Colorado Statutes

Title 14. DOMESTIC MATTERS

DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES

Article 10. Uniform Dissolution of Marriage Act

Current through Chapter 430, Second Regular Session 2010

§ 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;

(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;

(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) Taxable distributions from general partnerships, limited partnerships, closely held corporations, or limited liability companies;

(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.

(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 eight hundred fifty 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 eight hundred fifty 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 eight hundred fifty dollars, a child support payment of fifty dollars per month shall be required of the obligor. The minimum order of fifty dollars 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 eight hundred fifty 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 eight hundred fifty 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 nine hundred dollars from that parent's monthly adjusted gross income. The court shall multiply the resulting amount by a factor of forty percent. The product of the multiplication shall be added to the following basic minimum child support amount as additional minimum support, unless the product of the multiplication amount is zero or a negative figure, in which case the court shall add zero to the following basic minimum child support amount: Seventy-five dollars for one child; one hundred fifty dollars for two children; two hundred twenty-five dollars for three children; two hundred seventy-five dollars for four children; three hundred twenty-five dollars for five children; and three 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 eight hundred fifty dollars, regardless of the monthly adjusted gross income of the obligee, the obligor shall be ordered to pay fifty dollars per month in child support. The minimum order of fifty dollars 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 SIX OR GROSS ONE TWO THREE FOUR FIVE MORE INCOME CHILD CHILDREN CHILDREN CHILDREN CHILDREN CHILDREN 100 ORDER OF $50 PER MONTH

