

C.R.S. 14-10-115

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CO - Colorado Revised Statutes Annotated **TITLE 14. DOMESTIC MATTERS** **DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES** **ARTICLE 10. UNIFORM DISSOLUTION OF MARRIAGE ACT**

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

(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)

(I) "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, as described in subsection (3)(a)(II) of this section.

(II) For purposes of this subsection (3)(a), if the alimony or maintenance actually paid by a parent is deductible for federal income tax purposes by that parent, then the actual amount of alimony or maintenance paid by that parent must be deducted from that parent's gross income. If the alimony or maintenance actually paid by a parent is not deductible for federal income tax purposes by that parent, then the amount of alimony or maintenance deducted from that parent's gross income is the amount of alimony or maintenance actually paid by that parent multiplied by 1.25.

(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.

(c.5) [Editor's note: This subsection (3)(c.5) is effective July 1, 2020.] "Mandatory school fees" means fees charged by a school or school district, including a charter school, for a child attending public primary or secondary school for activities that are directly related to the educational mission of the school, including but not limited to laboratory fees; book or educational material fees; school computer or automation-related fees, whether paid to the school directly or purchased by a parent; testing fees; and supply or material fees paid to the school. "Mandatory school fees" does not include uniforms, meals, or extracurricular activity fees.

(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 career and technical education programs.

(g) "Postsecondary education support" means support for the following expenses associated with attending a college, university, or career and technical 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 subsection (5)(a)(II) of this section, and includes, but is not limited to:
 - (A)** Income from salaries;
 - (B)** Wages, including tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater;
 - (C)** Commissions;
 - (D)** Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment;
 - (E)** Bonuses;
 - (F)** Dividends;
 - (G)** Severance pay;
 - (H)** Pensions and retirement benefits, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and article 30 of title 31, C.R.S.;
 - (I)** Royalties;
 - (J)** Rents;
 - (K)** Interest;
 - (L)** Trust income;
 - (M)** Annuities;
 - (N)** Capital gains;
 - (O)** Any moneys drawn by a self-employed individual for personal use that are deducted as a business expense, which moneys must be considered income from self-employment;
 - (P)** Social security benefits, including social security benefits actually received by a parent as a result of the disability of that parent or as the result of the death of the minor child's stepparent but not including social security benefits received by a minor child or on behalf of a minor child as a result of the death or disability of a stepparent of the child;
 - (Q)** Workers' compensation benefits;
 - (R)** Unemployment insurance benefits;
 - (S)** Disability insurance benefits;
 - (T)** Funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages;
 - (U)** Monetary gifts;
 - (V)** Monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office;
 - (W)** Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies. However, if a parent is a passive investor, has a minority interest in the company, and does not have any managerial duties or input, then the income to be recognized may be limited to actual cash distributions received.
 - (X)** Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business if they are significant and reduce personal living expenses;
 - (Y)** Alimony or maintenance received, as adjusted, if applicable, pursuant to subsection (5)(a)(I.5) of this section; and

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

(I.5) For purposes of subsection (5)(a)(I)(Y) of this section, if the alimony or maintenance actually received by a parent is taxable income to that parent for federal income tax purposes, then the actual amount of alimony or maintenance received is included in that parent's gross income. If the alimony or maintenance actually received by a parent is not taxable income to that parent for federal income tax purposes, then the amount of alimony or maintenance that is included in that parent's gross income is the amount of alimony or maintenance received by that parent multiplied by 1.25.

(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;

(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; and

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

(III)

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

(B) "Ordinary and necessary expenses" does not include amounts allowable by the internal revenue service for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

(b)

(I) If a parent is voluntarily unemployed or underemployed, child support must be calculated based on a determination of potential income; except that a determination of potential income must not be made for:

(A) A parent who is physically or mentally incapacitated;

(B) A parent who is caring for a child under the age of twenty-four months for whom the parents owe a joint legal responsibility; or

(C) An incarcerated parent sentenced to one hundred eighty days or more.

(I.5) If the court or delegate child support enforcement unit imputes income pursuant to this subsection (5), the provisions of subsection (5)(b.5) of this section apply.

(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 is not 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 full-time in an educational or vocational program or is employed part-time while enrolled in a part-time educational or vocational program, based on the institution's enrollment definitions, and the program is reasonably intended to result in a degree or certification within a reasonable period of time; completing the program will result in a higher income; the program is a good faith career choice that is not intended to deprive the child of support; and the parent's participation in the program does not unreasonably reduce the amount of child support available to a child.

(b.5)

(I) Except as otherwise provided in this section, if the court or delegate child support enforcement unit determines that a parent is voluntarily unemployed or underemployed or employment information is unreliable, the court or delegate child support enforcement unit shall determine and document, for the record, the parent's potential income.

