

**Colorado Statutes**

**Title 14. DOMESTIC MATTERS**

**DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES**

**Article 10. Uniform Dissolution of Marriage Act**

*Current through Chapter 420 of the 2014 Legislative Session*

**§ 14-10-115. Child support guidelines - purpose - definitions - determination of income - schedule of basic child support obligations - adjustments to basic child support - additional guidelines - child support commission**

(1)

**Purpose and applicability.**

(a)

The child support guidelines and schedule of basic child support obligations have the following purposes:

(I)

To establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;

(II)

To make awards more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(III)

To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards.

(b)

The child support guidelines and schedule of basic child support obligations do the following:

(I)

Calculate child support based upon the parents' combined adjusted gross income estimated to have been allocated to the child if the parents and children were living in an intact household;

(II)

Adjust the child support based upon the needs of the children for extraordinary medical expenses and work-related child care costs; and

(III)

Allocate the amount of child support to be paid by each parent based upon physical care arrangements.

(c)

This section shall apply to all child support obligations, established or modified, as a part of any proceeding, including, but not limited to, articles 5, 6, and 10 of this title and articles 4 and 6 of title 19, C.R.S., regardless of when filed.

(2)

**Duty of support - factors to consider.**

(a)

In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support and may order an amount determined to be reasonable under the circumstances for a time period that occurred after the date of the parties' physical separation or the filing of the petition or service upon the respondent, whichever date is latest, and prior to the entry of the support order, without regard to marital misconduct.

(b)

In determining the amount of support under this subsection (2), the court shall consider all relevant factors, including:

(I)

The financial resources of the child;

(II)

The financial resources of the custodial parent;

(III)

The standard of living the child would have enjoyed had the marriage not been dissolved;

(IV)

The physical and emotional condition of the child and his or her educational needs; and

(V)

The financial resources and needs of the noncustodial parent.

(3)

**Definitions.** As used in this section, unless the context otherwise requires:

(a)

"Adjusted gross income" means gross income, as specified in subsection (5) of this section, less preexisting child support obligations and less alimony or maintenance actually paid by a parent.

(b)

"Combined gross income" means the combined monthly adjusted gross incomes of both parents.

(c)

"Income" means the actual gross income of a parent, if employed to full capacity, or potential income, if unemployed or underemployed. Gross income of each parent shall be determined according to subsection (5) of this section.

(d)

"Number of children due support", as used in the schedule of basic child support obligations specified in subsection (7) of this section, means children for whom the parents share joint legal responsibility and for whom support is being sought.

(e)

"Other children" means children who are not the subject of the child support determination at issue.

(f)

"Postsecondary education" includes college and vocational education programs.

(g)

"Postsecondary education support" means support for the following expenses associated with attending a college, university, or vocational education program: Tuition, books, and fees.

(h)

"Shared physical care", for the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, and as further specified in paragraph (b) of subsection (8) of this section, means that each parent keeps the children overnight for more than ninety-two overnights each year

and that both parents contribute to the expenses of the children in addition to the payment of child support.

(i)

"Split physical care", for the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, and as further specified in paragraph (c) of subsection (8) of this section, means that each parent has physical care of at least one of the children by means of that child or children residing with that parent the majority of the time.

(4)

#### **Forms - identifying information.**

(a)

The child support guidelines shall be used with standardized child support guideline forms to be issued by the judicial department. The judicial department is responsible for promulgating and updating the Colorado child support guideline forms, schedules, worksheets, and instructions.

(b)

All child support orders entered pursuant to this article shall provide the names and dates of birth of the parties and of the children who are the subject of the order and the parties' residential and mailing addresses. The social security numbers of the parties and children shall be collected pursuant to section 14-14-113 and section 26-13-127, C.R.S.

(5)

#### **Determination of income.**

(a)

For the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, the gross income of each parent shall be determined according to the following guidelines:

(I)

"Gross income" includes income from any source, except as otherwise provided in subparagraph (II) of this paragraph (a), and includes, but is not limited to:

(A)

Income from salaries;

(B)

Wages, including tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross

earnings to the minimum wage for the number of hours worked, whichever is greater;

(C)

Commissions;

(D)

Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment;

(E)

Bonuses;

(F)

Dividends;

(G)

Severance pay;

(H)

Pensions and retirement benefits, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and article 30 of title 31, C.R.S.;

(I)

Royalties;

(J)

Rents;

(K)

Interest;

(L)

Trust income;

(M)

Annuities;

(N)

Capital gains;

(O)

Any moneys drawn by a self-employed individual for personal use that are deducted as a business expense, which moneys must be considered income from self-employment;

(P)

Social security benefits, including social security benefits actually received by a parent as a result of the disability of that parent or as the result of the death of the minor child's stepparent but not including social security benefits received by a minor child or on behalf of a minor child as a result of the death or disability of a stepparent of the child;

(Q)

Workers' compensation benefits;

(R)

Unemployment insurance benefits;

(S)

Disability insurance benefits;

(T)

Funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages;

(U)

Monetary gifts;

(V)

Monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office;

(W)

Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies. However, if a parent is a passive investor, has a minority interest in the company, and does not have any managerial duties or input, then the income to be recognized may be limited to actual cash distributions received.

(X)

Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business if they are significant and reduce personal living expenses;

(Y)

Alimony or maintenance received; and

(Z)

Overtime pay, only if the overtime is required by the employer as a condition of employment.

(II)

"Gross income" does not include:

(A)

Child support payments received;

(B)

Benefits received from means-tested public assistance programs, including but not limited to assistance provided under the Colorado works program, as described in part 7 of article 2 of title 26, C.R.S., supplemental security income, food stamps, and general assistance;

(C)

Income from additional jobs that result in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment; and

(D)

Social security benefits received by the minor children, or on behalf of the minor children, as a result of the death or disability of a stepparent are not to be included as income for the minor children for the determination of child support.

(E)

Earnings or gains on a retirement account, including an IRA, which earnings or gains must not be included as income unless or until a parent takes a distribution from the account. If a distribution from a retirement account may be taken without being subject to an IRS penalty for early distribution and the parent decides not to take the distribution, the court may consider the distribution that could have been taken in determining the parent's gross income if the parent is not otherwise employed full-time and the retirement account was not received pursuant to the division of marital property.

(III)

(A)

For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" equals gross receipts minus ordinary and necessary expenses, as defined in sub-subparagraph (B) of this subparagraph (III), required to produce such income.

(B)

"Ordinary and necessary expenses" does not include amounts allowable by the internal revenue service for the accelerated component of depreciation expenses or

investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

(b)

(I)

If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income; except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a child under the age of thirty months for whom the parents owe a joint legal responsibility or for an incarcerated parent sentenced to one year or more.

(II)

If a noncustodial parent who owes past-due child support is unemployed and not incapacitated and has an obligation of support to a child receiving assistance pursuant to part 7 of article 2 of title 26, C.R.S., the court or delegate child support enforcement unit may order the parent to pay such support in accordance with a plan approved by the court or to participate in work activities. Work activities may include one or more of the following:

(A)

Private or public sector employment;

(B)

Job search activities;

(C)

Community service;

(D)

Vocational training; or

(E)

Any other employment-related activities available to that particular individual.

(III)

For the purposes of this section, a parent shall not be deemed "underemployed" if:

(A)

The employment is temporary and is reasonably intended to result in higher income within the foreseeable future; or

(B)

The employment is a good faith career choice that is not intended to deprive a child of support and does not unreasonably reduce the support available to a child; or

(C)

The parent is enrolled in an educational program that is reasonably intended to result in a degree or certification within a reasonable period of time and that will result in a higher income, so long as the educational program is a good faith career choice that is not intended to deprive the child of support and that does not unreasonably reduce the support available to a child.

(c)

Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. A copy of wage statements or other wage information obtained from the computer data base maintained by the department of labor and employment shall be admissible into evidence for purposes of determining income under this subsection (5).

(6)

**Adjustments to gross income.**

(a)

The amount of child support actually paid by a parent with an order for support of other children shall be deducted from that parent's gross income.

(b)

(I)

At the time of the initial establishment of a child support order, or in any proceeding to modify a support order, if a parent is also legally responsible for the support of other children for whom the parents do not share joint legal responsibility, an adjustment shall be made revising the parent's income prior to calculating the basic child support obligation for the children who are the subject of the support order if the children are living in the home of the parent seeking the adjustment or if the children are living out of the home, and the parent seeking the adjustment provides documented proof of money payments of support of those children. The amount shall not exceed the schedule of basic support obligations listed in this section. For a parent with a gross income of one thousand nine hundred dollars or less per month, the adjustment shall be seventy-five percent of the amount

calculated using the low-income adjustment described in sub-subparagraphs (B) and (C) of subparagraph (II) of paragraph (a) of subsection (7) of this section based only upon the responsible parent's income, without any other adjustments for the number of other children for whom the parent is responsible. For a parent with gross income of more than one thousand nine hundred dollars per month, the adjustment shall be seventy-five percent of the amount listed under the schedule of basic support obligations in paragraph (b) of subsection (7) of this section that would represent a support obligation based only upon the responsible parent's income, without any other adjustments for the number of other children for whom the parent is responsible. The amount calculated as set forth in this subparagraph (I) shall be subtracted from the amount of the parent's gross income prior to calculating the basic support obligation based upon both parents' gross income, as provided in subsection (7) of this section.

(II)

The adjustment pursuant to this paragraph (b), based on the responsibility to support other children, shall not be made to the extent that the adjustment contributes to the calculation of a support order lower than a previously existing support order for the children who are the subject of the modification hearing at which an adjustment is sought.

(7)

**Schedule of basic child support obligations.**

(a)

(I)

The basic child support obligation shall be determined using the schedule of basic child support obligations contained in paragraph (b) of this subsection (7). The basic child support obligation shall be divided between the parents in proportion to their adjusted gross incomes.

(II)

(A)

For combined gross income that falls between amounts shown in the schedule of basic child support obligations, basic child support amounts shall be interpolated. The category entitled "number of children due support" in the schedule of basic child support obligations shall have the meaning defined in subsection (3) of this section.

(B)

Except as otherwise provided in sub-subparagraph (D) of this subparagraph (II), in circumstances in which the parents' combined monthly adjusted gross income is less than one thousand one hundred dollars, a child support

payment of fifty dollars per month for one child, seventy dollars per month for two children, ninety dollars per month for three children, one hundred ten dollars per month for four children, one hundred thirty dollars per month for five children, and one hundred fifty dollars per month for six or more children shall be required of the obligor. The minimum order amount shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in paragraph (h) of subsection (3) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(C)

Except as otherwise provided in sub-subparagraph (D) of this subparagraph (II), in circumstances in which the parents' combined monthly adjusted gross income is one thousand one hundred dollars or more, but in which the parent with the least number of overnights per year with the child has a monthly adjusted gross income of less than one thousand nine hundred dollars, the court or delegate child support enforcement unit, pursuant to section 26-13.5-105(4), C.R.S., shall perform a low-income adjustment calculation of child support as follows: The court or delegate child support enforcement unit shall determine each parent's monthly adjusted gross income, as that term is defined in subsection (3) of this section. Based upon the parents' combined monthly adjusted gross incomes, the court or delegate child support enforcement unit shall determine the monthly basic child support obligation, using the schedule of basic child support obligations set forth in paragraph (b) of this subsection (7) and shall determine each parent's presumptive proportionate share of said obligation. The court or delegate child support enforcement unit shall then adjust the income of the parent with the fewest number of overnights per year with the child by subtracting one thousand one hundred dollars from that parent's monthly adjusted gross income. The result of the subtraction shall be added to the following basic minimum child support amount as additional minimum support, unless the result of the subtraction amount is zero or a negative figure, in which case the court shall add zero to the following basic minimum child support amount: Fifty dollars for one child; seventy dollars for two children; ninety dollars for three children; one hundred ten dollars for four children; one hundred thirty dollars for five children; and one hundred fifty dollars for six or more children. The court or delegate child support enforcement unit shall compare the product of this addition to the parent's presumptive proportionate share of the monthly basic support obligation determined previously from the schedule of basic child support obligations. The lesser of the two amounts shall be the basic monthly support obligation to be paid by the low-income parent, as adjusted by the low-income parent's proportionate share of the work-related and

education-related child care costs, health insurance, extraordinary medical expenses, and other extraordinary adjustments as described in subsections (9) to (11) of this section. The low-income adjustment shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(D)

In any circumstance in which the obligor's monthly adjusted gross income is less than one thousand one hundred dollars, regardless of the monthly adjusted gross income of the obligee, the obligor shall be ordered to pay the minimum monthly order amount in child support based on the number of children due support and this subsection (7). The minimum order amount shall be fifty dollars per month for one child, seventy dollars per month for two children, ninety dollars per month for three children, one hundred ten dollars per month for four children, one hundred thirty dollars per month for five children, and one hundred fifty dollars per month for six or more children. The minimum order amount shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(E)

The judge may use discretion to determine child support in circumstances where combined adjusted gross income exceeds the uppermost levels of the schedule of basic child support obligations; except that the presumptive basic child support obligation shall not be less than it would be based on the highest level of adjusted gross income set forth in the schedule of basic child support obligations.

(b)

#### **Schedule of basic child support obligations.**

##### **Combined**

##### **One Child**

##### **Two Children**

##### **Three Children**

##### **Four Children**

##### **Five Children**

##### **Six Children**

<b>Adjusted</b>	348
<b>Gross Income</b>	427
100.00	477
150.00	524
Minimum Order Formula Applies for Adjusted Gross Income Below \$1,100	570
	1200.00
200.00	234
250.00	362
300.00	443
350.00	495
400.00	545
450.00	592
500.00	1250.00
550.00	243
600.00	375
650.00	460
700.00	513
750.00	565
800.00	614
850.00	1300.00
900.00	251
950.00	389
1000.00	476
1050.00	532
1100.00	585
216	636
335	1350.00
410	260
458	402
504	492
547	550
1150.00	605
225	

658	572
1400.00	639
269	703
416	764
509	1650.00
568	310
625	480
680	587
1450.00	656
277	721
429	784
525	1700.00
587	319
645	492
701	602
1500.00	673
286	740
442	805
541	1750.00
604	327
665	505
723	618
1550.00	690
294	759
455	825
556	1800.00
622	335
684	518
743	634
1600.00	708
302	778
467	846



1850.00	794
343	874
530	950
649	2100.00
725	385
798	594
867	727
1900.00	812
352	893
543	971
665	2150.00
742	393
817	607
888	742
1950.00	829
360	912
556	991
680	2200.00
760	401
836	620
908	758
2000.00	847
368	931
569	1012
696	2250.00
777	410
855	632
929	773
2050.00	864
377	950
581	1033
711	2300.00

418	1045
645	1136
789	2550.00
881	459
969	709
1054	866
2350.00	968
426	1064
658	1157
804	2600.00
899	468
988	722
1074	882
2400.00	985
435	1084
671	1178
820	2650.00
916	476
1007	734
1095	897
2450.00	1002
443	1103
683	1198
835	2700.00
933	484
1026	747
1116	913
2500.00	1020
451	1122
696	1219
851	2750.00
950	493

760	1319
928	3000.00
1037	533
1141	821
1240	1002
2800.00	1119
501	1231
772	1338
944	3050.00
1054	541
1160	833
1261	1016
2850.00	1135
509	1248
785	1357
959	3100.00
1071	548
1179	844
1281	1030
2900.00	1150
517	1266
797	1376
974	3150.00
1087	556
1196	856
1300	1044
2950.00	1166
525	1283
809	1394
988	3200.00
1103	564
1213	868

1058	3450.00
1182	604
1300	928
1413	1129
3250.00	1261
572	1388
880	1508
1072	3500.00
1198	612
1318	940
1432	1144
3300.00	1278
580	1406
892	1529
1086	3550.00
1214	620
1335	953
1451	1160
3350.00	1295
588	1425
904	1549
1101	3600.00
1229	628
1352	965
1470	1175
3400.00	1312
596	1444
915	1569
1115	3650.00
1245	636
1370	977
1489	1189