200

300

400

500

600

700

800

850 184 269 319 352 382 409

900 193 282 334 369 400 428

950 202 294 349 386 418 447

1000 211 307 364 402 436 467

1050 220 320 379 419 455 486

1100 228 333 395 436 473 506

1150 237 346 410 453 491 525

1200 246 359 425 470 509 545

1250 255 372 440 487 528 565

1300 264 385 456 504 546 584

1350 273 397 471 520 564 603

1400 281 410 486 537 582 622

1450 290 422 500 553 599 641

1500 298 435 515 569 617 660

1550 307 447 530 586 635 679

1600 315 460 545 602 652 698

1650 324 472 559 618 670 717

1700 333 485 574 634 688 736

1750 341 497 589 651 705 755

1800 350 510 604 667 723 774

1850 358 522 619 683 741 793

1900 367 535 633 700 759 812

1950 375 547 648 716 776 830

2000 383 558 661 730 792 847

2050 391 570 674 745 807 864

2100 399 581 687 759 823 881

2150 407 592 700 774 839 898

2200 415 604 714 789 855 915

2250 423 615 727 803 871 931

2300 431 626 740 818 886 948

2350 439 638 753 832 902 965

2400 447 649 766 847 918 982

2450 455 660 779 861 934 999

2500 462 672 793 876 949 1016

2550 470 683 806 890 965 1033

2600 479 694 819 905 981 1050

2650 487 706 833 920 997 1067

2700 495 718 846 935 1013 1084

2750 503 729 859 950 1029 1101

2800 511 741 873 964 1045 1119

2850 519 752 886 979 1061 1136

2900 527 763 898 993 1076 1151

2950 533 772 910 1005 1089 1166

3000 540 782 921 1017 1103 1180

3050 547 792 932 1030 1116 1194

3100 554 801 943 1042 1130 1209

3150 560 811 954 1054 1143 1223

3200 567 821 965 1067 1156 1237

3250 574 831 977 1080 1171 1253

3300 581 841 989 1093 1185 1268

3350 589 851 1002 1107 1200 1284

3400 596 862 1014 1120 1214 1299

3450 603 872 1026 1133 1229 1315

3500 610 882 1038 1147 1243 1330

3550 617 892 1050 1160 1258 1346

3600 624 903 1062 1173 1272 1361

3650 631 913 1074 1187 1287 1377

3700 638 923 1086 1200 1301 1392

3750 645 934 1098 1214 1315 1408

3800 652 944 1110 1227 1330 1423

3850 660 954 1122 1240 1344 1439

3900 667 964 1135 1254 1359 1454

3950 673 973 1145 1266 1372 1468

4000 677 980 1153 1274 1381 1478

4050 682 987 1161 1283 1391 1488

4100 686 993 1169 1292 1400 1498

4150 691 1000 1177 1301 1410 1509

4200 695 1006 1185 1310 1420 1519

4250 700 1013 1193 1318 1429 1529

4300 704 1020 1201 1327 1439 1539

4350 708 1026 1209 1336 1448 1550

4400 713 1033 1217 1345 1458 1560

4450 717 1039 1225 1354 1467 1570

4500 722 1046 1233 1362 1477 1580

4550 726 1053 1241 1371 1486 1590

4600 731 1059 1249 1380 1496 1601

4650 735 1066 1257 1389 1505 1611

4700 739 1071 1262 1395 1512 1618

4750 742 1075 1267 1400 1517 1623

4800 745 1079 1271 1405 1523 1629

4850 748 1083 1276 1410 1528 1635

4900 751 1088 1280 1415 1533 1641

4950 755 1092 1285 1420 1539 1647

5000 758 1096 1289 1425 1544 1652

5050 761 1100 1294 1430 1550 1658

5100 764 1105 1298 1435 1555 1664

5150 768 1109 1303 1440 1560 1670

5200 771 1113 1307 1445 1566 1676

5250 774 1117 1312 1450 1571 1681

5300 777 1122 1316 1455 1577 1687

5350 781 1126 1321 1460 1582 1693

5400 784 1130 1326 1465 1588 1699

5450 787 1135 1331 1470 1594 1705

5500 790 1139 1336 1476 1600 1712

5550 792 1143 1341 1482 1606 1718

5600 795 1147 1346 1487 1612 1725

5650 798 1152 1351 1493 1618 1731

5700 801 1156 1356 1498 1624 1738

5750 804 1160 1361 1504 1630 1744

5800 807 1164 1365 1509 1636 1750

5850 809 1168 1370 1514 1641 1756

5900 812 1172 1375 1520 1647 1762

5950 815 1176 1380 1525 1653 1769

6000 818 1180 1385 1530 1659 1775

6050 820 1184 1390 1536 1664 1781

6100 823 1188 1394 1541 1670 1787

6150 826 1193 1400 1547 1677 1794

6200 831 1199 1407 1555 1686 1804

6250 836 1206 1415 1563 1695 1813

6300 840 1212 1422 1572 1704 1823

6350 845 1219 1430 1580 1713 1833

6400 849 1225 1437 1588 1722 1842

6450 854 1232 1445 1597 1731 1852

6500 858 1238 1452 1605 1740 1861

6550 863 1245 1460 1613 1749 1871

6600 868 1251 1467 1621 1758 1881

6650 872 1258 1475 1630 1767 1890

6700 877 1264 1482 1638 1775 1900

6750 882 1271 1491 1647 1785 1910

6800 887 1278 1499 1656 1795 1921

6850 892 1285 1507 1665 1805 1932

6900 897 1293 1515 1675 1815 1942

6950 902 1300 1524 1684 1825 1953

7000 907 1307 1532 1693 1835 1963

7050 912 1314 1540 1702 1845 1974

7100 917 1321 1549 1711 1855 1985

7150 922 1328 1557 1720 1865 1995

7200 927 1336 1565 1729 1875 2006

7250 932 1343 1573 1738 1884 2016

7300 937 1349 1581 1747 1893 2026

7350 942 1356 1588 1755 1902 2036

7400 946 1362 1596 1763 1912 2045

7450 951 1369 1603 1772 1921 2055

7500 955 1375 1611 1780 1930 2065

7550 960 1382 1619 1789 1939 2075

7600 965 1389 1626 1797 1948 2084

7650 969 1395 1634 1805 1957 2094

7700 974 1402 1641 1814 1966 2104

7750 979 1408 1649 1822 1975 2113

7800 983 1415 1657 1830 1984 2123

7850 988 1422 1664 1839 1993 2133

7900 993 1428 1672 1847 2002 2143