(II) In determining potential income, the court or delegate child support enforcement unit shall consider, to the extent known, the specific circumstances of the parent, including consideration of the following information, when available:

- (A)** The parent's assets;
- (B)** Residence;
- (C)** Employment and earnings history;
- (D)** Job skills;
- (E)** Educational attainment;
- (F)** Literacy;
- (G)** Age;
- (H)** Health;
- (I)** Criminal record;
- (J)** Other employment barriers;
- (K)** Record of seeking work;
- (L)** The local job market;
- (M)** The availability of employers hiring in the community, without changing existing law regarding the burden of proof;
- (N)** Prevailing earnings level in the local community; and
- (O)** Other relevant background factors in the case.

(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)

(a) At the time a child support order is initially established, or in any proceeding to modify a child support order, if a parent is also legally responsible for the support of any other children for whom the parents do not share joint legal responsibility, the court shall make an adjustment to the parent's gross income prior to calculating the basic child support obligation for the child or children who are the subject of the support order in question as follows:

(I) If a parent is obligated to pay support for another child pursuant to an order, the amount actually paid on the order must be deducted from that parent's gross income;

(II) If the other child is residing in the home of a parent, the court shall deduct from that parent's gross income the amount calculated pursuant to paragraph (b) of this subsection (6);

(III) If another child of a parent is residing outside the home of that parent, the court shall deduct from that parent's gross income the amount of documented money payments actually paid by the parent for the support of the other child, not to exceed the schedule of basic support obligations set forth in subsection (7) of this section.

(b) [Editor's note: This version of subsection (6)(b) is effective until July 1, 2020.] The amount of the adjustment must not exceed the schedule of basic support obligations listed in this section. For a parent with a gross income of one thousand nine hundred dollars or less per month, the adjustment is seventy-five percent of the amount calculated using the low-income adjustment described in sub-subparagraphs (B) and (C) of subparagraph (II) of paragraph (a) of subsection (7) of this section based only upon the responsible parent's income, without any other adjustments for the number of other children for whom the parent is responsible. For a parent with gross income of more than one thousand nine hundred dollars per month, the adjustment is 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 paragraph (b) must 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.

(b) [Editor's note: This version of subsection (6)(b) is effective July 1, 2020.] The amount of the adjustment must not exceed the schedule of basic support obligations listed in this section. For a parent with gross income of more than one thousand five hundred dollars per month, the adjustment is seventy-five percent of the amount listed under the schedule of basic support obligations in subsection (7)(b) 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 subsection (6)(b) must 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.

(7) (a) (I) Schedule of basic child support obligations.

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) [Editor's note: This version of subsection (7)(a)(II)(B) is effective until July 1, 2020.] Except as otherwise provided in sub-subparagraph (D) of this subparagraph (II), in circumstances in which the parents' combined monthly adjusted gross income is less than one thousand one hundred dollars, a child support payment of fifty dollars per month for one child, seventy dollars per month for two children, ninety dollars per month for three children, one hundred ten dollars per month for four children, one hundred thirty dollars per month for five children, and one hundred fifty dollars per month for six or more children