1328	671
1460	1031
1587	1254
3700.00	1401
643	1541
987	1675
1202	3950.00
1342	678
1477	1042
1605	1267
3750.00	1416
650	1557
998	1693
1215	4000.00
1357	685
1493	1053
1622	1280
3800.00	1430
657	1573
1009	1710
1228	4050.00
1372	692
1509	1063
1640	1294
3850.00	1445
664	1589
1020	1728
1241	4100.00
1386	699
1525	1074
1658	1306
3900.00	1459

1605	1126
1744	1368
4150.00	1529
706	1681
1084	1828
1319	4400.00
1473	741
1620	1136
1761	1381
4200.00	1542
713	1697
1095	1844
1331	4450.00
1487	747
1635	1147
1778	1393
4250.00	1556
720	1712
1105	1861
1344	4500.00
1501	754
1651	1157
1794	1406
4300.00	1570
727	1727
1115	1878
1356	4550.00
1515	761
1666	1167
1811	1418
4350.00	1584
734	1743

1894	1478
4600.00	1651
768	1817
1178	1975
1431	4850.00
1598	801
1758	1227
1911	1489
4650.00	1664
775	1830
1188	1989
1443	4900.00
1612	808
1773	1237
1928	1500
4700.00	1676
782	1844
1199	2004
1456	4950.00
1626	814
1789	1246
1944	1511
4750.00	1688
788	1857
1209	2019
1467	5000.00
1639	820
1803	1256
1960	1523
4800.00	1701
795	1871
1218	2033

5050.00	1762
827	1938
1265	2107
1534	5300.00
1713	859
1884	1312
2048	1589
5100.00	1774
833	1952
1274	2122
1545	5350.00
1725	865
1898	1322
2063	1600
5150.00	1787
840	1965
1284	2136
1556	5400.00
1738	871
1911	1330
2078	1610
5200.00	1798
846	1978
1293	2150
1567	5450.00
1750	875
1925	1337
2092	1617
5250.00	1806
852	1987
1303	2160
1578	5500.00



879	2031
1343	2208
1624	5750.00
1814	900
1996	1373
2169	1660
5550.00	1854
883	2040
1349	2217
1631	5800.00
1822	904
2005	1379
2179	1667
5600.00	1862
887	2049
1355	2227
1639	5850.00
1830	908
2013	1385
2189	1674
5650.00	1870
891	2057
1361	2236
1646	5900.00
1838	912
2022	1391
2198	1682
5700.00	1878
896	2066
1367	2246
1653	5950.00
1846	916

1397	2294
1689	6200.00
1886	937
2075	1428
2256	1725
6000.00	1926
920	2119
1404	2303
1696	6250.00
1894	941
2084	1434
2265	1732
6050.00	1934
924	2128
1410	2313
1703	6300.00
1902	945
2093	1440
2275	1739
6100.00	1942
928	2136
1416	2322
1710	6350.00
1910	949
2101	1446
2284	1746
6150.00	1950
932	2145
1422	2332
1717	6400.00
1918	953
2110	1452

1753	6650.00
1958	973
2154	1482
2341	1789
6450.00	1998
957	2198
1458	2389
1760	6700.00
1966	977
2162	1488
2351	1796
6500.00	2006
961	2207
1464	2399
1767	6750.00
1974	981
2171	1494
2360	1803
6550.00	2014
965	2216
1470	2408
1774	6800.00
1982	985
2180	1500
2370	1810
6600.00	2022
969	2225
1476	2418
1782	6850.00
1990	989
2189	1506
2379	1818

2030	1009
2233	1536
2428	1854
6900.00	2071
993	2278
1512	2476
1825	7150.00
2038	1013
2242	1542
2437	1861
6950.00	2079
997	2287
1518	2486
1832	7200.00
2047	1017
2251	1548
2447	1868
7000.00	2087
1001	2296
1524	2495
1839	7250.00
2055	1021
2260	1554
2457	1876
7050.00	2095
1005	2304
1530	2505
1847	7300.00
2063	1025
2269	1560
2466	1883
7100.00	2103

2313	1591
2515	1919
7350.00	2143
1029	2358
1567	2563
1890	7600.00
2111	1049
2322	1597
2524	1926
7400.00	2151
1033	2367
1573	2572
1897	7650.00
2119	1053
2331	1603
2534	1933
7450.00	2159
1037	2375
1579	2582
1904	7700.00
2127	1057
2340	1608
2544	1940
7500.00	2167
1041	2384
1585	2591
1912	7750.00
2135	1061
2349	1614
2553	1947
7550.00	2175
1045	2392

2600	1967
7800.00	2197
1063	2416
1618	2627
1952	8050.00
2180	1074
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4019	2022
4421	3046
4806	3634
23400.00	4060
2006	4466
3022	4854
3606	23650.00
4027	2026
4430	3052
4816	3642
23450.00	4068
2010	4474
3028	4864
3613	23700.00
4035	2030
4439	3058
4825	3649
23500.00	4076
2014	4483
3034	4873
3620	23750.00
4044	2034
4448	3064
4835	3656
23550.00	4084
2018	4492



4883	3692
23800.00	4124
2038	4536
3070	4931
3663	24050.00
4092	2058
4501	3100
4893	3699
23850.00	4132
2042	4545
3076	4941
3670	24100.00
4100	2062
4510	3106
4902	3707
23900.00	4140
2046	4554
3082	4950
3678	24150.00
4108	2066
4519	3112
4912	3714
23950.00	4148
2050	4563
3088	4960
3685	24200.00
4116	2070
4528	3118
4922	3721
24000.00	4156
2054	4572
3094	4970

24250.00	4197
2074	4616
3124	5018
3728	24500.00
4164	2094
4581	3155
4979	3764
24300.00	4205
2078	4625
3130	5027
3735	24550.00
4172	2098
4590	3161
4989	3771
24350.00	4213
2082	4634
3137	5037
3743	24600.00
4180	2102
4598	3167
4999	3779
24400.00	4221
2086	4643
3143	5047
3750	24650.00
4188	2106
4607	3173
5008	3786
24450.00	4229
2090	4652
3149	5056
3757	24700.00

2110	4696
3179	5104
3793	24950.00
4237	2130
4661	3209
5066	3829
24750.00	4277
2114	4705
3185	5114
3800	25000.00
4245	2134
4669	3215
5076	3836
24800.00	4285
2118	4714
3191	5124
3807	25050.00
4253	2138
4678	3221
5085	3844
24850.00	4293
2122	4723
3197	5133
3815	25100.00
4261	2142
4687	3227
5095	3851
24900.00	4301
2126	4731
3203	5143
3822	25150.00
4269	2146

3233	5191
3858	25400.00
4309	2166
4740	3263
5153	3894
25200.00	4350
2150	4785
3239	5201
3865	25450.00
4317	2170
4749	3269
5162	3901
25250.00	4358
2154	4793
3245	5210
3872	25500.00
4325	2174
4758	3276
5172	3908
25300.00	4366
2158	4802
3251	5220
3880	25550.00
4333	2178
4767	3282
5182	3916
25350.00	4374
2162	4811
3257	5230
3887	25600.00
4342	2182
4776	3288

3923	25850.00
4382	2202
4820	3318
5239	3959
25650.00	4422
2186	4864
3294	5287
3930	25900.00
4390	2206
4829	3324
5249	3966
25700.00	4430
2190	4873
3300	5297
3937	25950.00
4398	2210
4838	3330
5259	3973
25750.00	4438
2194	4882
3306	5307
3944	26000.00
4406	2214
4847	3336
5268	3981
25800.00	4446
2198	4891
3312	5316
3952	26050.00
4414	2218
4855	3342
5278	3988

4454	2238
4900	3372
5326	4024
26100.00	4495
2222	4944
3348	5374
3995	26350.00
4462	2242
4909	3378
5336	4031
26150.00	4503
2226	4953
3354	5384
4002	26400.00
4470	2247
4917	3384
5345	4038
26200.00	4511
2230	4962
3360	5393
4009	26450.00
4478	2251
4926	3390
5355	4045
26250.00	4519
2234	4971
3366	5403
4017	26500.00
4486	2255
4935	3396
5365	4053
26300.00	4527

4979	3427
5413	4089
26550.00	4567
2259	5024
3402	5461
4060	26800.00
4535	2279
4988	3433
5422	4096
26600.00	4575
2263	5033
3408	5470
4067	26850.00
4543	2283
4997	3439
5432	4103
26650.00	4583
2267	5041
3415	5480
4074	26900.00
4551	2287
5006	3445
5442	4110
26700.00	4591
2271	5050
3421	5490
4081	26950.00
4559	2291
5015	3451
5451	4118
26750.00	4599
2275	5059

5499	4154
27000.00	4640
2295	5103
3457	5547
4125	27250.00
4607	2315
5068	3487
5509	4161
27050.00	4648
2299	5112
3463	5557
4132	27300.00
4615	2319
5077	3493
5519	4168
27100.00	4656
2303	5121
3469	5567
4139	27350.00
4623	2323
5086	3499
5528	4175
27150.00	4664
2307	5130
3475	5576
4146	27400.00
4631	2327
5095	3505
5538	4182
27200.00	4672
2311	5139
3481	5586



27450.00	4712
2331	5183
3511	5634
4190	27700.00
4680	2351
5148	3541
5596	4226
27500.00	4720
2335	5192
3517	5644
4197	27750.00
4688	2355
5157	3547
5605	4233
27550.00	4728
2339	5201
3523	5653
4204	27800.00
4696	2359
5165	3554
5615	4240
27600.00	4736
2343	5210
3529	5663
4211	27850.00
4704	2363
5174	3560
5625	4247
27650.00	4744
2347	5219
3535	5673
4218	27900.00

2367	5263
3566	5721
4255	28150.00
4752	2387
5228	3596
5682	4291
27950.00	4793
2371	5272
3572	5730
4262	28200.00
4760	2391
5236	3602
5692	4298
28000.00	4801
2375	5281
3578	5740
4269	28250.00
4768	2395
5245	3608
5702	4305
28050.00	4809
2379	5290
3584	5750
4276	28300.00
4776	2399
5254	3614
5711	4312
28100.00	4817
2383	5298
3590	5759
4283	28350.00
4785	2403

3620	5808
4319	28600.00
4825	2423
5307	3650
5769	4355
28400.00	4865
2407	5352
3626	5817
4327	28650.00
4833	2427
5316	3656
5779	4363
28450.00	4873
2411	5360
3632	5827
4334	28700.00
4841	2431
5325	3662
5788	4370
28500.00	4881
2415	5369
3638	5836
4341	28750.00
4849	2435
5334	3668
5798	4377
28550.00	4889
2419	5378
3644	5846
4348	28800.00
4857	2439
5343	3674

4384	29050.00
4897	2459
5387	3705
5856	4420
28850.00	4938
2443	5431
3680	5904
4392	29100.00
4905	2463
5396	3711
5865	4428
28900.00	4946
2447	5440
3686	5913
4399	29150.00
4913	2467
5405	3717
5875	4435
28950.00	4954
2451	5449
3692	5923
4406	29200.00
4921	2471
5414	3723
5885	4442
29000.00	4962
2455	5458
3699	5933
4413	29250.00
4929	2475
5422	3729
5894	4449

4970	2495
5467	3759
5942	4485
29300.00	5010
2479	5511
3735	5990
4456	29550.00
4978	2499
5476	3765
5952	4492
29350.00	5018
2483	5520
3741	6000
4464	29600.00
4986	2503
5484	3771
5962	4500
29400.00	5026
2487	5529
3747	6010
4471	29650.00
4994	2507
5493	3777
5971	4507
29450.00	5034
2491	5538
3753	6019
4478	29700.00
5002	2511
5502	3783
5981	4514
29500.00	5042

5546	3813
6029	4550
29750.00	5083
2515	5591
3789	6077
4521	30000.00
5050	2535
5555	3819
6039	4557
29800.00	5091
2519	5600
3795	6087
4529	(8)
5058	<b>Computation of basic child support - shared physical care - split physical care - stipulations - deviations - basis for periodic updates.</b>
5564	
6048	(a)
29850.00	Except in cases of shared physical care or split physical care as defined in paragraphs (h) and (i) of subsection (3) of this section, a total child support obligation is determined by adding each parent's respective basic child support obligation, as determined through the guidelines and schedule of basic child support obligations specified in subsection (7) of this section, work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule of basic child support obligations. The parent receiving a child support payment shall be presumed to spend his or her total child support obligation directly on the children. The parent paying child support to the other parent shall owe his or her total child support obligation as child support to the other parent minus any ordered payments included in the calculations made directly on behalf of the children for work-related net child care costs, extraordinary medical expenses, or extraordinary adjustments to the schedule of basic child support obligations.
2523	
3801	
4536	
5066	
5573	
6058	
29900.00	
2527	
3807	
4543	
5074	(b)
5582	Because shared physical care presumes that certain basic expenses for the children will be duplicated, an adjustment for shared physical care is made by multiplying the basic child support obligation by one and fifty hundredths (1.50). In cases of shared physical care, each parent's adjusted basic child support obligation obtained by application of paragraph (b) of subsection (7) of this section shall first be divided between the parents
6068	
29950.00	
2531	

in proportion to their respective adjusted gross incomes. Each parent's share of the adjusted basic child support obligation shall then be multiplied by the percentage of time the children spend with the other parent to determine the theoretical basic child support obligation owed to the other parent. To these amounts shall be added each parent's proportionate share of work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule of basic child support obligations. The parent owing the greater amount of child support shall owe the difference between the two amounts as a child support order minus any ordered direct payments made on behalf of the children for work-related net child care costs, extraordinary medical expenses, or extraordinary adjustments to the schedule of basic child support obligations. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(c)

(I)

In cases of split physical care, a child support obligation shall be computed separately for each parent based upon the number of children living with the other parent in accordance with subsections (7), (9), (10), and (11) of this section. The amount so determined shall be a theoretical support obligation due each parent for support of the child or children for whom he or she has primary physical custody. The obligations so determined shall then be offset, with the parent owing the larger amount owing the difference between the two amounts as a child support order.

(II)

If the parents also share physical care as outlined in paragraph (b) of this subsection (8), an additional adjustment for shared physical care shall be made as provided in paragraph (b) of this subsection (8).

(d)

Stipulations presented to the court shall be reviewed by the court for approval. No hearing shall be required; however, the court shall use the guidelines and schedule of basic child support obligations to review the adequacy of child support orders negotiated by the parties as well as the financial affidavit that fully discloses the financial status of the parties as required for use of the guidelines and schedule of basic child support obligations.

(e)

In any action to establish or modify child support, whether temporary or permanent, the guidelines and schedule of basic child support obligations as set forth in subsection (7) of this section shall be used as a rebuttable presumption for the establishment or modification of the

amount of child support. Courts may deviate from the guidelines and schedule of basic child support obligations where its application would be inequitable, unjust, or inappropriate. Any such deviation shall be accompanied by written or oral findings by the court specifying the reasons for the deviation and the presumed amount under the guidelines and schedule of basic child support obligations without a deviation. These reasons may include, but are not limited to, the extraordinary medical expenses incurred for treatment of either parent or a current spouse, extraordinary costs associated with parenting time, the gross disparity in income between the parents, the ownership by a parent of a substantial nonincome producing asset, consistent overtime not considered in gross income under sub-subparagraph (C) of subparagraph (II) of paragraph (a) of subsection (5) of this section, or income from employment that is in addition to a full-time job or that results in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment. The existence of a factor enumerated in this section does not require the court to deviate from the guidelines and basic schedule of child support obligations but is a factor to be considered in the decision to deviate. The court may deviate from the guidelines and basic schedule of child support obligations even if no factor enumerated in this section exists.

(f)

The guidelines and schedule of basic child support obligations may be used by the parties as the basis for periodic updates of child support obligations.

(9)

#### **Adjustments for child care costs.**

(a)

Net child care costs incurred on behalf of the children due to employment or job search or the education of either parent shall be added to the basic obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(b)

Child care costs shall not exceed the level required to provide quality care from a licensed source for the children. The value of the federal income tax credit for child care shall be subtracted from actual costs to arrive at a figure for net child care costs.

