts, obligations, and liabilities and regarding the parties' separate, addresses; and

(iii) provide for the enforcement of orders.

(2) The orders and decrees under this section be enforced by sale of any property of the spouse contempt proceedings or otherwise as may be sary.

(3) The court may change the support or maintenance of a party from time to time according circumstances, and may terminate altogether an gation upon satisfactory proof of voluntary an manent reconciliation. An order or decree of support or maintenance shall in every case be valid on the joint lives of the husband and wife.

30-4-4. Restraining disposal of property.

At the time of filing the complaint mentioned in Section 30-4-1, or at any time subsequent thereafter plaintiff may procure from the court, and file with county recorder of any county in the state in the defendant may own real estate, an order restraining and restraining the defendant from disposing or encumbering the same or any portion thereof by conveying such real estate with reasonable certainty and from the time of filing such order the plaintiff described therein shall be charged with a lien in of the plaintiff to the extent of any judgment may be rendered in the action.

30-4-5. Rights and remedies — Imprisonment of husband or wife.

Like rights and remedies shall be extended to either husband or wife on the imprisonment of the other in the state prison under a sentence of one or more years when suitable provision has not been for the support of the one not so imprisoned.

CHAPTER 4a

NUNC PRO TUNC ORDERS

Section

30-4a-1. Authority of court.

30-4a-1. Authority of court.

A court having jurisdiction may, upon its finding of a good cause and giving of such notice as may

a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation \$1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels;
- (b) act as liaison with the Supreme Court;
- (c) call and preside over the meetings of the Court of Appeals; and
- (d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court. 1988

78-2a-3. Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer;
- (b) appeals from the district court review of:

- (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
- (ii) a challenge to agency action under Section 63-46a-12.1;

- (c) appeals from the juvenile courts;
- (d) appeals from the circuit courts, except those from the small claims department of a circuit court;

- (e) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

- (f) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

- (g) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to

(h) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons except in cases involving a first degree or capital felony;

(i) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

(j) appeals from the Utah Military Court; and

(k) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, in its review of agency adjudicative proceedings. 1992

78-2a-4. Review of actions by Supreme Court.
Review of the judgments, orders, and decrees of the Court of Appeals shall be by petition for writ of certiorari to the Supreme Court. 1988

78-2a-5. Location of Court of Appeals.

The Court of Appeals has its principal location in Salt Lake City. The Court of Appeals may perform any of its functions in any location within the state. 1988

CHAPTER 3

DISTRICT COURTS

Section

78-3-1 to 78-3-2. Repealed.

78-3-3. Term of judges — Vacancy.

78-3-4. Jurisdiction — Transfer of cases to circuit court — Appeals — Jurisdiction when circuit and district court merged.

78-3-5. Repealed.

78-3-6. Terms — Minimum of once quarterly.

78-3-7 to 78-3-11. Repealed.

78-3-11.5. State District Court Administrative System.

78-3-12. Repealed.

78-3-12.5. Costs of system.

78-3-13. Repealed.

78-3-13.4. Counties joining court system — Procedure — Facilities — Salaries.

78-3-13.5, 78-3-14. Repealed.

78-3-14.5. Allocation of district court fees and fines.

78-3-15 to 78-3-17. Repealed.

78-3-17.5. Application of savings accruing to counties.

78-3-18. Judicial Administration Act — Short title.

78-3-19. Purpose of act.

78-3-20. Definitions.

78-3-21. Judicial Council — Creation — Members — Terms and election — Responsibilities — Reports.

78-3-21.5. Data bases for judicial boards.

78-3-22. Presiding officer — Compensation — Duties.

78-3-23. Administrator of the courts — Appointment — Qualifications — Salary.

Section

78-3-25. Assistants for administrator of the courts — Appointment of trial court executives.

78-3-26. Courts to provide information and statistical data to administrator of the courts.

78-3-27. Annual judicial conference.

78-3-28. Repealed.

78-3-29. Presiding judge — Election — Term — Compensation — Powers — Duties.

78-3-30. Duties of the clerk of the district court.

78-3-31. Court commissioners — Qualifications — Appointment — Functions governed by rule.

78-3-1 to 78-3-2. Repealed. 1971, 1961, 1968

78-3-3. Term of judges — Vacancy.

Judges of the district courts shall be appointed initially until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office for judges of the district courts is six years, and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. 1988

78-3-4. Jurisdiction — Transfer of cases to circuit court — Appeals — Jurisdiction when circuit and district court merged.

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) Under the general supervision of the presiding officer of the Judicial Council and subject to policies established by the Judicial Council, cases filed in the district court, which are also within the concurrent jurisdiction of the circuit court, may be transferred to the circuit court by the presiding judge of the district court in multiple judge districts or the district court judge in single judge districts. The transfer of these cases may be made upon the court's own motion or upon the motion of either party for adjudication. When an order is made transferring a case, the court shall transmit the pleadings and papers to the circuit court to which the case is transferred. The circuit court has the same jurisdiction as if the case had been originally commenced in the circuit court and any appeals from final judgments shall be to the Court of Appeals.