7950 997 1435 1679 1856 2011 2152

8000 1002 1441 1687 1864 2021 2162

8050 1006 1448 1694 1872 2030 2172

8100 1011 1454 1702 1881 2039 2181

8150 1016 1461 1710 1889 2048 2191

8200 1020 1468 1717 1898 2057 2201

8250 1025 1474 1725 1906 2066 2211

8300 1030 1481 1732 1914 2075 2220

8350 1034 1487 1740 1923 2084 2230

8400 1039 1494 1748 1931 2093 2240

8450 1043 1501 1755 1939 2102 2250

8500 1048 1507 1763 1948 2111 2259

8550 1053 1514 1770 1956 2121 2269

8600 1057 1520 1778 1965 2130 2279

8650 1062 1527 1785 1973 2139 2288

8700 1066 1533 1793 1981 2148 2298

8750 1070 1539 1800 1989 2157 2308

8800 1075 1546 1808 1998 2166 2317

8850 1079 1552 1815 2006 2175 2327

8900 1083 1558 1823 2014 2184 2336

8950 1088 1565 1830 2023 2193 2346

9000 1092 1571 1838 2031 2202 2356

9050 1096 1577 1845 2039 2211 2365

9100 1101 1583 1853 2048 2220 2375

9150 1105 1590 1860 2056 2228 2384

9200 1110 1596 1868 2064 2237 2394

9250 1114 1602 1875 2072 2246 2404

9300 1118 1609 1883 2081 2255 2413

9350 1123 1615 1890 2089 2264 2423

9400 1127 1621 1898 2097 2273 2433

9450 1131 1628 1905 2106 2282 2442

9500 1136 1634 1913 2114 2291 2452

9550 1140 1640 1920 2122 2300 2461

9600 1144 1647 1928 2130 2309 2471

9650 1149 1653 1935 2139 2318 2481

9700 1153 1659 1943 2147 2327 2490

9750 1157 1666 1950 2155 2336 2500

9800 1162 1672 1958 2164 2345 2510

9850 1166 1678 1965 2172 2354 2519

9900 1170 1685 1973 2180 2363 2529

9950 1175 1691 1981 2188 2372 2538

10000 1179 1697 1988 2197 2381 2548

10050 1183 1703 1995 2204 2389 2557

10100 1187 1709 2002 2212 2398 2565

10150 1191 1715 2008 2219 2406 2574

10200 1195 1720 2015 2227 2414 2583

10250 1199 1726 2022 2234 2422 2592

10300 1203 1732 2029 2242 2430 2601

10350 1207 1738 2036 2250 2439 2609

10400 1211 1744 2043 2257 2447 2618

10450 1215 1749 2050 2265 2455 2627

10500 1219 1755 2056 2272 2463 2636

10550 1223 1761 2063 2280 2471 2644

10600 1227 1767 2070 2288 2480 2653

10650 1231 1773 2077 2295 2488 2662

10700 1235 1778 2084 2303 2496 2671

10750 1239 1784 2091 2310 2504 2680

10800 1243 1790 2098 2318 2513 2688

10850 1247 1796 2104 2325 2521 2697

10900 1251 1802 2111 2333 2529 2706

10950 1255 1808 2118 2341 2537 2715

11000 1259 1813 2125 2348 2545 2724

11050 1263 1819 2132 2356 2554 2732

11100 1267 1825 2139 2363 2562 2741

11150 1271 1831 2146 2371 2570 2750

11200 1275 1837 2152 2378 2578 2759

11250 1279 1842 2159 2386 2586 2768

11300 1283 1848 2166 2394 2595 2776

11350 1287 1854 2173 2401 2603 2785

11400 1291 1860 2180 2409 2611 2794

11450 1295 1866 2187 2417 2619 2803

11500 1299 1871 2194 2424 2628 2812

11550 1303 1877 2201 2432 2636 2821

11600 1307 1883 2208 2440 2644 2830

11650 1311 1889 2215 2447 2653 2838

11700 1315 1895 2222 2455 2661 2847

11750 1319 1900 2229 2463 2669 2856

11800 1322 1906 2235 2470 2678 2865

11850 1326 1912 2242 2478 2686 2874

11900 1330 1918 2249 2486 2694 2883

11950 1334 1923 2256 2493 2703 2892

12000 1338 1929 2263 2501 2711 2901

12050 1342 1935 2270 2508 2719 2909

12100 1346 1940 2276 2515 2726 2917

12150 1349 1945 2283 2522 2734 2925

12200 1353 1951 2289 2529 2742 2934

12250 1357 1956 2295 2536 2749 2942

12300 1360 1961 2302 2543 2757 2950

12350 1364 1967 2308 2551 2765 2958

12400 1367 1972 2315 2558 2772 2966

12450 1371 1977 2321 2565 2780 2975

12500 1375 1983 2327 2572 2788 2983

12550 1378 1988 2334 2579 2795 2991

12600 1382 1993 2340 2586 2803 2999

12650 1386 1998 2347 2593 2811 3007

12700 1389 2004 2353 2600 2818 3016

12750 1393 2009 2359 2607 2826 3024

12800 1397 2014 2366 2614 2834 3032

12850 1400 2020 2373 2622 2842 3041

12900 1405 2026 2380 2630 2851 3050

12950 1409 2032 2387 2638 2859 3059

13000 1413 2038 2394 2646 2868 3069

13050 1417 2044 2402 2654 2877 3078

13100 1421 2050 2409 2662 2885 3087

13150 1425 2056 2416 2670 2894 3096

13200 1429 2062 2423 2678 2902 3106

13250 1433 2068 2430 2685 2911 3115

13300 1437 2074 2437 2693 2920 3124

13350 1441 2080 2445 2701 2928 3133

13400 1445 2086 2452 2709 2937 3142

13450 1449 2092 2459 2717 2945 3152

13500 1453 2098 2466 2725 2954 3161

13550 1457 2104 2473 2733 2963 3170

13600 1461 2110 2481 2741 2971 3179

13650 1465 2116 2488 2749 2980 3189

13700 1469 2122 2495 2757 2989 3198

13750 1473 2128 2502 2765 2997 3207

13800 1477 2134 2509 2773 3006 3216

13850 1481 2140 2517 2781 3014 3225

13900 1485 2146 2524 2789 3023 3235

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(8) **Computation of basic child support - shared physical care - split physical care - stipulations - deviations - basis for periodic updates.** (a) 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.

(b) 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 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.