(10)

#### **Adjustments for health care expenditures for children.**

(a)

In orders issued pursuant to this section, the court shall also provide for the child's or children's current and future medical needs by ordering either parent or both parents to initiate medical or medical and dental insurance coverage for the child or children through currently effective medical or medical and dental insurance policies held by the parent or parents, purchase medical or medical and dental insurance for the child or children, or provide the child or children with current and future medical needs through some other manner. If a parent has been directed to provide insurance pursuant to this section and that parent's spouse provides the insurance for the benefit of the child or children either directly or through employment, a credit on the child support worksheet shall be given to the parent in the same manner as if the premium were paid by the parent. At the same time, the court shall order payment of medical insurance or medical and dental insurance deductibles and copayments.

(b)

The payment of a premium to provide health insurance coverage on behalf of the children subject to the order shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross income.

(c)

The amount to be added to the basic child support obligation shall be the actual amount of the total insurance premium that is attributable to the child who is the subject of the order. If this amount is not available or cannot be verified, the total cost of the premium should be divided by the total number of persons covered by the policy. The cost per person derived from this calculation shall be multiplied by the number of children who are the subject of the order and who are covered under the policy. This amount shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(d)

After the total child support obligation is calculated and divided between the parents in proportion to their adjusted gross incomes, the amount calculated in paragraph (c) of this subsection (10) shall be deducted from the obligor's share of the total child support obligation if the obligor is actually paying the premium. If the obligee is actually paying the premium, no further adjustment is necessary.

(e)

Prior to allowing the health insurance adjustment, the parent requesting the adjustment must submit proof that the child or children have been enrolled in a health insurance plan and must submit proof of the cost of the premium. The court shall require the parent receiving the

adjustment to submit annually proof of continued coverage of the child or children to the delegate child support enforcement unit and to the other parent.

(f)

If a parent who is ordered by the court to provide medical or medical and dental insurance for the child or children has insurance that excludes coverage of the child or children because the child or children reside outside the geographic area covered by the insurance policy, the court shall order separate coverage for the child or children if the court determines coverage is available at a reasonable cost.

(g)

Where the application of the premium payment on the guidelines and schedule of basic child support obligations results in a child support order of fifty dollars or less or the premium payment is twenty percent or more of the parent's gross income, the court or delegate child support enforcement unit may elect not to require the parent to include the child or children on an existing policy or to purchase insurance. The parent shall, however, be required to provide insurance when it does become available at a reasonable cost.

(h)

(I)

Any extraordinary medical expenses incurred on behalf of the children shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(II)

Extraordinary medical expenses are uninsured expenses, including copayments and deductible amounts, in excess of two hundred fifty dollars per child per calendar year. Extraordinary medical expenses shall include, but need not be limited to, such reasonable costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any uninsured chronic health problem. At the discretion of the court, professional counseling or psychiatric therapy for diagnosed mental disorders may also be considered as an extraordinary medical expense.

(11)

**Extraordinary adjustments to the schedule of basic child support obligations - periodic disability benefits.**

(a)

By agreement of the parties or by order of court, the following reasonable and necessary expenses incurred on behalf of the child shall be divided between the parents in



proportion to their adjusted gross income:

(I)

Any expenses for attending any special or private elementary or secondary schools to meet the particular educational needs of the child; and

(II)

Any expenses for transportation of the child, or the child and an accompanying parent if the child is less than twelve years of age, between the homes of the parents.

(b)

Any additional factors that actually diminish the basic needs of the child may be considered for deductions from the basic child support obligation.

(c)

In cases where the custodial parent receives periodic disability benefits granted by the federal "Old-age, Survivors, and Disability Insurance Act" on behalf of dependent children due to the disability of the noncustodial parent or receives employer-paid retirement benefits from the federal government on behalf of dependent children due to the retirement of the noncustodial parent, the noncustodial parent's share of the total child support obligation as determined pursuant to subsection (8) of this section shall be reduced in an amount equal to the amount of the benefits.

(d)

In cases where the custodial parent receives a lump sum retroactive award for benefits granted by the federal old-age, survivors, or disability insurance benefits program, 42 U.S.C. 7, on behalf of a dependent child due to the disability of the noncustodial parent, or receives a lump sum retroactive award for employer-paid retirement benefits from the federal government on behalf of a dependent child due to the retirement of the noncustodial parent, the lump sum award received by the custodial parent must be credited against any retroactive support judgment or any past-due child support obligation, regardless of whether the past-due obligation has been reduced to judgment owed by the noncustodial parent. This credit must not be given against any amounts owed by the noncustodial parent for debt as defined in section 14-14-104 or for any retroactive support or any arrearage that accrued prior to the date of eligibility for disability or retirement benefits as determined by the social security administration. Any lump sum retirement or disability payments due to the retirement or disability of the noncustodial parent, received by the custodial parent as a result of the retirement or disability of the noncustodial parent, paid for a period of time that precedes the date of such benefit date eligibility, or any amount in excess of the established child support order or judgment, must be

deemed a gratuity to the child.

(12)

**Dependency exemptions.** Unless otherwise agreed upon by the parties, the court shall allocate the right to claim dependent children for income tax purposes between the parties. These rights shall be allocated between the parties in proportion to their contributions to the costs of raising the children. A parent shall not be entitled to claim a child as a dependent if he or she has not paid all court-ordered child support for that tax year or if claiming the child as a dependent would not result in any tax benefit.

(13)

**Emancipation.**

(a)

For child support orders entered on or after July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates without either party filing a motion when the last or only child attains nineteen years of age unless one or more of the following conditions exist:

(I)

The parties agree otherwise in a written stipulation after July 1, 1997;

(II)

If the child is mentally or physically disabled, the court or the delegate child support enforcement unit may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of nineteen;

(III)

If the child is still in high school or an equivalent program, support continues until the end of the month following graduation. A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support upon reenrollment and until the end of the month following graduation, but not beyond age twenty-one.

(IV)

If the child marries, the child shall be considered emancipated as of the date of the marriage. If the marriage is annulled, dissolved, or declared invalid, child support may be reinstated.

(V)

If the child enters into active military duty, the child shall be considered emancipated.

(b)

Nothing in paragraph (a) of this subsection (13) or subsection (15) of this section shall preclude the parties from agreeing in a written stipulation or agreement on or after July 1, 1997, to continue child support beyond the age of nineteen or to provide for postsecondary education expenses for a child and to set forth the details of the payment of the expenses. If the stipulation or agreement is approved by the court and made part of a decree of dissolution of marriage or legal separation, the terms of the agreement shall be enforced as provided in section 14-10-112.

(14)

**Annual exchange of information.**

(a)

When a child support order is entered or modified, the parties may agree or the court may require the parties to exchange financial information, including verification of insurance and its costs, pursuant to paragraph (c) of subsection (5) of this section and other appropriate information once a year or less often, by regular mail, for the purpose of updating and modifying the order without a court hearing. The parties shall use the approved standardized child support forms specified in subsection (4) of this section in exchanging financial information. The forms shall be included with any agreed modification or an agreement that a modification is not appropriate at the time. If the agreed amount departs from the guidelines and schedule of basic child support obligations, the parties shall furnish statements of explanation that shall be included with the forms and shall be filed with the court. The court shall review the agreement pursuant to this paragraph (a) and inform the parties by regular mail whether or not additional or corrected information is needed, or that the modification is granted, or that the modification is denied. If the parties cannot agree, no modification pursuant to this paragraph (a) shall be entered; however, either party may move for or the court may schedule, upon its own motion, a modification hearing.

(b)

Upon request of the noncustodial parent, the court may order the custodial parent to submit an annual update of financial information using the approved standardized child support forms, as specified in subsection (4) of this section, including information on the actual expenses relating to the children of the marriage for whom support has been ordered. The court shall not order the custodial parent to update the financial information pursuant to this paragraph (b) in circumstances where the noncustodial parent has failed to exercise parenting time rights or when child support payments are in arrears or where there is documented evidence of domestic violence, child abuse, or a violation of a protection order on the part of

the noncustodial parent. The court may order the noncustodial parent to pay the costs involved in preparing an update to the financial information. If the noncustodial parent claims, based upon the information in the updated form, that the custodial parent is not spending the child support for the benefit of the children, the court may refer the parties to a mediator to resolve the differences. If there are costs for such mediation, the court shall order that the party requesting the mediation pay such costs.

(15)

**Post-secondary education.**

(a)

This subsection (15) shall apply to all child support obligations established or modified as a part of any proceeding, including but not limited to articles 5, 6, and 10 of this title and articles 4 and 6 of title 19, C.R.S., prior to July 1, 1997. This subsection (15) shall not apply to child support orders established on or after July 1, 1997, which shall be governed by paragraph (a) of subsection (13) of this section.

(b)

For child support orders entered prior to July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates without either party filing a motion when the last or only child attains nineteen years of age unless one or more of the following conditions exist:

(I)

The parties agree otherwise in a written stipulation after July 1, 1991;

(II)

If the child is mentally or physically disabled, the court or the delegate child support enforcement unit may order child support, including payments for medical expenses or insurance or both, to continue beyond the age of nineteen; or

(III)

If the child is still in high school or an equivalent program, support continues until the end of the month following graduation, unless there is an order for postsecondary education, in which case support continues through postsecondary education as provided in this subsection (15). A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support upon reenrollment and until the end of the month following graduation, but not beyond age twenty-one.

(IV)

If the child marries, the child shall be considered

emancipated as of the date of the marriage. If the marriage is annulled, dissolved, or declared invalid, child support may be reinstated.

(V)

If the child enters into active military duty, the child shall be considered emancipated.

(c)

If the court finds that it is appropriate for the parents to contribute to the costs of a program of postsecondary education, then the court shall terminate child support and enter an order requiring both parents to contribute a sum determined to be reasonable for the education expenses of the child, taking into account the resources of each parent and the child. In determining the amount of each parent's contribution to the costs of a program of postsecondary education for a child, the court shall be limited to an amount not to exceed the amount listed under the schedule of basic child support obligations in paragraph (b) of subsection (7) of this section for the number of children receiving postsecondary education. If such an order is entered, the parents shall contribute to the total sum determined by the court in proportion to their adjusted gross incomes as defined in paragraph (a) of subsection (3) of this section. The amount of contribution that each parent is ordered to pay pursuant to this subsection (15) shall be subtracted from the amount of each parent's gross income, respectively, prior to calculating the basic child support obligation for any remaining children pursuant to subsection (7) of this section.

(d)

In no case shall the court issue orders providing for both child support and postsecondary education to be paid for the same time period for the same child regardless of the age of the child.

(e)

Either parent or the child may move for an order at any time before the child attains the age of twenty-one years. The order for postsecondary education support may not extend beyond the earlier of the child's twenty-first birthday or the completion of an undergraduate degree.

(f)

Either a child seeking an order for postsecondary education expenses or on whose behalf postsecondary education expenses are sought, or the parent from whom the payment of postsecondary education expenses are sought, may request that the court order the child and the parent to seek mediation prior to a hearing on the issue of postsecondary education expenses. Mediation services shall be provided in accordance with section 13-22-305, C.R.S. The court may order the parties to seek mediation

if the court finds that mediation is appropriate.

(g)

The court may order the support paid directly to the educational institution, to the child, or in such other fashion as is appropriate to support the education of the child.

(h)

A child shall not be considered emancipated solely by reason of living away from home while in postsecondary education. If the child resides in the home of one parent while attending school or during periods of time in excess of thirty days when school is not in session, the court may order payments from one parent to the other for room and board until the child attains the age of nineteen.

(i)

If the court orders support pursuant to this subsection (15), the court or delegate child support enforcement unit may also order that the parents provide health insurance for the child or pay medical expenses of the child or both for the duration of the order. The order shall provide that these expenses be paid in proportion to their adjusted gross incomes as defined in subsection (3) of this section. The court or delegate child support enforcement unit shall order a parent to provide health insurance if the child is eligible for coverage as a dependent on that parent's insurance policy or if health insurance coverage for the child is available at reasonable cost.

(j)

An order for postsecondary education expenses entered between July 1, 1991, and July 1, 1997, may be modified pursuant to this subsection (15) to provide for postsecondary education expenses subject to the statutory provisions for determining the amount of a parent's contribution to the costs of postsecondary education, the limitations on the amount of a parent's contribution, and the changes to the definition of postsecondary education consistent with this section as it existed on July 1, 1994. An order for child support entered prior to July 1, 1997, that does not provide for postsecondary education expenses shall not be modified pursuant to this subsection (15).

(k)

Postsecondary education support may be established or modified in the same manner as child support under this article.

(16)

#### **Child support commission.**

(a)

The child support guidelines, including the schedule of basic child support obligations, and general child support issues shall be reviewed and the results of the review and any recommended changes shall be reported to the governor and to the general assembly on or before December 1, 1991, and at least every four years thereafter by a child support commission, which commission is hereby created.

(b)

As part of its review, the commission must consider economic data on the cost of raising children and analyze case data on the application of, and deviations from, the guidelines and the schedule of basic child support obligations to be used in the commission's review to ensure that deviations from the guidelines and schedule of basic child support obligations are limited.

(c)

The child support commission shall consist of no more than twenty-one members. The governor shall appoint persons to the commission who are representatives of the judiciary and the Colorado bar association. Members of the commission appointed by the governor shall also include the director of the division in the state department of human services that is responsible for child support enforcement, or his or her designee, a director of a county department of social services, the child support liaison to the judicial department, interested parties, a certified public accountant, and parent representatives. In making his or her appointments to the commission, the governor may appoint persons as parent representatives. In making his or her appointments to the commission, the governor shall attempt to assure geographical diversity. The remaining two members of the commission shall be a member of the house of representatives appointed by the speaker of the house of representatives and a member of the senate appointed by the president of the senate and shall not be members of the same political party.

(d)

Members of the child support commission shall not be compensated for their services on the commission except as otherwise provided in section 2-2-326, C.R.S., and except that members shall be reimbursed for actual and necessary expenses for travel and mileage incurred in connection with their duties. The child support commission is authorized, subject to appropriation, to incur expenses related to its work, including the costs associated with public hearings, printing, travel, and research.

(d.5) and (e)

(Deleted by amendment, L. 2013.)

**Cite as C.R.S. § 14-10-115**

**History.** Amended by 2014 Ch. 390, §7, eff. 6/6/2014.

Amended by 2013 Ch. 103, §2, eff. 1/1/2014.

Amended by 2013 Ch. 103, §1, eff. 1/1/2014.