(4) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78-2-2 and 78-2a-3.

(5) The district court has jurisdiction to review agency adjudicative proceedings as set forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings.

(6) When a circuit court is given original or appellate jurisdiction of a matter and the circuit and district court of the county of proper venue have been merged into one court, the jurisdiction of the circuit court shall be merged into the jurisdiction of the district court.

and forfeitures collected in such cases shall be distributed as if filed in the circuit court. 1993

78-3-5. Repealed. 1986

78-3-6. Terms — Minimum of once quarterly.

Each district court shall hold court at the county seat of each county within the district at least once in each quarter of the year. 1988

78-3-7 to 78-3-11. Repealed. 1988

78-3-11.5. State District Court Administrative System.

(1) There is established a State District Court Administrative System. The Judicial Council shall administer the operation of the system.

(2) In this chapter, "court system" means the State District Court Administrative System.

(3) The county seat of each county shall be a location of the district court. 1993

78-3-12. Repealed. 1988

78-3-12.5. Costs of system.

(1) The cost of salaries, travel, and training required for the discharge of the duties of district court judges, court commissioners, secretaries of judges or court executives, court executives, and court reporters, shall be paid from appropriations made by the Legislature.

(2) Except as provided in Subsection (1), the Judicial Council may directly provide for the actual and necessary expenses of operation of courts in the district court system, including personnel salary and benefits, travel, training, facilities, security, equipment, furniture, supplies, legal reference materials, and other operating expenses, or may contract with the county in a county seat or with the unit of local government in municipalities other than a county seat for the actual and necessary expenses of such operation. Any necessary contract with the county or unit of local government shall be pursuant to Subsection 78-3-13.4(4). 1991

78-3-13. Repealed. 1988

78-3-13.4. Counties joining court system — Procedure — Facilities — Salaries.

(1) (a) Counties of the first and second class, as defined by Section 17-16-13 for the operation of the district court, shall be in the court system, effective January 1, 1989.

(b) The governing body of counties of the third, fourth, fifth, and sixth classes as defined by Section 17-16-13 may elect to participate in the court system effective January 1, 1989, by written declaration to the Judicial Council on or before July 1, 1988.

(c) Counties not exercising the option to participate in the court system on or before July 1, 1988, under Subsection (b) continue to assume district court expenses, but may petition the Legislature to transfer to the court system during any general session of the Legislature in odd-numbered years, beginning in 1991, provided written notice is submitted to the Judicial Council no later than one year prior to that legislative session.

(d) A county's determination to participate in the court system shall be made by the governing body of the county.

state which recognizes the validity of common law marriages.

(15) "Total child support award" means the base child support award, plus any uninsured medical expenses and child care costs that may be ordered.

(16) "Work-related child care costs" means reasonable child care costs for up to a full-time work week or training schedule as necessitated by the employment or training of the custodial parent, under Section 78-45-7.17. 1990

78-45-3. Duty of man.

Every father shall support his child; and every man shall support his wife when she is in need. 1991

78-45-4. Duty of woman.

Every woman shall support her child; and she shall support her husband when he is in need. 1987

78-45-4.1. Duty of stepparent to support stepchild — Effect of termination of marriage or common law relationship.

A stepparent shall support a stepchild to the same extent that a natural or adoptive parent is required to support a child. Provided, however, that upon the termination of the marriage or common law relationship between the stepparent and the child's natural or adoptive parent the support obligation shall terminate. 1990

78-45-4.2. Natural or adoptive parent has primary obligation of support — Right of stepparent to recover support.

Nothing contained herein shall act to relieve the natural parent or adoptive parent of the primary obligation of support; furthermore, a stepparent has the same right to recover support for a stepchild from the natural or adoptive parent as any other obligee. 1979

78-45-4.3. Ward of state — Primary obligation to support.

Notwithstanding Section 78-45-2, a natural or an adoptive parent or stepparent whose minor child has become a ward of the state is not relieved of the primary obligation to support that child until he reaches the age of majority. 1963

78-45-5. Duty of obligor regardless of presence or residence of obligee.

An obligor present or resident in this state has the duty of support as defined in this act regardless of the presence or residence of the obligee. 1957

78-45-6. District court jurisdiction.

The district court shall have jurisdiction of all proceedings brought under this act. 1957

78-45-7. Determination of amount of support — Rebuttable guidelines.

(1) Prospective support shall be equal to the amount granted by prior court order unless there has been a material change of circumstance on the part of the obligor or obligee.