(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 such 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. In addition, the commission shall review issues identified in the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, including out-of-wedlock births and the prevention of teen pregnancy.

(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 shall attempt to appoint persons as parent representatives or as other representatives on the commission who include a male custodial parent, a female custodial parent, a male noncustodial parent, a female noncustodial parent, a joint custodial parent, and a parent in an intact family. In making his or her appointments to the commission, the governor shall attempt to assure geographical diversity by appointing at least one member from each of the congressional districts in the state. 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 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) The terms of the members appointed by the speaker of the house of representatives and the president of the senate who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall each appoint or reappoint one member in the same manner as provided in paragraph (c) of this subsection (16). Thereafter, the terms of members appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members appointed or reappointed by the speaker and the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(e) In reviewing the child support guidelines and the schedule of basic child support obligations as required in paragraph (a) of this subsection (16), the child support commission shall study the following issues:

(I) The merits of a statutory time limitation or the application of the doctrine of laches or such other time-limiting provision on the enforcement of support judgments that arise pursuant to the provisions of section 14-10-122;

(II) Whether different time limitations on the enforcement of support judgments should apply depending on whether support payments are made directly to an obligee or whether such payments are made through the family support registry;

(III) The merits of support judgments arising automatically as provided in section 14-10-122 (1) (c); and

(IV) Whether support obligors should receive additional notice and an opportunity for hearing prior to execution on such judgments.

History. Source: 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, (SB 09-282), ch. 288, p. 1397, § 59, effective January 1, 2010.

Editor's Note:

(1) Section 2 of chapter 17, Session Laws of Colorado 2005, provides that the act amending subsection (1.6) applies to child support orders entered on or after July 1, 1997. In 2007, subsection (1.6) was relocated to subsection (13)(a).

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

(3) 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).

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 24 Am. Jur.2d, Divorce and Separation, §§ 1001-1046, 1079, 1080, 1082-1099, 1119.

C.J.S. See 27B C.J.S., Divorce, §§ 665-693, 719-736.

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).

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).

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).

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).

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 ex rel. J.R.T., 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 ex rel. J.R.T., 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 ex rel. J.R.T., 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, 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).

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 Upson, 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).

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).

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 non-custodial 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).

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 Chalat, 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 Chalat, 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 Chalat, 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).

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.

(2) For the legislative declaration contained in the 1993 act amending subsection (3)(b)(III), see section 1 of chapter 165, Session Laws of Colorado 1993; for the legislative declaration contained in the act amending subsection (18)(a), see section 1 of chapter 345, Session Laws of Colorado 1994; for the legislative declaration contained in the 1997 act amending subsections (1.5), (3.5), (7)(b), and (18)(a) and enacting subsections (1.6) and (1.7), see section 1 of chapter 236, Session Laws of Colorado 1997.

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