L. 71: R&RE, p. 527, § 1. C.R.S. 1963: § 46-1-15. L. 85: (2) added, p. 592, § 10, effective July 1. L. 86: (3) to (16) added, p. 718, § 1, effective November 1. L. 87: (3)(b), (5), IP(7)(a), (10)(a), (11), and (12) amended, (7)(b)(II), (15), and (16) repealed, (7)(d), (7)(e), (10)(c), and (17) added, and (8), (9), (13), and (14) R&RE, pp. 587, 588, 600, 591, 589, §§ 5, 7, 38, 9, 6, 8, effective July 10. L. 89: (7)(d.5) added and (17) amended, p. 792, §§ 14, 15, effective July 1. L. 90: (18) added, p. 890, § 10, effective June 7; (7)(a)(I)(A), (7)(c), and (13)(a)(III) amended and (7)(b)(III) added, pp. 564, 890, 889, §§ 35, 10, 9, effective July 1. L. 91: (18)(a) amended, p. 359, § 21, effective April 9; (1.5) added and (7)(b), (13), (14)(b), and (18) amended, p. 234, § 1, effective July 1. L. 92: (17) amended, p. 2171, § 18, effective June 2; (1.5)(b)(I), (2), (3)(a), (3)(b), (7)(a), (7)(e), (8), (10)(a)(II), (10)(c), (14)(c)(I), (18), and (18)(a) amended, (1.5)(d), (13.5), (14.5), and (16.5) added, (7)(e) repealed, and (10)(b) R&RE, pp. 166, 203, 188, 169, 198, 193, §§ 1, 9, 2, 3, effective August 1. L. 93: (1.5)(b)(I) and (3)(b)(III) amended and (1.5)(e) added, pp. 1556, 577, §§ 1, 7, effective July 1; (1.5)(b)(I), (2), and (10)(c) amended and (3.5) and (18)(e) added, pp. 1559, 1560, §§ 7, 8, effective September 1. L. 94: (1.5)(b)(I), (1.5)(e), (7)(a)(I)(A), (7)(b)(III), (7)(d.5)(I), and (18)(e) amended, p. 1536, § 5, effective July 1; (18)(a) amended, p. 2645, § 107, effective July 1. L. 96: IP(1), (2), (3)(a), (3)(b)(II), (7)(a)(I)(A), (7)(a)(I)(C), (7)(b)(I), (10)(a)(II), (11)(a), (12), (13.5), and (16.5) amended, p. 594, § 7, effective July 1. L. 97: (1.5) amended and (1.6) and (1.7) added, p. 565, § 20, effective July 1; (1.5), (3.5), (7)(b), and (18)(a) amended and (1.6) and (1.7) added, pp. 1264, 1312, §§ 8, 49, effective July 1; (5) and (17) amended, p. 561, § 5, effective July 1; (7)(a)(I)(B) amended, p. 1240, § 37, effective July 1. L. 98: (3)(a), (7)(d.5)(I), and (13)(a)(II) amended, p. 768, § 21, effective July 1; (7)(a)(I)(A) amended, p. 921, § 7, effective July 1; (4)(c), (8), (9), (10)(c), and (14) amended, p. 1398, § 42, effective February 1, 1999. L. 99: (3.5) amended, p. 1085, § 2, effective July 1; (7)(a)(I)(A) amended, p. 621, § 15, effective August 4. L. 2000: (18) amended, p. 1709, § 6, effective July 1. L. 2001: (18)(a) amended and (19) added, p. 721, § 4, effective May 31. L. 2002: (10)(a)(II), (10)(b), and (13.5)(h)(II) amended, p. 286, § 1, effective January 1, 2003. L. 2003: (3)(b)(III) amended, p. 1011, § 15, effective July 1; (10)(a)(II)(B), (10)(a)(II)(C), and (10)(a)(II)(D) amended, p. 1264, § 51, effective July 1. L. 2004: (5), (10)(a)(II)(A), (13.5)(h)(II), and (19) amended, p. 385, § 1, effective July 1. L. 2005: (1.6) amended, p. 80, § 1, effective August 8. L. 2006: IP(1.6) amended, p. 516, § 1, effective August 7. L. 2007: Entire section amended with relocated provisions, p. 73, § 1, effective March 16; (16)(d.5) added, p. 178, § 7, effective March 22; (13)(a)(IV), (13)(a)(V), (15)(b)(IV), and (15)(b)(V)

added and IP(15)(b) amended, p. 1649, §§ 5, 3, effective May 31; (6)(b)(I) and (10)(a) amended, p. 1651, § 7, effective January 1, 2008. L. 2008: (4)(b) and (5)(b)(I) amended, p. 1347, § 1, effective July 1. L. 2009: (5)(a)(I)(H) amended, (SB09-282), ch. 288, p. 1397, §59, effective January 1, 2010.

#### **Editor's Note:**

(1) This section was amended in Senate Bill 07-015, resulting in the relocation of provisions.

(2) *Subsection (16.5)(d.5) was originally numbered as subsection (18)(a.5), and the amendments to it in Senate Bill 07-076 were harmonized with Senate Bill 07-015 and renumbered as subsection (16)(d.5).*

**Note:** 2013 Ch. 103, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

#### **Case Notes:**

#### **ANNOTATION**

#### **I. GENERAL CONSIDERATION.**

**Law reviews.** For article, "What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court", see 57 Den. L.J. 21 (1979). For article, "Automatic Escalation Clauses Relating to Maintenance and Child Support", see 12 Colo. Law. 1083 (1983). For article, "Support Calculation Revisited", see 12 Colo. Law. 1647 (1983). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Child Support Guidelines: Will They Cause More Problems Than They Cure?", see 15 Colo. Law. 408 (1986). For article, "Summary of the Report on the Colorado Commission Child Support and Proposed Child Support Guidelines", see 15 Colo. Law. 665 (1986). For article, "New Child Support Guideline Adopted", see 15 Colo. Law. 1662 (1986). For article, "Key Issues in the Colorado Child Support Guidelines", see 16 Colo. Law 51 (1987). For article, "Postsecondary Education Costs: Forging Through a Legislative Labyrinth", see 24 Colo. Law. 43 (1995). For article, "Calculating Income in Child Support Cases", see 25 Colo. Law. 53 (March 1996). For article, "Post-secondary Education Expenses: A Multi-tiered Approach", see 27 Colo. Law. 61 (January 1998). For article, "Determining Gross Income for Child Support Purposes", see 32 Colo. Law. 65 (May 2003). For article, "The State of Voluntary Unemployment and Underemployment in Colorado", see 34 Colo. Law. 49 (November 2005). For article, "Colorado Child Support Case Law Update", see 36 Colo. Law. 79 (October 2007). For article, "Postsecondary Education Expenses after Chalat: Paying College Expenses after Divorce", see 38 Colo. Law. 19 (January 2009). For article, "Child Support Continuation for Disabled Children", see 40 Colo. Law. 61 (December 2011). For article, "Retroactive Child Support: Conflicting Decisions and Practical Advice", see

41 Colo. Law. 91 (August 2012).

**Annotator's note.** Since § 14-10-115 is similar to § 14-10-115 as it existed prior to the 2007 amendment relocating provisions, § 46-1-5 (1)(c), C.R.S. 1963, § 46-1-5, CRS 53, and CSA, C. 56, § 8, relevant cases construing those provisions have been included in the annotations to this section.

**This section does not violate equal protection, due process, and privacy rights, and enforcement of the section is not an unconstitutional taking of property or an ongoing threat of imprisonment for debt.** A distinction between sets of parents based on marital status is rationally related to the legitimate state interest to insure that children of divorced or separated parents receive support despite the divorce or separation. *Stillman v. State*, 87 P.3d 200 (Colo. App. 2003).

**Because it approximates the amount of parental income that the child would have received in an intact family, application of the child support guidelines is not arbitrary, capricious, fundamentally unfair, or coercive.** *Stillman v. State*, 87 P.3d 200 (Colo. App. 2003).

**There may be a remedy for child support apart from a divorce action.** *Scheer v. District Court*, 147 Colo. 265, 363 P.2d 1059 (1961).

**Duty of child support is independent**, and is not limited to, entry of decree of dissolution. *In re Price*, 727 P.2d 1073 (Colo. 1986).

**Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order**, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations and may not commingle one element with another. *In re Huff*, 834 P.2d 244 (Colo. 1992).

**Child has standing to seek support for herself** under this section. *In re Conradson*, 43 Colo. App. 432, 604 P.2d 701 (1979).

**Reasonable and necessary business expenses may be satisfied before support payment.** Obligations relating to reasonable and necessary expenses associated with maintaining the structure and solvency of a business or the production of income can be satisfied before payment of child support. *In re Crowley*, 663 P.2d 267 (Colo. App. 1983).

**Interest accrues on arrearages from the date each installment becomes due.** *In re Pote*, 847 P.2d 246 (Colo. App. 1993).

**Award of past pregnancy expenses and support.** There is no jurisdiction under this section to award expenses

incurred prior to the date of the filing of a motion for child support. In re Garcia, 695 P.2d 774 (Colo. App. 1984).

**Reasonable to charge support against Colorado property of out-of-country father.** Where the trial court ordered the father, who resides in Norway, to pay child support in a lump sum amount, and the court further ordered that such sum should be a charge against certain Colorado property interests of the father, such order was reasonable and not confiscatory. Berge v. Berge, 189 Colo. 103, 536 P.2d 1135 (1975).

**Subsection (1.5)(a)(II) provides that emancipation occurs and an order for child support terminates when a child attains 19 years of age,** unless the child is then mentally or physically disabled and, if a child is physically or mentally incapable of self-support upon attaining majority at age 21, the duty of parental support continues for the duration of the disability. Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

**The plain language of subsection (1)(b)(I) creates no exemption for separation agreements entered into under and consistent with earlier legislation.** Although the parties' specific intention in 1991 separation agreement to share four years of college costs prevailed over general intention that child would be emancipated at 21 years of age, subsection (1)(b)(I) nevertheless controls and requires that father's college cost obligation terminates upon the earlier of the child's 21st birthday or completion of a four-year college program. In re Crowder, 77 P.3d 858 (Colo. App. 2003).

**Subsection (1.5)(c) was modified to distinguish between orders for postsecondary education costs entered prior to, and after, July 1, 1997, when in a distinct departure from prior law, the court could no longer enter orders for postsecondary education expenses absent written agreement of the parties.** In re Chalat, 94 P.3d 1191 (Colo. App. 2004), aff'd in part and rev'd in part on other grounds, 112 P.3d 47 (Colo. 2005).

**Subsection (1.5)(c.5) was added in 1997 to clarify that the convoluted legislation that had been passed since 1991 was applicable to all orders that concerned postsecondary education expenses and that were established or modified prior to July 1, 1997.** In re Chalat, 94 P.3d 1191 (Colo. App. 2004), aff'd in part and rev'd in part on other grounds, 112 P.3d 47 (Colo. 2005).

**Tax exemptions.** Court has authority to divide tax exemptions between the parents. In re Berjer, 789 P.2d 468 (Colo. App. 1989); In re Nielson, 794 P.2d 1097 (Colo. App. 1990); In re Larsen, 805 P.2d 1195 (Colo. App. 1991).

**Court must allocate dependency exemption between the parties** based on their respective gross incomes. Federal tax law contemplates such an allocation, and does

not preempt it. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

When allocating tax exemptions between the parents, the phrase "contributions to the costs of raising the children" refers to the percentage of child support attributed to each parent in the course of making the child support computation. In re Staggs, 940 P.2d 1109 (Colo. App. 1997).

The trial court may consider the allocation of tax exemptions in a motion for modification. In re Oberg, 900 P.2d 1267 (Colo. App. 1994).

A parent may not be ordered to pay an ex-spouse child support amounts for a period prior to entry of a child support order. In re Pote, 847 P.2d 246 (Colo. App. 1993).

**Husband's discovery request** that wife list all gifts, including without limitation, jewelry, clothes, entertainment, travel, and restaurant meals provided to her or the children by her current husband; list all amounts paid by wife's current husband directly to wife or to other parties from which she received a benefit, including attorney fees, maid service, cable television, mortgage payments, car and home repairs, insurance, and utilities; and list all assets purchased for which her current husband contributed, and husband's definition of "income" to include "all funds available for your use, including gifts" was significantly broader than the statutory definition of gross income, and therefore, denial of husband's motion to compel was proper. In re Seanor, 876 P.2d 44 (Colo. App. 1993).

**Applied** in Smith v. Casey, 198 Colo. 433, 601 P.2d 632 (1979); In re Hartford, 44 Colo. App. 303, 612 P.2d 1163 (1980); In re Dickey, 658 P.2d 276 (Colo. App. 1982); In re Steele, 714 P.2d 497 (Colo. App. 1985); In re Stone, 749 P.2d 467 (Colo. App. 1987).

## II. DUTY OF SUPPORT.

**This section includes adopted children** as well as natural children. In re Ashlock, 629 P.2d 1108 (Colo. App. 1981).

**Absent a legal parent-child relationship, there is no duty to support a child under this section.** In re Bonifas, 879 P.2d 478 (Colo. App. 1994).

**Husband and wife who sought and were granted custody of a non-biological child under a parental responsibility order** owed a duty of support to the child, and trial court had the authority in their dissolution of marriage proceeding to order husband to pay child support pursuant to subsections (1) and (17). In re Rodrick, 176 P.3d 806 (Colo. App. 2007).

**Only the parents' incomes and not the guardians' are to be included in the determination of child support,**

as supported by § 15-14-209 (2), which states, "A guardian need not use the guardian's personal funds for the ward's expenses". *Sidman v. Sidman*, 240 P.3d 360 (Colo. App. 2009).

**Section contemplates a parent being responsible for the support of his children, not his former spouse, however reprehensible his behavior.** Therefore it was error to award the reimbursement of mother's transportation costs as child care. In *re Kluver*, 771 P.2d 34 (Colo. App. 1989).

**Child must reside and be supported by spouse granted custody and support.** Wife who has been granted child custody is only entitled to support payments when the children were actually with her and supported by her. *Brown v. Brown*, 183 Colo. 356, 516 P.2d 1129 (1973).

**This section contemplates that, when in a divorce case, custody of a minor child is awarded to the wife, an order for its support may be made on the husband, and in proceeding to such order the court looks only to the future.** *Gourley v. Gourley*, 101 Colo. 430, 73 P.2d 1375 (1937).

**It was not an abuse of discretion for trial court to award child support during the pendency of the dissolution proceeding.** In *re Atencio*, 47 P.3d 718 (Colo. App. 2002).

**Where plaintiff alleged that defendant was the father of the minor children of the parties, but had failed and refused to support them,** and that they were in need of support which he has the means and ability to provide, if established by evidence, plaintiff would be entitled to appropriate relief. *Hutchinson v. Hutchinson*, 149 Colo. 38, 367 P.2d 594 (1961).

**Person without funds or profitable employment not relieved of support obligation.** Merely because a spouse desires to work on a long-range investment does not relieve him of his obligation to support his children, and the fact that a person is without funds and without profitable employment has been held not to preclude the allowance of reasonable alimony and support where nothing but a disinclination to work, regardless of the motive therefor, interferes with his ability to earn a reasonable living. *Berge v. Berge*, 33 Colo. App. 376, 522 P.2d 752 (1974), *aff'd*, 189 Colo. 103, 536 P.2d 1135 (1975).

**Where the oldest of three children of the parties was living with father, the trial court did not abuse its discretion** in declining to award plaintiff support money for all of the children, since such award would require defendant to pay twice for support of child in his custody. *Cohan v. Cohan*, 150 Colo. 249, 372 P.2d 149 (1962).

**Custodial parent can be ordered to pay support to noncustodial parent under Uniform Dissolution of Marriage Act.** In *re Fest*, 742 P.2d 962 (Colo. App.

1987).

**In order for child support to be calculated according to shared physical custody,** sufficient evidence must be submitted that each parent keeps the children overnight for more than 25% of the time and that both parents contribute to the expenses of the children in addition to the payment of child support. In *re Redford*, 776 P.2d 1149 (Colo. App. 1989).

**There is no statutory requirement that any particular amount of expense be proven by the parent seeking a support adjustment for shared physical custody.** In *re Redford*, 776 P.2d 1149 (Colo. App. 1989).

**Application of shared custody formula that results in a support payment by the custodial parent to the noncustodial parent** is not necessarily prohibited. In *re Antuna*, 8 P.3d 589 (Colo. App. 2000).

**Where there was an absence of evidence from husband establishing that he contributed to the child's financial needs,** there was no basis for application of the shared custody formula under worksheet B. In *re Antuna*, 8 P.3d 589 (Colo. App. 2000).

**Where a mother removed her child from the state and deliberately concealed her whereabouts from the father,** and by her affirmative acts voluntarily assumed responsibility for the child's support for a period of several years, during which time it appears that the child wanted for nothing necessary to health, comfort, and welfare, the mother was not in a position to claim reimbursement for such support. *Griffith v. Griffith*, 152 Colo. 292, 381 P.2d 455 (1963).

**Where a father asserted that his right to direct and select the nature of the education of his son coexisted with the obligation to contribute** to the costs of the education, it was held that it was for the divorced wife as custodian to make the decisions concerning the place and nature of the son's college education, subject only to the approval of the divorce court acting with due regard for the financial capabilities of the father. *Van Orman v. Van Orman*, 30 Colo. App. 177, 492 P.2d 81 (1971).

**A divorced father did not have an absolute duty to pay for the college expenses** of his minor child. *Van Orman v. Van Orman*, 30 Colo. App. 177, 492 P.2d 81 (1971).