(2) If no prior court order exists, or a material change in circumstances has occurred, the court determining the amount of prospective support shall require each party to file a proposed award of child support using the guidelines before an order awarding child support or modifying an existing award may be granted.

limited to:

(a) the standard of living and situation of the parties;

(b) the relative wealth and income of the parties;

(c) the ability of the obligor to earn;

(d) the ability of the obligee to earn;

(e) the needs of the obligee, the obligor, and the child;

(f) the ages of the parties; and

(g) the responsibilities of the obligor and the obligee for the support of others.

(4) When no prior court order exists, the court shall determine and assess all arrearages based upon, but not limited to:

(a) the amount of public assistance received by the obligee, if any; and

(b) the funds that have been reasonably and necessarily expended in support of spouse and children. 1990

78-45-7.1. Medical and dental expenses of dependent children — Assigning responsibility for payment — Insurance coverage [Effective until January 1, 1994].

When no prior court order exists or the prior court order makes no specific provision for the payment of medical and dental expenses for dependent children, the court in its order:

(1) shall include a provision assigning responsibility for the payment of reasonable and necessary medical and dental expenses for the dependent children; and

(2) may include a provision requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for those children if insurance coverage is or becomes available at a reasonable cost. 1990

Medical and dental expenses of dependent children — Assigning responsibility for payment — Insurance coverage — Income withholding [Effective January 1, 1994].

The court shall include the following in its order:

(1) a provision assigning responsibility for the payment of reasonable and necessary medical and dental expenses for the dependent children;

(2) a provision requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children, if coverage is or becomes available at a reasonable cost;

(3) provisions for income withholding, in accordance with Title 62A, Chapter 11, Parts 4 and 5; and

(4) with regard to child support orders issued or modified on or after January 1, 1994, that are subject to income withholding, an order assessing against the obligor an additional \$7 per month check processing fee to be included in the amount withheld and paid to the Office of Recovery Services within the Department of Human Services for the purposes of income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5. 1993

child support entered on or after July 1, 1989.

(2) (a) The child support guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines and the award amounts resulting from the application of the guidelines are presumed to be correct, unless rebutted under the provisions of this section.

(3) A written finding or specific finding on the record supporting the conclusion that complying with a provision of the guidelines or ordering an award amount resulting from use of the guidelines would be unjust, inappropriate, or not in the best interest of a child in a particular case is sufficient to rebut the presumption in that case.

(4) (a) Natural or adoptive children of either parent who live in the home of that parent and are not children in common to both parties may at the option of either party be taken into account under the guidelines in setting or modifying a child support award, as provided in Subsection (5).

(b) Additional worksheets shall be prepared that compute the obligations of the respective parents for the additional children. The obligations shall then be subtracted from the appropriate parent's income before determining the award in the instant case.

(5) In a proceeding to modify an existing award, consideration of natural or adoptive children other than those in common to both parties may be applied to mitigate an increase in the award, but may not be applied to justify a decrease in the award.

(6) With regard to child support orders, enactment of the guidelines and any subsequent change in the guidelines constitutes a substantial or material change of circumstances as a ground for modification of a court order, if there is a difference of at least 25% between the existing order and the guidelines. With regard to IV-D cases, the office may request modification, in accordance with the requirements of the Family Support Act of 1988, Public Law 100-485, no more often than once every three years. 1990

78-45-7.3. Procedure — Documentation — Stipulation.

(1) In a default or uncontested proceeding, the moving party shall submit:

(a) a completed child support worksheet;

(b) the financial verification required by Subsection 78-45-7.5(5); and

(c) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines.

(2) (a) If the documentation of income required under Subsection (1) is not available, a verified representation of the defaulting party's income by the moving party, based on the best evidence available, may be submitted.

(b) The evidence shall be in affidavit form and may only be offered after a copy has been provided to the defaulting party in accordance with Utah Rules of Civil Procedure or Title 63, Chapter 46b, the Administrative Procedures Act, in an administrative proceeding.

(ii) the financial verification required by Subsection 78-45-7.5(5); and

(iii) a written statement indicating whether or not the amount of child support requested is consistent with the guidelines.

(b) A hearing is not required, but the guidelines shall be used to review the adequacy of a child support order negotiated by the parents.

(c) A stipulated amount for child support or combined child support and alimony is adequate under the guidelines if the stipulated child support amount or combined amount exceeds the total child support award required by the guidelines. When the stipulated amount exceeds the guidelines, it may be awarded without a finding under Section 78-45-7.2. 1990

78-45-7.4. Obligation — Adjusted gross income used.

Adjusted gross income shall be used in calculating each parent's share of the child support award. Only income of the natural or adoptive parents of the child may be used to determine the award under these guidelines. 1989

78-45-7.5. Determination of gross income — Imputed income.

(1) As used in the guidelines "gross income" includes:

(a) prospective income from any source, including nonearned sources, except under Subsection (3); and

(b) income from salaries, wages, commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay, pensions, interest, trust income, alimony from previous marriages, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment compensation, disability insurance benefits, and payments from "nonmeans-tested" government programs.