**When it had been properly demonstrated at trial that the welfare of the child would be served by further education at the college level,** the father could properly be compelled to contribute to the costs of such education on a basis commensurate with the father's ability to pay until such time as the child attained majority or was otherwise emancipated. *Van Orman v. Van Orman*, 30 Colo. App. 177, 492 P.2d 81 (1971).

**Travel expenses for a child, including the travel**

**expenses of the guardians accompanying the child, shall be divided between the parents.** Court did not apply the correct legal standard when it ordered the guardians to travel with juvenile at their own expense. *Sidman v. Sidman*, 240 P.3d 360 (Colo. App. 2009).

**Award of retroactive child support is error.** Since the court lacked proper jurisdiction to enter support orders until husband was personally served, its attempt to order retroactive child support was void. In re *McKendry*, 735 P.2d 908 (Colo. App. 1986).

**Termination of support pursuant to decree.** Absent a provision in the decree or a court order to the contrary, a father's duty to support pursuant to a decree which was paid to his ex-wife terminated with her death, although his common law and statutory duty of support continued. *Application of Connolly*, 761 P.2d 224 (Colo. App. 1988).

**Phrase "each will contribute whatever may be necessary for the support of their children" creates a binding promise** on part of father to contribute to children's financial support. In re *Meisner*, 807 P.2d 1205 (Colo. App. 1990).

**"Absolute requirement" or "necessary requirement" is not the appropriate standard to apply in determining whether private school was an appropriate placement for a child.** The court should consider whether private schooling meets the child's particular educational needs. In re *Eaton*, 894 P.2d 56 (Colo. App. 1995).

**A motion to quash subpoenas issued to third persons allegedly contributing to support of children was properly granted** where the voluntary donations of such parties had nothing to do with a defendant's duty to support children. *Garrow v. Garrow*, 152 Colo. 480, 382 P.2d 809 (1963).

**Support for adult child.** A dissolution action is a proper proceeding to enforce continued support of an adult child. *Koltay v. Koltay*, 667 P.2d 1374 (Colo. 1983).

### III. AWARD OF SUPPORT.

#### A. Amount.

**Law reviews.** For article, "Calculation of Potential Income in Child Support Matters", see 20 *Colo. Law*. 233 (1991). For article, "Postsecondary Education Costs: Forging Through a Legislative Labyrinth", see 24 *Colo. Law*. 43 (1995).

**Needs of the children are of paramount importance in determining child support obligations.** *Wright v. Wright*, 182 Colo. 425, 514 P.2d 73 (1973); In re *Van Inwegen*, 757 P.2d 1118 (Colo. App. 1988).

**There is no mathematical formula for establishing a**

**just and equitable property settlement or alimony or support.** *Carlson v. Carlson*, 178 Colo. 283, 497 P.2d 1006 (1972).

**The guidelines for calculating child support require a court to** calculate a monthly amount of child support based on the parties' combined adjusted gross income, adjust the child support based upon the needs of the children for extraordinary medical expenses and work-related child care costs, and allocate each parent's share based on the physical custody arrangements. In re *Aldrich*, 945 P.2d 1370 (Colo. 1997).

**Adoption subsidy.** An adoption subsidy should not be considered a credit against the noncustodial parent's child support obligation. The underlying intent of the child support statute is best served by declining to offset a noncustodial parent's support obligation by the amount of an adoption subsidy or to consider the subsidy as a factor that may diminish the child's basic needs within the meaning of subsection (13)(b). In re *Bolding-Roberts*, 113 P.3d 1265 (Colo. App. 2005).

**An award of alimony and child support should bear a reasonable relationship to the needs of a wife and children.** *Vines v. Vines*, 137 Colo. 449, 326 P.2d 662 (1958).

**Subsection (1)(a) authorizes the court to consider social security disability payments received on behalf of the children in calculating child support.** In re *Quintana*, 30 P.3d 870 (Colo. App. 2001).

**Social security disability benefits received by custodial parent for benefit of child on account of custodial parent's disability are not included in the custodial parent's gross income** but are instead considered a financial resource of the child pursuant to subsections (2)(b)(I) and (11)(b). In re *Anthony-Guillar*, 207 P.3d 934 (Colo. App. 2009).

**The extent to which the child's social security disability payment represents a "reduction in need" of the child** is a question to be determined by the trial court based upon the totality of the circumstances. The court is not bound to deduct the entire amount of the child's social security disability payment from the basic support obligation. In re *Anthony-Guillar*, 207 P.3d 934 (Colo. App. 2009).

**Social security survivor benefits should not be treated any differently than disability benefits.** Thus, survivor benefits received by the wife in a representative capacity for son from previous marriage should not be included in wife's gross income for purposes of calculating husband's support obligation for daughter. In re *Ross-Ooley*, 251 P.3d 1221 (Colo. App. 2010).

**Trial court did not err in excluding adoption subsidies and foster care payments from mother's gross income in child support considerations.** These payments are



income of the children on whose behalf the mother receives them and are not part of mother's income. In re Dunkle, 194 P.3d 462 (Colo. App. 2007).

**Father is not entitled to an offset of his support obligation against the benefit amount he receives through his railroad retirement on behalf of his child** since he retains the payments and he is the noncustodial parent. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

**Subsection (1.5)(b)(I) does not require that expenses be absolutely necessary but only that they be reasonable.** In re Eaton, 894 P.2d 56 (Colo. App. 1995); In re Elmer, 936 P.2d 617 (Colo. App. 1997).

**Determination of conscionability of support provisions.** To determine whether the child support provisions of a separation agreement which has been incorporated into a prior dissolution decree are fair, reasonable, and just, a trial court should consider and apply all the criteria provided by the general assembly for judicial evaluation of the provisions of property settlement agreements: the economic circumstances of the parties, § 14-10-112 ; the division of property, § 14-10-113(1); and the provisions for maintenance, § 14-10-114(1). In re Carney, 631 P.2d 1173 (Colo. 1981).

In determining whether the terms of the original child support decree have become unconscionable, the trial court should apply the criteria set forth in subsection (1). In re Hughes, 635 P.2d 933 (Colo. App. 1981); In re Gomez, 728 P.2d 747 (Colo. App. 1986).

**In a divorce action, particularly with respect to the care, custody, and maintenance of minor children, the court,** at the time of making an award for the minor children, was obligated to appraise conditions as they exist at the time of the presentation. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955); Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957); Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963); In re Serfoss, 642 P.2d 44 (Colo. App. 1981); In re McKendry, 735 P.2d 908 (Colo. App. 1986).

**Parent's net income is primary consideration in determining support.** With regard to a parent's ability to pay support for his child, net income after reasonable and justifiable business expenses should be the primary consideration. In re Crowley, 663 P.2d 267 (Colo. App. 1983).

**The applicable rule of support ability is the father's ability to pay weighed against the reasonable needs of his children,** because society does not require a father in poor or moderate circumstances to support children on a higher scale just because the family once so lived or because the mother may desire to so live after the divorce. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

In making its award of child support, a trial court must

weigh the father's ability to pay against the reasonable needs of the children. Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, 189 Colo. 103, 536 P.2d 1135 (1975).

**Where the father's income, while substantial, is limited and subject to numerous demands,** an order contemplating only the needs of the child and not bearing any relationship to the ability of the father to pay, and that could possibly become confiscatory of all of the father's available resources, is not valid. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

**Finding as to earning capacity not confiscatory.** Where the evidence supports the court's finding that the husband is capable of earning sums greatly in excess of his present net salary, although it appears that the court based its order on the present net income of the husband, the orders are not confiscatory. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

**Order that husband pay one-half of extraordinary medical and dental bills of the children,** while unlimited as to amount or duration, was not confiscatory considering that the expenses were to be borne equally by each parent. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

**Factors considered in assessing propriety of child support provisions in separation agreement.** In assessing the propriety of child support provisions in a separation agreement, the court must consider, in addition to unconscionability, other factors, such as the living standards the child would have enjoyed had the parties not dissolved the marriage and the physical and emotional well-being of the child. In re Brown, 626 P.2d 755 (Colo. App. 1981).

**Child support obligations cannot be altered by agreement of the parents.** Wright v. Wright, 182 Colo. 425, 514 P.2d 73 (1973).

**Child support cannot be based on financial resources of nonparent with whom child living.** The factors to be considered in making a support award do not include the financial resources of a nonparent with whom the child is living. In re Conradson, 43 Colo. App. 432, 604 P.2d 701 (1979).

**Estimates of children's expenses to be considered.** A trial court should not determine the amount of child support to be paid by a husband based solely on some amount that it feels is commensurate with his income but should make the determination on evidence that includes estimates of the actual needs and expenses of the children involved. In re Berry, 660 P.2d 512 (Colo. App. 1983).

A court must consider and make findings concerning a reasonable pro rata portion of necessary general family expenses as "necessary for support of the child." In re

Klein, 671 P.2d 1345 (Colo. App. 1983).

**Standard of living employed in determination of child support.** Where the evidence shows that the standard of living at the time of separation in all probability would have continued but for the dissolution, that is the standard of living the court must employ in its determination of child support. In re Klien, 671 P.2d 1345 (Colo. App. 1983).

**This section does not require specific findings of fact concerning children's assets,** but only that, before determining the amount of support to be paid by a parent, the court consider, among other things the financial resources of the child. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

**Obligation of support not affected by gifts or transfers.** The intent of the uniform act, § 11-50-101 et seq., is to allow custodians to disburse funds whether or not the children are adequately supported. Gifts under that act do nothing to relieve a parent of the separate duty to support the children, nor does that act authorize the custodian to disburse the funds as a means of fulfilling the parent's obligation of support. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

Where a parent or parents voluntarily make gifts to children during the parents' marriage and the gifts are not in fulfillment of a court order to pay support, and where the parents are, at the time of dissolution of the marriage, able to meet their support obligations, the court may order that such gifts not be used to reduce the legal obligation of support. This rule assumes that the court has properly considered the financial resources of the children as required by subsection (1), before ordering the amount of support to be paid by the parents. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

**Court may order life insurance naming children as beneficiaries be maintained** by parent obligated to pay child support, just as its provisions for child support now extend beyond the death of the parent, unless otherwise provided. In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975).

**Award of additional \$6,000 for "recreational opportunities" for children was fairly embraced within the factors to be considered by court in dividing marital property** and did not create a separate "recreational fund" for the needs of the children in the nature of child support. In re Jackson, 698 P.2d 1347 (Colo. 1985).

**The judgment in the divorce action did not determine the limits of the husband's obligation to support the children,** and the children were not parties to that action, and their rights were not concluded thereby. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

**Where there was no verification of the father's income**

**as required by this section,** the trial court was directed to take additional evidence to determine the income and to modify the support order. In re Velasquez, 773 P.2d 635 (Colo. App. 1989).

**Trial court may draw inference that parent was concealing income,** where parent refused to make a willing disclosure of financial status. In re Sgarlatti, 801 P.2d 18 (Colo. App. 1990).

**Although the general assembly specifically provided for the use of extrapolation** for combined gross income amounts falling between amounts shown in the guideline schedule, it did not provide for the use of extrapolation when combined gross incomes fall above or below the guideline schedule. In re Van Inwegen, 757 P.2d 1118 (Colo. App. 1988).

**Section guidelines applicable in determination of amount of modified award** despite fact that guidelines were enacted after the original support order. In re Anderson, 761 P.2d 293 (Colo. App. 1988).

**Application of new child support guidelines** resulting in more than a ten percent change in support due creates a rebuttable presumption that existing support award must be modified. In re Pugliese, 761 P.2d 277 (Colo. App. 1988).

**The general assembly intended income imputation to be an important exception to the normal rule of computation based on actual gross income of the parent.** This exception applies when the parent shirks his or her child support obligation by unreasonably foregoing higher paying employment that he or she could obtain. The legislature meant this exception to prevent detriment to children by deterring parents from making employment choices that do not account for their children's welfare. Nevertheless, the general assembly intended courts to approach income imputation with caution. People v. Martinez, 70 P.3d 474 (Colo. 2003).

**Imputing to voluntarily unemployed wife an income equal to income that of a person employed at the minimum wage even though evidence indicated that wife had been offered a higher paying job** was not abuse of court's discretion given evidence of wife's ill health and problems in obtaining day care. In re Beyer, 789 P.2d 468 (Colo. App. 1989).

**Imputing of full-time income to mother working part-time was error** where mother did not voluntarily choose part-time employment but was required to stay home during the day to care for one of her children who had Downs syndrome. In re Pote, 847 P.2d 246 (Colo. App. 1993).

**Court abused its discretion in finding that mother's underemployment was voluntary** where mother worked only 32 hours per week so that she would have time to take the parties' child, who had cerebral palsy, to physical

therapy. In re Foss, 30 P.3d 850 (Colo. App. 2000).

**Interest was properly included in calculation of imputed income.** In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

**"Overtime", in determination of parent's gross income** (prior to 1996 amendment), does not include income from "extra" jobs. In re Marson, 929 P.2d 51 (Colo. App. 1996).

**It was proper for the trial court to find that the overtime worked by father was required and to include such income within the father's gross income** for the following reasons: (1) In his position as equity owner, director, and officer of the family-owned corporation, he was his own supervisor; (2) the evidence established, and the court found, that his position as vice-president and job-site foreman required that he work more than other employees as evidenced by his own testimony that his job as foreman could not always be done in a 40-hour week; and (3) the evidence established that the reason the father was required to work twenty to 25 hours of overtime per week was to assure that the jobs for which he was responsible would be completed in a timely fashion in order to avoid penalties that would work a direct financial disadvantage to the father. In re Rice & Foutch, 987 P.2d 947 (Colo. App. 1999).

**Trial court did not abuse its discretion** in excluding mother's overtime pay from the determination of her gross income. Mother chose to work extra hours voluntarily, and the overtime was not required as a condition of her employment. In re Dunkle, 194 P.3d 462 (Colo. App. 2007).

**Section imposes no burden on one parent to prove that an available job exists for the other parent.** Rather, the determination of income hinges on the ability of the parent to perform work. In re Mackey, 940 P.2d 1112 (Colo. App. 1997).

**Court is merely required by subsection (7)(b)(I) to determine potential income** and statute imposes no burden on one parent to prove that an available job exists for the other parent or that a particular job is available. In re Bregar, 952 P.2d 783 (Colo. App. 1997).

**In order to impute income based upon a parent's voluntary underemployment,** the trial court must examine all relevant factors bearing on whether the parent is shirking his or her child support obligation by unreasonably foregoing higher paying employment that he or she could obtain, and, if the parent is, the trial court must determine what he or she can reasonably earn and contribute to the child's support. If the trial court does not find that the parent is shirking his or her child support obligation by unreasonably foregoing higher paying employment, the court should calculate the amount of child support from actual gross income only. People v.

Martinez, 70 P.3d 474 (Colo. 2003).

In determining if a parent is voluntarily underemployed, the factors the court may consider may include: The firing and post-firing conduct of the parent; the amount of time the parent spent looking for a job of equal caliber before accepting a lower paying job; whether the parent refused an offer of employment at a higher salary; whether the parent sought a job in the field in which he or she has experience and training; the availability of jobs for a person with the parent's level of education, training, and skills; the prevailing wage rates in the region; the parent's prior employment experience and history; and the parent's history of child support payment. People v. Martinez, 70 P.3d 474 (Colo. 2003).

**The court must make findings sufficient to support a determination of underemployment.** Imputing support without factual findings supporting a determination of underemployment is in error. In re Martin, 42 P.3d 75 (Colo. App. 2002).

**Father not underemployed** where mother presented no evidence that employment at income previously earned by father was available to him, no evidence of alternative employment at a higher level of remuneration than he presently earned, and no evidence that support to the children had been unreasonably reduced. In re Campbell, 905 P.2d 19 (Colo. App. 1995).

**Trial court properly found father was voluntarily underemployed** where father, a licensed attorney, had opted for inactive status and worked seasonally for an apple orchard at \$10 per hour. In re Elmer, 936 P.2d 617 (Colo. App. 1997).