(2) Income from earned income sources is limited to the equivalent of one full-time job.

(3) Specifically excluded from gross income are:

(a) Aid to Families with Dependent Children (AFDC);

(b) benefits received under a housing subsidy program, the Job Training Partnership Act, S.S.I., Medicaid, Food Stamps, or General Assistance; and

(c) other similar means-tested welfare benefits received by a parent.

(4) (a) Gross income from self-employment or operation of a business shall be calculated by subtracting necessary expenses required for self-employment or business operation from gross receipts. The income and expenses from self-employment or operation of a business shall be reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support award. Only those expenses necessary to allow the business to operate at a reasonable level may be deducted from gross receipts.

(b) Gross income determined under this subsection may differ from the amount of business income determined for tax purposes.

(5) (a) When possible, gross income should first be computed on an annual basis and then recalculated.

lated to determine the average gross monthly income.

(b) Each parent shall provide suitable documentation of current earnings, including year-to-date pay stubs or employer statements. Each parent shall supplement documentation of current earnings with copies of tax returns from at least the most recent year to provide verification of earnings over time and shall document income from nonearned sources according to the source. Verification of income from records maintained by the Office of Employment Security may be substituted for employer statements and income tax returns.

(c) Historical and current earnings shall be used to determine whether an underemployment or overemployment situation exists.

(6) Gross income includes income imputed to the parent under Subsection (7).

(7) (a) Income may not be imputed to a parent unless the parent stipulates to the amount imputed or a hearing is held and a finding made that the parent is voluntarily unemployed or underemployed.

(b) If income is imputed to a parent, the income shall be based upon employment potential and probable earnings as derived from work history, occupation qualifications, and prevailing earnings for persons of similar backgrounds in the community.

(c) If a parent has no recent work history, income shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a greater income, the judge in a judicial proceeding or the presiding officer in an administrative proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

(d) Income may not be imputed if any of the following conditions exist:

(i) the reasonable costs of child care for the parents' minor children approach or equal the amount of income the custodial parent can earn;

(ii) a parent is physically or mentally disabled to the extent he cannot earn minimum wage;

(iii) a parent is engaged in career or occupational training to establish basic job skills; or

(iv) unusual emotional or physical needs of a child require the custodial parent's presence in the home.

(8) (a) Gross income may not include the earnings of a child who is the subject of a child support award, nor benefits to a child in the child's own right, such as Supplemental Security Income.

(b) Social Security benefits received by a child due to the earnings of a parent may be credited as child support to the parent upon whose earning record it is based, by crediting the amount against the potential obligation of that parent. Other unearned income of a child may be considered as income to a parent depending upon the circumstances of each case. 1990

78-45-7.6. Adjusted gross income.

(1) As used in the guidelines, "adjusted gross income" is the amount calculated by subtracting from gross income alimony previously ordered and paid and child support previously ordered.

(2) The guidelines do not reduce the total child

parents for alimony ordered in the pending proceeding. In establishing alimony, the court shall consider that in determining the child support, the guidelines do not provide a deduction from gross income for alimony. 1989

78-45-7.7. Calculation of obligations.

(1) The parents' child support obligation shall be divided between them in proportion to their adjusted gross incomes.

(2) Except in cases of joint physical custody and split custody as defined in Section 78-45-2, the total child support award shall be determined as follows:

(a) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base child support obligation table.

(b) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income, and subtracting from the products the children's portion of any monthly payments made directly by each parent for medical and dental insurance premiums.

(c) Allocate monthly work-related child care costs equally to each parent.

(d) Calculate the total child support award by adding the noncustodial parent's share of the base child support obligation calculated in Subsection (2)(b) and the amount allocated in Subsection (2)(c). Include in the order both amounts and the total child support award.

(3) The base combined child support obligation table provides combined child support obligations for up to ten children. For more than ten children, additional amounts shall be added to the base child support obligation shown. The amount shown on the table is the support amount for the total number of children, not an amount per child. 1990

78-45-7.8. Split custody — Obligation calculations.

In cases of split custody, the total child support award shall be determined as follows:

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base child support obligation table. Allocate a portion of the calculated amount between the parents in proportion to the number of children for whom each parent has physical custody. The amounts so calculated are a tentative base child support obligation due each parent from the other parent for support of the child or children for whom each parent has physical custody.

(2) Multiply the tentative base child support obligation due each parent by the percentage that the other parent's adjusted gross income bears to the total combined adjusted gross income of both parents.

(3) Subtract from the products in Subsection (2) the children's portion of any monthly payments made directly by each parent for medical and dental insurance premiums.

(4) Subtract the lesser amount in Subsection (3) from the larger amount to determine the base child support award to be paid by the parent with the greater financial obligation.

(5) Allocate combined monthly work-related

(6) Calculate the total child support award by adding the base child support award calculated in Subsection (4) and the amount allocated in Subsection (5). Include both amounts and the total child support award in the child support order. 1990

78-45-7.9. Joint physical custody — Obligation calculations.

In cases of joint physical custody, the total child support award shall be determined as follows:

(1) Combine the adjusted gross incomes of the parents and determine the base combined child support obligation using the base child support obligation table.

(2) Calculate each parent's proportionate share of the base combined child support obligation by multiplying the combined child support obligation by each parent's percentage of combined adjusted gross income. The amounts so calculated are a tentative base child support obligation due from each parent for support of the children.

(3) Multiply each parent's tentative base child support obligation by the percentage of time the children spend with the other parent to determine each parent's tentative obligation to the other parent.

(4) Subtract from the products in Subsection (3) the children's portion of any monthly payments made directly by each parent for medical and dental insurance premiums.

(5) Calculate the base child support award to be paid by the obligor by subtracting the lesser amount calculated in Subsection (4) from the larger amount.

(6) Allocate the combined work-related child care costs of the parents equally to each parent to obtain the other parent's tentative child care obligation.

(7) (a) Calculate the total child support award that the parent determined to be the obligor in Subsection (5) must pay when the obligee has physical custody by:

(i) adding the base child support award calculated under Subsection (5); and

(ii) adding the amount of the child care obligation allocated to the obligor in Subsection (6).

(b) Calculate the total child support award that the parent determined to be the obligor in Subsection (5) must pay when that parent has physical custody by:

(i) adding the base child support award calculated under Subsection (5); and

(ii) subtracting the amount of the child care obligation allocated to the obligee in Subsection (6).

(8) Include the amounts determined in Subsections (7)(a) and (b) and the two total child support awards in the child support order. 1990

78-45-7.10. Reduction when child becomes 18.

(1) When a child becomes 18 years of age the base combined child support award is automatically reduced to reflect the lower base combined child support obligation shown in the table for the remaining number of children due child support, unless other

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered. 1989

78-45-7.11. Reduction for extended visitation.

(1) The child support order shall provide that the base child support award be reduced by 50% for each child for time periods during which the order grants specific extended visitation for that child for at least 25 of any 30 consecutive days. Only the base child support award is affected by the 50% abatement. The amount to be paid for work-related child care costs may be suspended if the costs are not incurred during the extended visitation.

(2) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award. 1990

78-45-7.12. Income in excess of tables.

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount may be ordered, but the amount ordered may not be less than the highest level specified in the table for the number of children due support. 1989

78-45-7.13. Advisory committee — Membership and functions.

(1) On or before May 1, 1989 and May 1, 1991, and then on or before May 1 of every fourth year subsequently, the governor shall appoint an advisory committee consisting of:

(a) two representatives recommended by the Office of Recovery Services;

(b) two representatives recommended by the Judicial Council;

(c) two representatives recommended by the Utah State Bar Association; and

(d) an uneven number of additional persons, not to exceed five, who represent diverse interests related to child support issues, as the governor may consider appropriate. However, none of the individuals appointed under this subsection may be members of the Utah State Bar Association.

(2) (a) The advisory committee shall review the child support guidelines to ensure their application results in the determination of appropriate child support award amounts.

(b) The committee shall report to the Legislative Judiciary Interim Committee on or before October 1 in 1989 and 1991, and then on or before October 1 of every fourth year subsequently.

(c) The committee's report shall include recommendations of the majority of the committee, as well as specific recommendations of individual members of the committee.

(3) The committee members serve without compensation. Staff for the committee shall be provided from the existing budgets of the Department of Human Services and the Judicial Council. The committee ceases to exist no later than the date the subsequent committee under this section is appointed. 1990

78-45-7.14. Child support obligation table.