**Trial court properly declined to find that father was voluntarily unemployed or underemployed** where he voluntarily refused to file a claim for damages resulting from a work-related accident. In re England, 997 P.2d 1288 (Colo. App. 1999).

**Loss of employment due to addiction and re-employment at a lower wage does not constitute voluntary underemployment; however,** a person who has been involuntarily terminated from a position for drug use may subsequently become voluntarily unemployed or underemployed based on actions taken after the termination. In re Atencio, 47 P.3d 718 (Colo. App. 2002).

**The trial court erroneously computed child support by relying solely upon the husband's income** and disregarding the wife's statutory obligation to contribute to the child's support. If both parents have actual income, or a reasonable ability to earn income, it is erroneous as a matter of law to allocate the support obligation to one parent. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

In computing child support, the trial court erred in failing to consider either the wife's income as represented by the

monthly maintenance award or her ability to earn income from the marital property distributed to her under the court's decree. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

**For purposes of child support, father's income, as derived from the exercise of stock options, is limited to the difference between his purchase price of the optioned stock and the price at which he then sold it.** In re Campbell, 905 P.2d 19 (Colo. App. 1995).

**Court should initially include the amount of a capital gain** as a component of gross income for the year in which the gain was received. Thereafter, the court has authority to deviate from the child support guidelines if their application would be inequitable, unjust, or inappropriate. In re Zisch, 967 P.2d 199 (Colo. App. 1998).

**When considering capital gains from the sale of property awarded in a property division,** the court shall include in gross income only those capital gains realized from post-property division appreciation in the property. In re Upson, 991 P.2d 341 (Colo. App. 1999).

**Court erred in not deducting ordinary and necessary expenses from capital gains when self-employed.** For purposes of determining a person's gross income, when the person was self-employed as a builder of custom homes, ordinary and necessary expenses incurred to sell property should have been deducted from the person's gross income. In re Glenn, 60 P.3d 775 (Colo. App. 2002).

**Husband's taxable distributions from a subchapter S corporation** owned wholly by him and two partners, one of whom had left, while not properly considered as extra income, should have been included as gross income, less ordinary and necessary business expenses. In re Upson, 991 P.2d 341 (Colo. App. 1999).

**In determining monthly child support obligation for the period following the year in which a capital gain is received,** the court should impute as income to the party a rate of return that the net capital gain, after taxes, can reasonably be expected to generate. In re Zisch, 967 P.2d 199 (Colo. App. 1998).

**Subsection (7)(a) does not provide for deduction of federal and state income taxes in computing gross income, including from lottery winnings,** for purposes of calculating child support. In re Bohn, 8 P.3d 539 (Colo. App. 2000).

**The amount received as gross income from lottery winnings is used to calculate child support for the year in which the income is received.** Thereafter, if a parent invests a portion of the funds which were received as income in one year, any interest earned in the subsequent years is properly included as gross income for purposes of calculating child support in those years. In re

Bohn, 8 P.3d 539 (Colo. App. 2000).

**Income from an irrevocable trust of which wife was beneficiary should not be omitted from wife's gross income** for purposes of calculating child support, even though the trial court correctly declined to treat the income as property subject to division. In re Pooley, 996 P.2d 230 (Colo. App. 1998).

**If a parent is voluntarily unemployed or underemployed, child support must be based on the parent's potential income.** While a parent is entitled to remain underemployed, the other parent's child support obligation may not be increased as a result. In re Mackey, 940 P.2d 1112 (Colo. App. 1997).

**The magistrate did not err in imputing to the father the annual income he had earned prior to his resignation.** The evidence amply supports the magistrate's determination that the father quit his job because he won the lottery, that he was physically capable of working but was voluntarily unemployed, and that his decision to resign from his job was not a good faith career choice. In re McCord, 910 P.2d 85 (Colo. App. 1995).

**Trial court did not err in imputing income to husband absent findings regarding involuntary job loss, ability to pay, and needs of the child.** Although the child's needs may be considered in determining the amount of child support that must be paid at a given level of income, nothing in subsection (7) suggests that the child's needs are relevant to the determination of a parent's income. In re Yates, 148 P.3d 304 (Colo. App. 2006).

**Mother's decision to accept travel agency job, rather than to collect unemployment benefits until she found a higher paying job,** was a good faith career choice and she therefore was not voluntarily underemployed. In re McCord, 910 P.2d 85 (Colo. App. 1995).

**Trial court has the prerogative to determine that husband's decision to leave the practice of law and pursue cattle ranching does not fit the exceptions set forth in subsection (7)(b)(III)(B),** where husband argued the change was a good faith career choice, was not intended to reduce the support available to his children, and did not unreasonably reduce support. In re Bregar, 952 P.2d 783 (Colo. App. 1997).

**Person who is involuntarily terminated from his position due to his own misconduct is not voluntarily unemployed or underemployed.** Whether a person lost a job because of willful or knowing misconduct is not determinative of whether the person is voluntarily unemployed or underemployed. What is determinative is the person's subsequent course of action and decision making. A person who has been involuntarily terminated from a position may thereafter become voluntarily unemployed or underemployed by not attempting in good faith to obtain new employment at a comparable salary or

by refusing to accept suitable employment offers. People ex rel. J.R.T., 55 P.3d 217 (Colo. App. 2002), aff'd sub nom. People v. Martinez, 70 P.3d 474 (Colo. 2003).

**"Support available to a child" in subsection (7)(b)(III)(B) is not synonymous with "basic child support obligation" elsewhere in this section.** "Basic child support obligation", as defined in subsection (10), typically involves consideration of both parties' respective incomes. "Support available to a child" in subsection (7)(b)(III)(B), however, focuses on the career decision and any associated income change of the putatively underemployed parent that affects his or her ability to provide child support. People ex rel. Cerda v. Walker, 32 P.3d 628 (Colo. App. 2001).

**Thus, if the mother has improved her ability to provide child support, it does not necessarily mean that the father's voluntary underemployment did not unreasonably reduce his ability to provide child support.** Because both parents have a duty to support a child to the best of their abilities, an increase in one parent's ability to provide child support cannot serve as justification for the other parent's unreasonable reduction in his or her ability to provide child support. People ex rel. Cerda v. Walker, 32 P.3d 628 (Colo. App. 2001).

**In computing parental income for purposes of establishing child support payments, child support for other dependents which a parent is legally obligated to pay, shall be deducted,** and such deduction is not limited to amounts actually paid pursuant to such obligation. In re Eze, 856 P.2d 75 (Colo. App. 1993).

**The intent of this section is that a parent who is legally responsible for the support of other children be given a deduction, within statutory guidelines, for child support actually paid, regardless whether an order for that support had been entered.** Thus, when a prior support order does not reflect the parent's full legal responsibility for support, the parent is entitled to a deduction under paragraph (d.5) of subsection (7), instead of under paragraph (d), in determining the parent's gross income. In re K.M.T., 33 P.3d 1276 (Colo. App. 2001).

**Adequate proof of child support obligations actually paid for other dependents** is required when computing parental income for the purpose of establishing child support for present dependents. In re Dickson, 983 P.2d 44 (Colo. App. 1998).

**"Maintenance actually paid by a parent", as used in subsection (10)(a)(II), includes payments made by a parent to a former spouse.** It is not limited to payments made to the mother of the child in the paternity proceedings before the court; it includes all maintenance payments made by a parent. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

**The court must consider the father's and the child's financial resources in addition to considering the**

**mother's resources in deciding the appropriate amount of the parents' contributions to the child's college expenses.** In re Eaton, 894 P.2d 56 (Colo. App. 1995) (decided under law in effect prior to 1993 amendment).

**Court did not err in including \$350 rent in father's gross income without excluding allowable business deductions** since record revealed nothing to warrant reversal of the trial court's implicit determination that any claimed expenses were not necessary or required to produce the rental income in question. In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

**Trial court should have considered mother's detailed evidence of the children's living expenses** and the fact that father provided and fully paid for a residence for the children in determining the child support obligation, given the difficulty in applying Colorado child support guidelines to the needs of children in Russia. People ex rel. A.K., 72 P.3d 402 (Colo. App. 2003).

**Once the requisites for shared physical custody have been established,** subsection (10)(c) requires that the child support obligation be adjusted by the mathematical formula contained in subsection (14)(b). In re Redford, 776 P.2d 1149 (Colo. App. 1989).

**If trial court deviates from the guidelines,** it is required to make findings that application of the guidelines would be inequitable and specifying the reasons for the deviation. Thus, when court deviated from guidelines, it was required to find either that one of the relevant factors in subsection (1) applied or that the husband did not make contributions to the child's expenses beyond what he was obligated to pay in child support. In re Marshall, 781 P.2d 177 (Colo. App. 1989), cert. denied, 794 P.2d 1011 (Colo. 1990).

Modification of award required where trial court deviates from guidelines but fails to make findings required by subsection (3)(a). In re Sgarlatti, 801 P.2d 18 (Colo. App. 1990).

**Trial court must make provision for expense of transportation of child between homes of parents,** which expense is to be divided between parents in proportion to their adjusted gross income. In re Marshall, 781 P.2d 177 (Colo. App. 1989), cert. denied, 794 P.2d 1011 (Colo. 1990); In re Sgarlatti, 801 P.2d 18 (Colo. App. 1990).

**Trial court did not err in including transportation expenses in the child support calculation** before those expenses were actually known since there was no dispute as to the parents' income and the magistrate was free to adopt the percentage share of the father's income as shown in the father's computation. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

**Husband's personal injury settlement payments** are a

financial resource that constitutes "gross income" under the child support guidelines. In re Fain, 794 P.2d 1086 (Colo. App. 1990).

**Proper for court to base child support calculation on father's monthly income from his railroad annuity despite that income deriving from a previously divided asset** since the property division does not change the status of those monthly payments as an income source to be considered in determining the husband's child support obligation. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

**For investments, income is limited to the gain on the original investment.** However, a party's characterization of payments as a return on investment is not binding on the court. In re Laughlin, 932 P.2d 858 (Colo. App. 1997).

**Trial court did not err in using a two-year average of father's investment income** when calculating father's overall income for the purposes of calculating child support. In re Rice and Foutch, 987 P.2d 947 (Colo. App. 1999).

**No error in the trial court's conclusion that father's "actual gross income" included interest or dividends which had accrued to his IRA but which he had not withdrawn.** The use of the word "actual" in subsection (7)(a) does not limit gross income to that "actually received". In re Tessmer, 903 P.2d 1194 (Colo. App. 1995).

**Trial court correctly excluded father's voluntary enhanced retirement program (VERP) benefit from calculation of his gross income.** In determining whether the VERP benefit constitutes income for child support purposes, the court must answer the following questions: (1) Is the VERP benefit severance pay? (2) Is the VERP benefit an employer contribution to pension and retirement benefits? (3) Should an undistributed employer contribution be treated as income? (4) Does father's option to elect a lump sum distribution or monthly annuity payments of his retirement account, including the VERP benefit, mean that the VERP benefit should be credited as income? In re Mugge, 66 P.3d 207 (Colo. App. 2003).

The requirements that father voluntarily retire rather than be terminated and that he provide a general release of the employer distinguish the VERP benefit from a typical severance pay program, and thus the VERP benefit was not severance pay includable within the statutory definition of gross income. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

The employer denominated the VERP benefit as a retirement benefit, credited the benefit to the father's retirement account in its pension plan, and calculated the amount using age and years of service, therefore the VERP benefit was an employer-contributed pension or

retirement benefit. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

Because the employer determined the amounts of pension plan contributions and the employees did not have the option of directly receiving the amounts as wages, prior to any distribution, the employer's VERP contribution to father's account in its pension plan did not constitute gross income for consideration under the child support guidelines. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

VERP benefit should not be treated as gross income for child support purposes merely because father could have elected a lump sum distribution or monthly annuity payments instead of rolling the benefit over into another qualified pension plan. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

**Employer contributions to father's insurance plans not income for child support purposes.** Similar to employer retirement plan contributions, father did not have the option to take the contributions as wages and use them for general living expenses, so such contributions are not properly considered income for purposes of the child support calculation. In re Davis, 252 P.3d 530 (Colo. App. 2011).

**Extraordinary medical expenses** were required to be divided between the parties in direct proportion to their adjusted gross income and added to the basic child support, even where the child's condition existed and was known at the time of the original agreement where the parties agreed to each pay one-half of these expenses. In re Nielsen, 794 P.2d 1097 (Colo. App. 1990).

**Meaning of "adjusted gross income".** Definition of "adjusted gross income" in subsection (10)(a) does not provide for the deduction of federal and state income taxes or FICA taxes in computation for child support purposes. In re Baroni, 781 P.2d 191 (Colo. App. 1989).

**The fact that certain items may be deductible on a party's federal income tax return does not require exclusion from gross income under the child support guideline.** In re Eaton, 894 P.2d 56 (Colo. App. 1995).

**Trial court did not err in determining that "gross income" included the foreign service premium, the commodities and services allowance, and the expatriate tax equalization payment made to compensate person for the cost of living in a foreign locale.** In re Stress, 939 P.2d 500 (Colo. App. 1997).

**Meaning of "extraordinary medical expenses".** Extraordinary medical expenses, as defined in subsection (12)(b), must be "uninsured". Where psychological counseling services were insured expenses under the father's medical insurance plan, trial court erred in requiring him to pay for child's counseling by a psychologist not participating in the plan absent a finding that such counseling was not adequately or reasonably

covered by the plan. In re Ahrens, 847 P.2d 257 (Colo. App. 1993).

**A parent's obligation for extraordinary medical expenses is an integral part of the child support obligation and, as such, is nondischargeable in bankruptcy.** Parent who provided letter to court asserting the obligation had been discharged was ordered to pay for his share of the extraordinary medical expenses on behalf of the children. In re Campbell, 140 P.3d 320 (Colo. App. 2006).

**Basic allowance for quarters (BAQ) constitutes an in-kind payment that is income for child support purposes.** In re Long, 921 P.2d 67 (Colo. App. 1996).

**Increased cost for the addition of teenage son to automobile insurance is not an extraordinary expense under subsection (13).** In re Long, 921 P.2d 67 (Colo. App. 1996).

**Court does not have authority to impute a gross income** where actual income is tax exempt. Rather the amount received each month shall be deemed to be a gross income. In re Fain, 794 P.2d 1986 (Colo. App. 1990).

**"Gross" income for purposes of calculating child support can include the amount of income an asset could reasonably be expected to generate** even if that asset has been consumed prior to the support determination. In re Laughlin, 932 P.2d 858 (Colo. App. 1997).

**The burden is upon the parent contesting the support order to prove that a deviation from the presumptive award is both reasonable and necessary.** In re Baroni, 781 P.2d 191 (Colo. App. 1989).

**No automatic adjustment of gross income for non-ordered support.** Non-ordered child support payments to others are not to be determined by a mechanical application of the child support schedule. Rather the impact of payment of non-ordered obligations must be evaluated as provided in subsection (3)(a). People in Interest of C.D., 767 P.2d 809 (Colo. App. 1989).

Party alleging that payment of non-ordered support obligation requires deviation from presumptive award determined under statutory guidelines has burden to prove the claim. Deviation from guidelines must be shown reasonable and necessary considering certain enumerated factors. People in Interest of C.D., 767 P.2d 809 (Colo. App. 1989).

**An agreement of the parties regarding child support, custody, and visitation does not bind the court,** and the court must review child support guidelines to determine the adequacy of the child support agreement of the

parties. In re Micaletti, 796 P.2d 54 (Colo. App. 1990).

**Trial court's apportionment of costs for child's guardian ad litem upheld** where court apportioned costs between mother and father on the basis of the underemployed mother's potential income. Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

**Specific written or oral findings** must be made by the court to support deviation from the child support amounts specified by the statutory schedule, and this applies to approving a stipulation of the parties. In re Miller, 790 P.2d 890 (Colo. App. 1990); In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

**Where the parties' gross income exceeded the uppermost level of income scheduled in the guidelines and the minimum child support amount is presumed to be set forth in the highest level in the guidelines,** this presumption may be rebutted, and the court must exercise discretion considering the financial resources of both parents and the children, the physical and emotional condition of the children and their educational needs, the needs of the noncustodial parent, and the standard of living that the children would have enjoyed had the parents' marriage not been dissolved. In re Schwaab and Rollins, 794 P.2d 1112 (Colo. App. 1990); In re Balanson, 996 P.2d 213 (Colo. App. 1999), *aff'd* in part and *rev'd* in part on other grounds, 25 P.3d 28 (Colo. 2001).