**BASE COMBINED CHILD SUPPORT
OBLIGATION
(Both Parents)
(Adjusted for FICA, and federal and state taxes)**

| Monthly Combined Adj. Gross Income | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|------|------|------|------|------|------|------|------|------|------|
| Less than \$200 | \$20 | \$28 | \$30 | \$31 | \$32 | \$33 | \$34 | \$35 | \$35 | \$36 |
| 200 | 23 | 34 | 35 | 35 | 36 | 36 | 37 | 38 | 38 | 39 |
| 225 | 25 | 38 | 39 | 39 | 40 | 40 | 41 | 41 | 42 | 42 |
| 250 | 28 | 42 | 43 | 43 | 44 | 45 | 46 | 46 | 47 | 48 |
| 275 | 31 | 47 | 48 | 48 | 49 | 50 | 51 | 51 | 52 | 53 |
| 300 | 34 | 51 | 52 | 52 | 53 | 54 | 55 | 55 | 56 | 57 |
| 325 | 37 | 55 | 56 | 56 | 57 | 58 | 59 | 59 | 60 | 61 |
| 350 | 40 | 59 | 60 | 60 | 61 | 62 | 63 | 63 | 64 | 65 |
| 375 | 43 | 63 | 64 | 64 | 65 | 66 | 67 | 67 | 68 | 69 |
| 400 | 46 | 67 | 68 | 68 | 69 | 70 | 71 | 71 | 72 | 73 |
| 425 | 49 | 71 | 72 | 72 | 73 | 74 | 75 | 75 | 76 | 77 |
| 450 | 52 | 75 | 76 | 76 | 77 | 78 | 79 | 79 | 80 | 81 |
| 475 | 55 | 79 | 80 | 80 | 81 | 82 | 83 | 83 | 84 | 85 |
| 500 | 58 | 83 | 84 | 84 | 85 | 86 | 87 | 87 | 88 | 89 |
| 525 | 61 | 87 | 88 | 88 | 89 | 90 | 91 | 91 | 92 | 93 |
| 550 | 64 | 91 | 92 | 92 | 93 | 94 | 95 | 95 | 96 | 97 |
| 575 | 67 | 95 | 96 | 96 | 97 | 98 | 99 | 99 | 100 | 101 |
| 600 | 70 | 99 | 100 | 100 | 101 | 102 | 103 | 103 | 104 | 105 |
| 625 | 73 | 103 | 104 | 104 | 105 | 106 | 107 | 107 | 108 | 109 |
| 650 | 76 | 107 | 108 | 108 | 109 | 110 | 111 | 111 | 112 | 113 |
| 675 | 79 | 111 | 112 | 112 | 113 | 114 | 115 | 115 | 116 | 117 |
| 700 | 82 | 115 | 116 | 116 | 117 | 118 | 119 | 119 | 120 | 121 |
| 725 | 85 | 119 | 120 | 120 | 121 | 122 | 123 | 123 | 124 | 125 |
| 750 | 88 | 123 | 124 | 124 | 125 | 126 | 127 | 127 | 128 | 129 |
| 775 | 91 | 127 | 128 | 128 | 129 | 130 | 131 | 131 | 132 | 133 |
| 800 | 94 | 131 | 132 | 132 | 133 | 134 | 135 | 135 | 136 | 137 |
| 825 | 97 | 135 | 136 | 136 | 137 | 138 | 139 | 139 | 140 | 141 |
| 850 | 100 | 139 | 140 | 140 | 141 | 142 | 143 | 143 | 144 | 145 |
| 875 | 103 | 143 | 144 | 144 | 145 | 146 | 147 | 147 | 148 | 149 |
| 900 | 106 | 147 | 148 | 148 | 149 | 150 | 151 | 151 | 152 | 153 |
| 925 | 109 | 151 | 152 | 152 | 153 | 154 | 155 | 155 | 156 | 157 |
| 950 | 112 | 155 | 156 | 156 | 157 | 158 | 159 | 159 | 160 | 161 |
| 975 | 115 | 159 | 160 | 160 | 161 | 162 | 163 | 163 | 164 | 165 |
| 1,000 | 118 | 163 | 164 | 164 | 165 | 166 | 167 | 167 | 168 | 169 |
| 1,025 | 121 | 167 | 168 | 168 | 169 | 170 | 171 | 171 | 172 | 173 |
| 1,050 | 124 | 171 | 172 | 172 | 173 | 174 | 175 | 175 | 176 | 177 |
| 1,075 | 127 | 175 | 176 | 176 | 177 | 178 | 179 | 179 | 180 | 181 |
| 1,100 | 130 | 179 | 180 | 180 | 181 | 182 | 183 | 183 | 184 | 185 |
| 1,125 | 133 | 183 | 184 | 184 | 185 | 186 | 187 | 187 | 188 | 189 |
| 1,150 | 136 | 187 | 188 | 188 | 189 | 190 | 191 | 191 | 192 | 193 |
| 1,175 | 139 | 191 | 192 | 192 | 193 | 194 | 195 | 195 | 196 | 197 |
| 1,200 | 142 | 195 | 196 | 196 | 197 | 198 | 199 | 199 | 200 | 201 |
| 1,225 | 145 | 199 | 200 | 200 | 201 | 202 | 203 | 203 | 204 | 205 |
| 1,250 | 148 | 203 | 204 | 204 | 205 | 206 | 207 | 207 | 208 | 209 |
| 1,275 | 151 | 207 | 208 | 208 | 209 | 210 | 211 | 211 | 212 | 213 |
| 1,300 | 154 | 211 | 212 | 212 | 213 | 214 | 215 | 215 | 216 | 217 |
| 1,325 | 157 | 215 | 216 | 216 | 217 | 218 | 219 | 219 | 220 | 221 |
| 1,350 | 160 | 219 | 220 | 220 | 221 | 222 | 223 | 223 | 224 | 225 |
| 1,375 | 163 | 223 | 224 | 224 | 225 | 226 | 227 | 227 | 228 | 229 |
| 1,400 | 166 | 227 | 228 | 228 | 229 | 230 | 231 | 231 | 232 | 233 |
| 1,425 | 169 | 231 | 232 | 232 | 233 | 234 | 235 | 235 | 236 | 237 |
| 1,450 | 172 | 235 | 236 | 236 | 237 | 238 | 239 | 239 | 240 | 241 |
| 1,475 | 175 | 239 | 240 | 240 | 241 | 242 | 243 | 243 | 244 | 245 |
| 1,500 | 178 | 243 | 244 | 244 | 245 | 246 | 247 | 247 | 248 | 249 |
| 1,525 | 181 | 247 | 248 | 248 | 249 | 250 | 251 | 251 | 252 | 253 |
| 1,550 | 184 | 251 | 252 | 252 | 253 | 254 | 255 | 255 | 256 | 257 |
| 1,575 | 187 | 255 | 256 | 256 | 257 | 258 | 259 | 259 | 260 | 261 |
| 1,600 | 190 | 259 | 260 | 260 | 261 | 262 | 263 | 263 | 264 | 265 |
| 1,625 | 193 | 263 | 264 | 264 | 265 | 266 | 267 | 267 | 268 | 269 |
| 1,650 | 196 | 267 | 268 | 268 | 269 | 270 | 271 | 271 | 272 | 273 |
| 1,675 | 199 | 271 | 272 | 272 | 273 | 274 | 275 | 275 | 276 | 277 |
| 1,700 | 202 | 275 | 276 | 276 | 277 | 278 | 279 | 279 | 280 | 281 |
| 1,725 | 205 | 279 | 280 | 280 | 281 | 282 | 283 | 283 | 284 | 285 |
| 1,750 | 208 | 283 | 284 | 284 | 285 | 286 | 287 | 287 | 288 | 289 |
| 1,775 | 211 | 287 | 288 | 288 | 289 | 290 | 291 | 291 | 292 | 293 |
| 1,800 | 214 | 291 | 292 | 292 | 293 | 294 | 295 | 295 | 296 | 297 |
| 1,825 | 217 | 295 | 296 | 296 | 297 | 298 | 299 | 299 | 300 | 301 |
| 1,850 | 220 | 299 | 300 | 300 | 301 | 302 | 303 | 303 | 304 | 305 |
| 1,875 | 223 | 303 | 304 | 304 | 305 | 306 | 307 | 307 | 308 | 309 |
| 1,900 | 226 | 307 | 308 | 308 | 309 | 310 | 311 | 311 | 312 | 313 |
| 1,925 | 229 | 311 | 312 | 312 | 313 | 314 | 315 | 315 | 316 | 317 |
| 1,950 | 232 | 315 | 316 | 316 | 317 | 318 | 319 | 319 | 320 | 321 |
| 1,975 | 235 | 319 | 320 | 320 | 321 | 322 | 323 | 323 | 324 | 325 |
| 2,000 | 238 | 323 | 324 | 324 | 325 | 326 | 327 | 327 | 328 | 329 |
| 2,025 | 241 | 327 | 328 | 328 | 329 | 330 | 331 | 331 | 332 | 333 |
| 2,050 | 244 | 331 | 332 | 332 | 333 | 334 | 335 | 335 | 336 | 337 |
| 2,075 | 247 | 335 | 336 | 336 | 337 | 338 | 339 | 339 | 340 | 341 |
| 2,100 | 250 | 339 | 340 | 340 | 341 | 342 | 343 | 343 | 344 | 345 |
| 2,125 | 253 | 343 | 344 | 344 | 345 | 346 | 347 | 347 | 348 | 349 |
| 2,150 | 256 | 347 | 348 | 348 | 349 | 350 | 351 | 351 | 352 | 353 |
| 2,175 | 259 | 351 | 352 | 352 | 353 | 354 | 355 | 355 | 356 | 357 |
| 2,200 | 262 | 355 | 356 | 356 | 357 | 358 | 359 | 359 | 360 | 361 |
| 2,225 | 265 | 359 | 360 | 360 | 361 | 362 | 363 | 363 | 364 | 365 |
| 2,250 | 268 | 363 | 364 | 364 | 365 | 366 | 367 | 367 | 368 | 369 |
| 2,275 | 271 | 367 | 368 | 368 | 369 | 370 | 371 | 371 | 372 | 373 |
| 2,300 | 274 | 371 | 372 | 372 | 373 | 374 | 375 | 375 | 376 | 377 |
| 2,325 | 277 | 375 | 376 | 376 | 377 | 378 | 379 | 379 | 380 | 381 |