**Where parties' gross income exceeded the uppermost level of income in the guidelines,** trial court was required to calculate the minimum presumptive amount of support and, in addition, translate the children's higher standard of living into specific monetary requirements. In re Bookout, 833 P.2d 800 (Colo. App. 1990), *cert. denied*, 846 P.2d 189 (Colo. 1993).

**There is a rebuttable presumption that the basic child support obligation at the upper level of the guidelines is the minimum presumptive amount of support.** Where father won five million dollars in the Colorado state lottery and the parties' adjusted gross incomes thereafter exceeded the uppermost levels of the guidelines, the court remanded the case for a redetermination of child support. In re Foss, 30 P.3d 850 (Colo. App. 2000).

**Where parties' income exceeded the highest combined gross income level set out in the guidelines,** the gross disparity in their incomes may explain the initial basis for deviation by the court, but additional findings concerning the needs of the children must be entered to establish the amount of deviation ordered. In re Upton, 991 P.2d 341 (Colo. App. 1999).

**Because the children's needs are of paramount importance in determining the child support obligation,** in calculating the appropriate amount of child support, the court should look at, among other things, the

costs of food, shelter, clothing, medical care, education, and recreational costs at the level enjoyed before the dissolution. In re Schwaab and Rollins, 794 P.2d 1112 (Colo. App. 1990).

**Viewing the statute as a whole, the means of meeting the "particular educational needs of a child" are not limited to providing private school only when a child has a learning disability** or otherwise qualifies for a program of special education. In re Payan, 890 P.2d 264 (Colo. App. 1995).

**Where the mother has sole custody of the three children, and there is a different visitation schedule for each child, in deciding whether the shared custody calculation for child support is applicable,** the court must calculate the number of overnight stays for each child, divide each by three and total the results to determine the total amount of time the father spends with the children. If the cumulative number of overnights is less than 25% of the year, the shared custody calculation is inapplicable. In re Quam, 813 P.2d 833 (Colo. App. 1991).

**Court erred in beginning the child support calculation for children with different parenting time schedules who are in the mother's primary care by using a separate worksheet for each child.** This error effectively treated each child as an only child under the guidelines and resulted in an inflated child support amount. The court did not enter sufficient findings to support a deviation from the presumed amount under the guidelines. In re Wells, 252 P.3d 1212 (Colo. App. 2011).

**Each parent in a dissolution proceeding has the obligation to support their children to the best of their abilities,** and the court may determine that one parent's failure to find or keep a job is a voluntary refusal to carry out a support obligation. In re Nordahl, 834 P.2d 838 (Colo. App. 1992).

**Costs of high school extracurricular activities** such as cheerleading, driver's education, sports, and debate do not qualify as higher educational expenses under subsection (13). In re Ansay, 839 P.2d 527 (Colo. App. 1992).

**Inclusion of ice skating fees in the support calculation as a reasonable and necessary expense was warranted.** In re Laughlin, 932 P.2d 858 (Colo. App. 1997).

**Trial court erred in ordering parent to pay percentage of children's estimated educational expenses without specifying sum to be paid.** In re Pollock, 881 P.2d 470 (Colo. App. 1994).

Because of a lack of certainty of future bonuses, the court did not abuse its discretion in refusing to estimate the amount of any possible future bonuses for present support purposes. In re Finer, 920 P.2d 325 (Colo. App. 1996).

**The trial court did not err in not considering income**

**from the parties' mentally retarded adult son in calculating child support obligation.** The trial court is not bound to deduct automatically the amount of a child's income from the basic child support obligation when that income does not reduce the need for parental support. In re Folwell, 910 P.2d 91 (Colo. App. 1995).

**Trial court did not abuse its discretion setting appropriate amount of child support** when it included the child's pro rata share of the standard and ongoing living expenses in wife's monthly needs. In re Balanson, 996 P.2d 213 (Colo. App. 1999), *aff'd*, 25 P.3d 28 (Colo. 2001).

B. Discretion of Court.

**Determination of child support is in the sound discretion of the trial court,** and in the absence of an abuse of that discretion, not shown here, it will not be disturbed on review. *Brigham v. Brigham*, 141 Colo. 41, 346 P.2d 302 (1959); *Lanz v. Lanz*, 143 Colo. 73, 351 P.2d 845 (1960); *Huber v. Huber*, 143 Colo. 255, 353 P.2d 379 (1960); *Carlson v. Carlson*, 178 Colo. 283, 497 P.2d 1006 (1972); *Ferguson v. Ferguson*, Colo. App., 507 P.2d 1110 (1973); *Berge v. Berge*, 33 Colo. App. 376, 522 P.2d 752 (1974), *aff'd*, 189 Colo. 103, 536 P.2d 1135 (1975); In re *Krise*, 660 P.2d 920 (Colo. App. 1983); In re *Garcia*, 695 P.2d 774 (Colo. App. 1984); In re *Pierce*, 720 P.2d 591 (Colo. App. 1985).

**Alimony, support, and property settlement issues were formerly considered together to determine whether the court had abused its discretion,** and in making the determination, the court would consider a variety of factors, including whether the property was acquired before or after marriage, the efforts and attitudes of the parties towards its accumulation, the respective ages and earning abilities of the parties, the conduct of the parties during the marriage, the duration of the marriage, their stations in life, their health and physical condition, the necessities of the parties, their financial condition, and other relevant circumstances. *Carlson v. Carlson*, 178 Colo. 283, 497 P.2d 1006 (1972).

**Court may consider only relevant provisions of section.** In awarding child support, a trial court is obligated to consider only the relevant provisions of this section. It commits reversible error by considering matters related to adoption. In re *Ashlock*, 629 P.2d 1108 (Colo. App. 1981).

**In granting a divorce a court has no authority under the statute to decree that a part of the property of the husband shall be the sole property of his children.** *Menor v. Menor*, 154 Colo. 475, 391 P.2d 473 (1964); *Giambrocco v. Giambrocco*, 161 Colo. 510, 423 P.2d 328 (1967).

**The trial court was without authority to direct the husband to give to each of his children a share in a future estate** which he may or may not acquire, because



the obligation of the defendant is to provide reasonable support for his children according to their need, within the range of his ability, and a father of children is under no obligation to settle any property upon his children, or to deed them an interest in any asset; on the contrary he may by will or deed or other voluntary act disinherit a child if he sees fit to do so. *Menor v. Menor*, 154 Colo. 475, 391 P.2d 473 (1964); *Giambrocco v. Giambrocco*, 161 Colo. 510, 423 P.2d 328 (1967).

**Former husband may not discover the amount of former wife's current husband's income** but may discover the existence of former wife's income in the form of regular payments made to the former wife by her current husband. In *re Nimmo*, 891 P.2d 1002 (Colo. 1995).

**Although trial court abused its discretion** in modifying child support and cause was remanded upon appeal, the trial court order for child support remained in full force and effect pending entry of a new support order. In *re Van Inwegen*, 757 P.2d 1118 (Colo. App. 1988).

**Court improperly ordered noncustodial mother** to make support payments when the court made a finding that the mother did not have the financial ability to pay child support. In *re Jarman*, 752 P.2d 1068 (Colo. App. 1988).

**There is a rebuttable presumption in any action to establish or modify child support** that \$1,000 is the minimum presumptive amount of child support for one child when the parental combined income exceeds the uppermost levels of the guideline; however, the trial court may exercise its discretion and choose to set a different amount after consideration of all relevant factors. In *re Van Inwegen*, 757 P.2d 1118 (Colo. App. 1988).

**As a matter of law, the trial court may not initially refuse to apply child support guidelines.** In *re Thornton*, 802 P.2d 1194 (Colo. App. 1990).

**Cost of a nanny** may be included in the calculation of child support. *S.F.E. in Interest of T.I.E.*, 981 P.2d 642 (Colo. App. 1998).

**Trial court erred in failing to divide uninsured medical expenses in proportion to parents' adjusted gross incomes** without making necessary findings to support deviation from guidelines. In *re Pollock*, 881 P.2d 470 (Colo. App. 1994).

**The trial court has discretion to order that the reasonable and necessary costs of a child's attendance at a private school be divided between the parents in proportion to their income.** In *re Elmer*, 936 P.2d 617 (Colo. App. 1997) (decided prior to 1998 amendment to subsection (13)(a)(II)); In *re West*, 94 P.3d 1248 (Colo. App. 2004).

**Attendance at a private school may be approved**

**where it is necessary to meet the particular educational needs of the child.** In *re West*, 94 P.3d 1248 (Colo. App. 2004).

**In determining whether the children's parochial school tuition should be approved prospectively as a reasonable and necessary expense, the court should consider** the parents' income, the standard of living that the children would have enjoyed if the parents' marriage had not been dissolved, and other factors as appropriate. In *re West*, 94 P.3d 1248 (Colo. App. 2004).

**The trial court exceeded its authority in ordering the husband to fund an educational trust** for the benefit of the parties' son. The courts have been granted no authority to order the creation of a trust for the benefit of minor children. In *re Sewell*, 817 P.2d 594 (Colo. App. 1991).

**Trial court did not abuse its discretion in ordering the husband to pay all college expenses** of the parties' son. Use of word "divided" in subsection (13) does not imply that both parents must contribute to each item of support; court is given discretion in subsection (1) to order "either or both" parents to pay support. In *re Huff*, 834 P.2d 244 (Colo. 1992) (decided under law in effect prior to enactment of subsection (1.5), dealing specifically with postsecondary education support).

**A parent may also be required to contribute to the costs associated with a child's athletic activities** in some cases. The child's particular needs and predissolution standard of living are among the factors to be considered by the court. In *re West*, 94 P.3d 1248 (Colo. App. 2004).

**Psychiatric therapy for child was properly included** as an extraordinary medical expense in an order under this section. In *re Elmer*, 936 P.2d 617 (Colo. App. 1997).

**Trial court erred in allocating to father all of child's travel expenses for visitation,** rather than proportionately allocating them between the parties, in absence of finding that such allocation was appropriate. In *re Elmer*, 936 P.2d 617 (Colo. App. 1997) (decided prior to 1998 amendment to subsection (13)(a)(II)).

**Child support guideline does not provide for allocation between the parties of a parent's travel expenses.** In *re Elmer*, 936 P.2d 617 (Colo. App. 1997) (decided prior to 1998 amendment to subsection (13)(a)(II)).

**Adjustment of the child support amount to allow for transportation expenses** is not limited to expenses incurred in long distance or interstate travel and does apply to automobile expenses incurred in transporting a child between the homes of the parents. In *re L.F.*, 56 P.3d 1249 (Colo. App. 2002).

**Award constituted an application of, and not a**

**deviation from, the guidelines** where the evidence and the findings were sufficient to support only a partial offset of the child's income for her pro rata share of reasonable and necessary monthly expenses as well as the maintenance of a fund for vacations, one-time purchases, and other occasional expenses. In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

**The burden is upon the parent contesting the support order to prove that a deviation from the presumptive award is both reasonable and necessary.** In re Stress, 939 P.2d 500 (Colo. App. 1997).

**Trial court did not abuse its discretion in finding that parent did not meet this burden.** In re Stress, 939 P.2d 500 (Colo. App. 1997).

**Trial court may deviate from the child support guidelines** set forth in this section if the application of such guidelines would be inequitable, but if it does deviate, the court must make specific factual findings to support any deviation and failure to make such specific findings requires reversal. In re English, 757 P.2d 1130 (Colo. App. 1988); In re Hoffman, 878 P.2d 103 (Colo. App. 1994); In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

The trial court has discretion to deviate from the guidelines where justified, provided it makes appropriate findings. In re Thornton, 802 P.2d 1194 (Colo. App. 1990); In re Payan, 890 P.2d 264 (Colo. App. 1995).

**Deviation from child support guidelines is not justified by hardship resulting solely from application of the guidelines,** absent other unusual or unique financial circumstances. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

**Taking care of three-year-old triplets may be considered extraordinary circumstances** justifying a deviation from the child support guidelines. In re Ikeler, 148 P.3d 347 (Colo. App. 2006), rev'd on other grounds, 161 P.3d 663 (Colo. 2007).

**The court must make specific factual findings, however, justifying such a deviation.** In re Ikeler, 148 P.3d 347 (Colo. App. 2006), rev'd on other grounds, 161 P.3d 663 (Colo. 2007).

**The finding that it is important for the child to spend extended time with mother** is, in itself, irrelevant to the issue of whether there should be a deviation in child support. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

**A finding that one parent has a higher cost of living** will not, in and of itself, ordinarily justify deviating from the guidelines. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

**Case remanded for reconsideration of deviation from**

**guidelines based on new spouse's income** under the guidelines in In re Nimmo, 891 P.2d 1002 (Colo. 1995). In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

**Subsection (13) does not require an automatic adjustment to presumptive amount of child support** but rather gives the trial court discretion to determine if an adjustment on account of a child's financial resources is appropriate. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

**Application of child support guidelines establishes an amount of support that is presumed to be necessary to meet a child's needs;** however, the extent to which an unemancipated child's income should be used to defray basic support obligations is within the trial court's discretion and depends upon the totality of circumstances in a particular case. In re Pollock, 881 P.2d 470 (Colo. App. 1994); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

**Trial court did not abuse its discretion in declining to include child's receipt of public support payments as income available to the child under subsection (13)(b).** Such payments represent gratuitous contributions from the government and do not reduce the parent's duty to provide support. They are intended to supplement other income, not to substitute for it. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

**But it is proper under subsection (13)(b) for the court to consider mother's receipt of social security disability payments on behalf of the children as an adjustment to child support because those payments actually diminished the children's basic needs.** In re Quintana, 30 P.3d 870 (Colo. App. 2001).

**Court is authorized under this section to calculate child support based on a determination of a parent's potential income** if parent is voluntarily unemployed or underemployed. In re Marshall, 781 P.2d 177 (Colo. App. 1989), cert. denied, 794 P.2d 1011 (Colo. 1990).

**Trial court did not abuse its discretion in reducing the father's amount of child support,** where it found that the father was not voluntarily underemployed but had terminated his full time employment to return to college to obtain an advanced degree. In re Ehlert, 868 P.2d 1168 (Colo. App. 1994).

**If a court determines that a parent engaged in a good faith effort to achieve higher income, financial independence, or a career in the foreseeable future,** to impute income to that parent would unfairly penalize the parent's effort at self-sufficiency and would be contrary to the public policy of encouraging the financial independence of dependent spouses. In re Seanor, 876 P.2d 44 (Colo. App. 1993).

**Wife was engaged in a good faith effort to achieve a college education in order to further her income**

**position where** the evidence showed she had not worked for approximately nine years and she had completed two years of study towards a bachelors degree in a three-year period, during which time she had achieved a 3.72 grade point average. She had not attended school the previous year because of the death of her current spouse's mother and the hospitalization and continued medical complications and concerns of one of the children. In re Seanor, 876 P.2d 44 (Colo. App. 1993).

**Trial court properly determined that father, a convicted sex offender, was voluntarily underemployed.** Although the conviction likely limited father's employment opportunities, father did not attempt to find gainful employment despite having an M.B.A. degree, a real estate broker's license, and many years of work experience. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

**Extent to which a child's income and assets should be applied to the payment of educational expenses or basic support is a question of fact to be determined by the trial court under the totality of circumstances in each case.** In re Barrett, 797 P.2d 848 (Colo. App. 1990); In re Pollock, 881 P.2d 470 (Colo. App. 1994); In re Davis, 252 P.3d 530 (Colo. App. 2011).

**The limit on postsecondary expenses is the amount calculated as if the child receiving such education had been the only child.** Legislative history makes it clear that the 1994 amendment was intended to clarify rather than change the statute. In re Parker, 886 P.2d 312 (Colo. App. 1994).