| 2,350 | 280 | 379 | 380 | 380 | 381 | 382 | 383 | 383 | 384 | 385 |
| 2,375 | 283 | 383 | 384 | 384 | 385 | 386 | 387 | 387 | 388 | 389 |
| 2,400 | 286 | 387 | 388 | 388 | 389 | 390 | 391 | 391 | 392 | 393 |
| 2,425 | 289 | 391 | 392 | 392 | 393 | 394 | 395 | 395 | 396 | 397 |
| 2,450 | 292 | 395 | 396 | 396 | 397 | 398 | 399 | 399 | 400 | 401 |
| 2,475 | 295 | 399 | 400 | 400 | 401 | 402 | 403 | 403 | 404 | 405 |
| 2,500 | 298 | 403 | 404 | 404 | 405 | 406 | 407 | 407 | 408 | 409 |
| 2,525 | 301 | 407 | 408 | 408 | 409 | 410 | 411 | 411 | 412 | 413 |
| 2,550 | 304 | 411 | 412 | 412 | 413 | 414 | 415 | 415 | 416 | 417 |
| 2,575 | 307 | 415 | 416 | 416 | 417 | 418 | 419 | 419 | 420 | 421 |
| 2,600 | 310 | 419 | 420 | 420 | 421 | 422 | 423 | 423 | 424 | 425 |
| 2,625 | 313 | 423 | 424 | 424 | 425 | 426 | 427 | 427 | 428 | 429 |
| 2,650 | 316 | 427 | 428 | 428 | 429 | 430 | 431 | 431 | 432 | 433 |
| 2,675 | 319 | 431 | 432 | 432 | 433 | 434 | 435 | 435 | 436 | 437 |
| 2,700 | 322 | 435 | 436 | 436 | 437 | 438 | 439 | 439 | 440 | 441 |
| 2,725 | 325 | 439 | 440 | 440 | 441 | 442 | 443 | 443 | 444 | 445 |
| 2,750 | 328 | 443 | 444 | 444 | 445 | 446 | 447 | 447 | 448 | 449 |
| 2,775 | 331 | 447 | 448 | 448 | 449 | 450 | 451 | 451 | 452 | 453 |
| 2,800 | 334 | 451 | 452 | 452 | 453 | 454 | 455 | 455 | 456 | 457 |
| 2,825 | 337 | 455 | 456 | 456 | 457 | 458 | 459 | 459 | 460 | 461 |
| 2,850 | 340 | 459 | 460 | 460 | 461 | 462 | 463 | 463 | 464 | 465 |
| 2,875 | 343 | 463 | 464 | 464 | 465 | 466 | 467 | 467 | 468 | 469 |
| 2,900 | 346 | 467 | 468 | 468 | 469 | 470 | 471 | 471 | 472 | 473 |
| 2,925 | 349 | 471 | 472 | 472 | 473 | 474 | 475 | 475 | 476 | 477 |
| 2,950 | 352 | 475 | 476 | 476 | 477 | 478 | 479 | 479 | 480 | 481 |
| 2,975 | 355 | 479 | 480 | 480 | 481 | 482 | 483 | 483 | 484 | 485 |
| 3,000 | 358 | 483 | 484 | 484 | 485 | 486 | 487 | 487 | 488 | 489 |
| 3,025 | 361 | 487 | 488 | 488 | 489 | 490 | 491 | 491 | 492 | 493 |
| 3,050 | 364 | 491 | 492 | 492 | 493 | 494 | 495 | 495 | 496 | 497 |
| 3,075 | 367 | 495 | 496 | 496 | 497 | 498 | 499 | 499 | 500 | 501 |
| 3,100 | 370 | 499 | 500 | 500 | 501 | 502 | 503 | 503 | 504 | 505 |
| 3,125 | 373 | 503 | 504 | 504 | 505 | 506 | 507 | 507 | 508 | 509 |
| 3,150 | 376 | 507 | 508 | 508 | 509 | 510 | 511 | 511 | 512 | 513 |
| 3,175 | 379 | 511 | 512 | 512 | 513 | 514 | 515 | 515 | 516 | 517 |
| 3,200 | 382 | 515 | 516 | 516 | 517 | 518 | 519 | 519 | 520 | 521 |
| 3,225 | 385 | 519 | 520 | 520 | 521 | 522 | 523 | 523 | 524 | 525 |
| 3,250 | 388 | 523 | 524 | 524 | 525 | 526 | 527 | 527 | 528 | 529 |
| 3,275 | 391 | 527 | 528 | 528 | 529 | 530 | 531 | 531 | 532 | 533 |
| 3,300 | 394 | 531 | 532 | 532 | 533 | 534 | 535 | 535 | 536 | 537 |
| 3,325 | 397 | 535 | 536 | 536 | 537 | 538 | 539 | 539 | 540 | 541 |
| 3,350 | 400 | 539 | 540 | 540 | 541 | 542 | 543 | 543 | 544 | 545 |
| 3,375 | 403 | 543 | 544 | 544 | 545 | 546 | 547 | 547 | 548 | 549 |
| 3,400 | 406 | 547 | 548 | 548 | 549 | 550 | 551 | 551 | 552 | 553 |
| 3,425 | 409 | 551 | 552 | 552 | 553 | 554 | 555 | 555 | 556 | 55 |