**Trial court did not abuse discretion in not deviating from the child support guidelines in order to avoid calculating child support based on IRA interest and dividends.** In re Tessmer, 903 P.2d 1194 (Colo. App. 1995).

**Absent a finding that a child has been diagnosed as having a mental disorder, a noncustodial parent cannot be required to share in the costs for therapy,** whether such costs are included within the child support obligation or ordered to be paid separately. Absent the need for therapy because of a mental disorder, such cost must be borne by the party who makes the decision to provide the child with therapy. In re Finer, 920 P.2d 325 (Colo. App. 1996).

**Court may not deviate downward from the presumptive child support award to ensure continued eligibility for public assistance benefits.** Court erred in ordering mother to pay \$245 per month in child support instead of the statutory amount of \$399 per month in order to preserve the paternal grandparents' public daycare benefits. In re Hein, 253 P.3d 636 (Colo. App. 2010).

**Applied** in In re Rosser, 767 P.2d 807 (Colo. App. 1988).

C. Modification.

**The provisions of subsections (2) and (7)(e)** indicate that the general assembly did not intend to include health insurance premiums in the ordinary and necessary expenses covered by the basic child support obligation set forth in the guidelines; therefore, health insurance premiums paid by the father cannot be deducted from the total amount of the father's support obligation under the child support guidelines. In re English, 757 P.2d 1130 (Colo. App. 1988).

Where there was no evidence presented to establish the asserted extra cost of purchasing health insurance through the employment of the father's present spouse, there was no basis for the trial court to apply this section. In re Ansay, 839 P.2d 527 (Colo. App. 1992).

**Application of the provisions of this section** by the court for the modification of a prior child support order entered under the Uniform Parentage Act was error as a matter of law. Ashcraft v. Allis, 747 P.2d 1274 (Colo. App. 1987).

**Pre-1991 postsecondary education support orders.** Subsection (1.5)(c.5) allows the modification of pre-1991 postsecondary education support orders. In re Chalot, 112 P.3d 47 (Colo. 2005).

**Substantial and continuing changed circumstances requirement and postsecondary education support orders.** Absent application of the age of emancipation (§ 14-10-122 (4)) or medical insurance (§ 14-10-122 (1)) exceptions, the court's continuing jurisdiction to modify postsecondary education support orders is invoked only upon a showing of substantial and continuing changed circumstances by the party seeking modification. Nothing in the plain language of subsection (1.5)(c.5) or § 14-10-122 alters this clear, unambiguous requirement. In re Chalot, 112 P.3d 47 (Colo. 2005).

**Effect of amendments to postsecondary education support scheme on the substantial and continuing changed circumstances requirement.** The general assembly did not express an intent that its enactments of amendments to the postsecondary education support scheme alone automatically triggers a court's continuing jurisdiction to modify child support. The requirement for substantial and continuing changed circumstances must still be shown. In re Chalot, 112 P.3d 47 (Colo. 2005).

**Order specifying amount where original order merely imposed duty.** Where an original court order imposes a duty of support without specifying an amount under the criteria of this section, a subsequent court order specifying the amount need only conform with this section, rather than the modification requirements of § 14-10-122. In re Saiz, 634 P.2d 1020 (Colo. App. 1981).

**If the financial ability of the husband and father improves, and the needs of the minor children**

**increase**, the jurisdiction of the court to make additional orders for the care and maintenance of the minor children may be invoked at any time in a proper proceeding. *Brown v. Brown*, 131 Colo. 467, 283 P.2d 951 (1955).

**Trial court properly denied father's motion for modification, which was based solely on the 1993 statutory amendment to subsection (1.5)(b)(I) and which did not allege any substantial or continuing change in the parents' or the child's circumstances.** In *re Eaton*, 894 P.2d 56 (Colo. App. 1995).

**The provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification.** Thus, if child support is modified, the modification should be effective as of the date of filing of the request therefor. In *re Mackey*, 940 P.2d 1112 (Colo. App. 1997).

**Any order reducing the amount of support money operated only in future.** *Engleman v. Engleman*, 145 Colo. 299, 358 P.2d 864 (1961).

**The proposition that future support payments could not be reduced as long as a husband was in default**, even though a proper showing could be made of inability to pay, was not the law in Colorado. *Kane v. Kane*, 154 Colo. 440, 391 P.2d 361 (1964).

**Parent's medical expenses relevant to modification as well as to initial determination of support.** Where change in presumed support under guideline based on gross income is less than ten percent, the parent seeking modification may nonetheless establish a substantial and continuing change in circumstances, justifying a deviation from the guideline, due to an increase in the parent's personal medical expenses. In *re Ford*, 851 P.2d 295 (Colo. App. 1993).

**Deviation from the guidelines in calculating the basic child support obligation was error** where court reasoned that father would not be able to support himself if required to pay the amount specified in the guidelines in light of his required contribution to the extraordinary medical expenses required by the child. In *re Nielsen*, 794 P.2d 1097 (Colo. App. 1990).

**In circumstances where father is providing health insurance coverage for new spouse and father's other children living with him**, in addition to child who is subject to order, the amount of the premium attributable to such child was "not available or cannot be verified" and trial court erred by refusing to allow the addition to the support obligation for a portion of that premium. In *re Andersen*, 895 P.2d 1161 (Colo. App. 1995).

**Child's income may allow for a reduction of the support obligation** if the court determines that it does "actually diminish basic needs" of child. In *re Kluver*,

771 P.2d 34 (Colo. App. 1989).

Mother's receipt of social security disability payments on behalf of the children actually diminished children's basic needs and court did not abuse its discretion by including the payments in the adjustment of the father's child support obligation. In *re Quintana*, 30 P.3d 870 (Colo. App. 2001).

**Modification of award based on child's income for purposes of extraordinary educational expenditures or the satisfaction of basic needs is a question of fact** to be determined under the totality of circumstances in each case. In *re Barrett*, 797 P.2d 848 (Colo. App. 1990).

A trial court is not bound to deduct automatically the entire amount of a child's income from his or her educational costs or basic support obligation but must look at the child's reduced need, if any, for parental support. In *re Barrett*, 797 P.2d 848 (Colo. App. 1990); In *re Cropper*, 895 P.2d 1158 (Colo. App. 1995).

Trial court abused its discretion in refusing to deviate from a strict application of the guideline calculations for basic child support where certain expenses were shown to be duplicative. In *re Barrett*, 797 P.2d 848 (Colo. App. 1990).

The court did not err in denying a modification for contributions earned by the children where evidence showed that the older children did not receive any Pell grants toward their college expenses, and testimony regarding the additional expenses towards which the children put their earnings was sufficient for the court to determine that a reduction in the amount of support was not appropriate. In *re Ansay*, 839 P.2d 527 (Colo. App. 1992).

**A trial court does not err if it requires parents who are legally responsible for support** to contribute to a dependent child's needs in lieu of requiring the child to expend all of his or her own resources. In *re Pring*, 742 P.2d 343 (Colo. App. 1987); In *re Cropper*, 895 P.2d 1158 (Colo. App. 1995).

**Child support obligations to children of a second marriage may be deducted from a parent's income** when the court is considering a modification of child support ordered for children of a first marriage. In *re Hannum*, 796 P.2d 57 (Colo. App. 1990).

**The allocation of tax exemptions may be considered** when the court is considering a modification of child support. In *re Oberg*, 900 P.2d 1267 (Colo. App. 1994).

**In considering a modification of child support, the trial court is bound** by the facts and circumstances of the parents and the children as they exist at the time of the hearing. If there is a pending foreclosure sale, the court should await the sale's completion and complete its record on the amount of debt incurred before it

determines the modification question. In re Kimbrough, 784 P.2d 852 (Colo. App. 1989).

**Court did not violate prohibition against adjustment that results in support payments lower than previously existing support order** under subsection (7)(d.5)(II) when the decrease in the husband's child support obligation was due solely to the switch to a shared custody child support calculation and a decrease in the wife's work-related child care expenses. The decrease was entirely unrelated to the income adjustment given to the wife for her after-born child. In re Martin, 910 P.2d 83 (Colo. App. 1995).

**Court had authority to recalculate child support using a different worksheet than previously used.** Once court gained jurisdiction to modify child support pursuant to the wife's motion, the court is not prohibited from utilizing the proper formula for such support, particularly when that formula was part of the same statute under which the wife filed her motion to modify. In re Martin, 910 P.2d 83 (Colo. App. 1995).

**Rebuttable presumption of a change of circumstances** existed under the child support guidelines where the parties changed custody of one of the minor children from the mother to the father. In re Miller, 790 P.2d 890 (Colo. App. 1990).

**For purpose of calculating and modifying child support,** trial court properly included in gross income of husband an amount which a one-time post-decree inheritance could be expected to yield, although calculation of such amount was incorrect. In re Armstrong, 831 P.2d 501 (Colo. App. 1992).

**Trial court did not impermissibly interfere with husband's constitutional property rights** by including in gross income an amount which a one-time post-decree inheritance received by husband could be expected to yield. In re Armstrong, 831 P.2d 501 (Colo. App. 1992).

**A monetary inheritance should be included in gross income for purposes of calculating child support** in the year that the beneficiary withdraws from the inheritance and relies on it as a source of income. In re A.M.D., 78 P.3d 741 (Colo. 2003).

**That remainder of a monetary inheritance that is not withdrawn and spent** should be treated as an income-producing asset and the actual interest income it generates should be included in gross income. In re A.M.D., 78 P.3d 741 (Colo. 2003).

**In determining how much of the principal of an inheritance to include in gross income,** the trial court should apply a two-part test: (1) The court must decide whether an inheritance is monetary; and, if so, (2) whether the recipient used the principal as a source of income either to meet existing living expenses or to increase the recipient's standard of living. In re A.M.D.,

78 P.3d 741 (Colo. 2003).

**Court did not make findings required by subsection (14.5) to modify the allocation of federal income tax exemptions between the parties.** Order allocating exemptions to the parties in alternating years, therefore, was reversed and the cause remanded to the trial court. In re Trout, 897 P.2d 838 (Colo. App. 1994).

**Failure to submit financial information to the trial court** and the failure of the trial court to review the modified agreement between the parties rendered the resulting trial court order subject to being set aside under C.R.C.P. 60 (b)(5). In re Smith, 928 P.2d 828 (Colo. App. 1996).

**Court's award of income tax exemption to father in alternate years, as part of court's judgment on mother's motion to modify child support was supported by the record and complies with the requirements of this section.** The court was not required to hold an additional hearing before amending the judgment when it had already heard testimony concerning the parties' incomes and had determined the percentage contribution of the parties to the costs of raising the child. The court could conclude on that record that father would receive a tax benefit from the exemption award. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

**Father's post-dissolution motion for reimbursement of previously paid child care expenses was properly denied.** Reimbursement is not mandated under this section and the court has discretion whether to refer the parties to mediation. In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

**Court should compare child support order currently in effect with child support guidelines to determine whether a substantial and continuing change of circumstances exists.** Although the parties' current child support order was the result of the parties' agreement to a reduced amount of child support, the court should have compared the current child support order with the presumed child support obligation under the guidelines at the time of mother's motion to determine if mother had shown a substantial and continuing change of circumstances sufficient to maintain her motion for modification. In re M.G.C.-G., 228 P.3d 271 (Colo. App. 2010).

D. Termination upon Emancipation.

**The resolution of the question of emancipation was concerned more with the extinguishment of parental rights and duties** than with the removal of the disabilities of infancy, and it occurred only when there was a complete severance of the filial tie, and the child's possession or lack of possession of the right to vote had little or no bearing on the determination as to whether such tie had or had not been severed. Van Orman v. Van

Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

**The enactment of the voting rights act of 1970, lowering the federal voting age to 18 years,** did not emancipate a 20 year old son, as a matter of law. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

**In Colorado, a person retains the status of minority until the age of 21 years,** and that statutory definition is controlling as to the age at which emancipation occurs as a matter of law, except where otherwise provided by statute. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

**In the absence of emancipation occurring upon attainment of majority,** the question of whether a child was emancipated was essentially one of fact determinable by the trier of fact. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

**Change in the age of emancipation and duty of support in this section did not automatically modify a parent's existing obligation of support which required obligor to pay support until child reached 21 years.** In re Dion, 970 P.2d 968 (Colo. App. 1997).

**The marriage of the minor daughter terminated the parental duty of support** and no enforceable rights to support payments could thereafter accrue to the mother. Berglund v. Berglund, 28 Colo. App. 382, 474 P.2d 800 (1970).

**Support for dependent child after attainment of majority.** This article gives the court jurisdiction to enter a decree for support of a dependent child of the marriage after attainment of majority. In re Koltay, 646 P.2d 405 (Colo. App. 1982), aff'd, 667 P.2d 1374 (Colo. 1983).

Once a child is over 21 and physically and mentally capable of self support, such child is not entitled to receive support payments from father, despite the fact that the child had an expectation of attending college had parents not divorced. Factors such as standard of living child would have enjoyed and educational needs can only be applied in determining child support if the child had not reached majority. In re Plummer, 735 P.2d 165 (Colo. 1987).

**Express provision for post-emancipation support, where circumstances warrant, may be made in a decree entered before the child's twenty-first birthday.** In such a case, factors such as standard of living and expectation of attending college may be considered. In re Huff, 834 P.2d 244 (Colo. 1992) (decided under law in effect prior to enactment of subsection (1.5), dealing specifically with postsecondary education support).

Provision for post-emancipation support may also be made by written agreement of the parties, as is indicated

by reading this section together with § 14-10-122 (3). In re Huff, 834 P.2d 244 (Colo. 1992).

**Meaning of "previously existing support order".** An order entered October 22, 1993, nunc pro tunc August 12, 1993, made retroactive to August 1, 1992, modifying a March 1992 support order, is not a "previously existing support order" with regard to a modification of support to take into account a child born to the father and his new wife in December 1992, because it was not "previously existing" until it was actually entered by the court. In re Oberg, 900 P.2d 1267 (Colo. App. 1994).

#### **IV. PAST DUE SUPPORT.**

**Past due child support payments in themselves constitute debt.** Colo. State Bank v. Utt, 622 P.2d 584 (Colo. App. 1980).

**Amount owed may be garnished** by bank which held judgment against former wife. Colo. State Bank v. Utt, 622 P.2d 584 (Colo. App. 1980).

**It was not error to require a husband to pay arrears of support money for his minor children during the period of time the wife refuses him the right to visit the children,** where no objection was made to the entry of such order. Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956).

**A trial court could not punish a father, delinquent in his child support payments through no fault of his own,** by denying him visitation rights until he became current in his payments. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

**A trial court was without authority to forgive delinquent payments of support money.** Gier v. Gier, 139 Colo. 289, 339 P.2d 677 (1959); Engleman v. Engleman, 145 Colo. 299, 358 P.2d 864 (1961); Drazich v. Drazich, 153 Colo. 218, 385 P.2d 259 (1963).

**Overpayments on child support made direct to one child could not be set off against accrued overdue installments** which were owed to the mother on behalf of another child. Dorsey v. Dorsey, 28 Colo. App. 63, 470 P.2d 581 (1970).

**The general rule was to the effect that when a father was required by a divorce decree to pay to the mother money for the support of their dependent children,** and the unpaid and accrued installments became judgments in her favor, he could not, as a matter of law, claim credit on account of payments voluntarily made directly to the children, special considerations of an equitable nature could justify a court in crediting such payments on his indebtedness to the mother when that could be done without injustice to her. Dorsey v. Dorsey, 28 Colo. App. 63, 470 P.2d 581 (1970).

**Cross References:**

(1) For provisions concerning deductions for health insurance from wages due an obligor ordered to provide health insurance, see § 14-14-112 .

(1) This article was repealed and reenacted in 1993, and this part 1 was subsequently amended with relocations in 2003, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 2003, consult the editor's note following the article heading. Former C.R.S. section numbers prior to 2003 are shown in editor's notes following those sections that were relocated.

(3) For the "Old-age, Survivors, and Disability Insurance Act", see 42 U.S.C. sec. 401 et seq.