shall be required of the obligor. The minimum order amount shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in paragraph (h) of subsection (3) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(B) [Editor's note: This version of subsection (7)(a)(II)(B) is effective July 1, 2020.] In circumstances in which the obligor's monthly adjusted gross income is less than one thousand five hundred dollars but more than six hundred fifty dollars, the obligor is required to pay a child support payment of fifty dollars per month for one child, seventy dollars per month for two children, ninety dollars per month for three children, one hundred ten dollars per month for four children, one hundred thirty dollars per month for five children, and one hundred fifty dollars per month for six or more children. The minimum order amount shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (3)(h) 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) [Editor's note: This version of subsection (7)(a)(II)(C) is effective until July 1, 2020.] Except as otherwise provided in sub-subparagraph (D) of this subparagraph (II), in circumstances in which the parents' combined monthly adjusted gross income is one thousand one hundred dollars or more, but in which the parent with the least number of overnights per year with the child has a monthly adjusted gross income of less than one thousand nine hundred dollars, the court or delegate child support enforcement unit, pursuant to section 26-13.5-105 (4), C.R.S., shall perform a low-income adjustment calculation of child support as follows: The court or delegate child support enforcement unit shall determine each parent's monthly adjusted gross income, as that term is defined in subsection (3) of this section. Based upon the parents' combined monthly adjusted gross incomes, the court or delegate child support enforcement unit shall determine the monthly basic child support obligation, using the schedule of basic child support obligations set forth in paragraph (b) of this subsection (7) and shall determine each parent's presumptive proportionate share of said obligation. The court or delegate child support enforcement unit shall then adjust the income of the parent with the fewest number of overnights per year with the child by subtracting one thousand one hundred dollars from that parent's monthly adjusted gross income. The result of the subtraction shall be added to the following basic minimum child support amount as additional minimum support, unless the result of the subtraction amount is zero or a negative figure, in which case the court shall add zero to the following basic minimum child support amount: Fifty dollars for one child; seventy dollars for two children; ninety dollars for three children; one hundred ten dollars for four children; one hundred thirty dollars for five children; and one hundred fifty dollars for six or more children. The court or delegate child support enforcement unit shall compare the product of this addition to the parent's presumptive proportionate share of the monthly basic support obligation determined previously from the schedule of basic child support obligations. The lesser of the two amounts shall be the basic monthly support obligation to be paid by the low-income parent, as adjusted by the low-income parent's proportionate share of the work-related and education-related child care costs, health insurance, extraordinary medical expenses, and other extraordinary adjustments as described in subsections (9) to (11) of this section. The low-income adjustment shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(C) [Editor's note: This version of subsection (7)(a)(II)(C) is effective July 1, 2020.] For an obligor with an adjusted gross income that is less than one thousand five hundred dollars but more than six hundred fifty dollars, the obligor's child support amount, as determined pursuant to subsection (7)(a)(II)(B) of this section, may be adjusted to include a 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, if, after these adjustments are made, the obligor's child support amount does not exceed twenty percent of the obligor's adjusted gross income. Adjustments must not be made to the obligor's child support amount pursuant to this subsection (7)(a)(II)(C) if, within the same child support order, the number of children for whom a duty of support is owed results in a child support obligation that exceeds twenty percent of the obligor's adjusted gross income. 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) [Editor's note: This version of subsection (7)(a)(II)(D) is effective until July 1, 2020.] In any circumstance in which the obligor's monthly adjusted gross income is less than one thousand one hundred dollars, regardless of the monthly adjusted gross income of the obligee, the obligor shall be ordered to pay the minimum monthly order amount in child support based on the number of children due support and this subsection (7). The minimum order amount shall be fifty dollars per month for one child, seventy dollars per month for two children, ninety dollars per month for three children, one hundred ten dollars per month for four children, one hundred thirty dollars per month for five children, and one hundred fifty dollars per month for six or more children. The minimum order amount shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(D) [Editor's note: This version of subsection (7)(a)(II)(D) is effective July 1, 2020.] In any circumstance in which the obligor's monthly adjusted gross income is less than six hundred fifty dollars, regardless of the monthly adjusted gross income of the obligee, the obligor must be ordered to pay the minimum monthly order amount in child support. The minimum order amount is ten dollars per month, regardless of the number of children between these parties. The ten-dollar minimum monthly order amount is not adjusted by the number of the obligor's overnights with children.

(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:

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

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 an action to establish or modify child support, whether temporary or permanent, the guidelines and schedule of basic child support obligations 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. A court 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, instances where one of the parents spends substantially more time with the child than is reflected by a straight calculation of overnights, 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 may be 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 a factor enumerated in this section does not exist.

(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.

(g) [Editor's note: Subsection (8)(g) is effective July 1, 2020.] For purposes of calculating child support, when two or more children are included in the child support worksheet calculation and the parties have a different number of overnights with two or more of the children, the number of overnights used to determine child support is determined by adding together the number of overnights for each child and then dividing that number by the number of children included in the child support worksheet calculation.

(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) (a) Adjustments for health care expenditures for children.

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 five 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 is, however, required to provide insurance when it becomes 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 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 behavioral or mental health 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) [Editor's note: This version of the introductory portion to subsection (11)(a) is effective until July 1, 2020.] 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:

(a) [Editor's note: This version of the introductory portion to subsection (11)(a) is effective until July 1, 2020.] 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:

(11) Extraordinary adjustments to the schedule of basic child support obligations - periodic disability benefits.

(a) [Editor's note: This version of the introductory portion to subsection (11)(a) is effective July 1, 2020.] By agreement of the parties or by order of court, the following reasonable and necessary expenses incurred on behalf of the child must be divided between the parents in proportion to their adjusted gross income:

(I) [Editor's note: This version of subsection (11)(a)(I) is effective until July 1, 2020.] Any expenses for attending any special or private elementary or secondary schools to meet the particular educational needs of the child; and

(I) [Editor's note: This version of subsection (11)(a)(I) is effective July 1, 2020.] Any expenses for attending any special or private elementary or secondary schools to meet the particular educational needs of the child or public school mandatory school fees; 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) [Editor's note: This version of subsection (11)(c) is effective until July 1, 2020.] 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.

(c) [Editor's note: This version of subsection (11)(c) is effective July 1, 2020.]

(I) If the noncustodial parent receives periodic disability benefits granted by the federal "Old-age, Survivors, and Disability Insurance Act", 42 U.S.C. sec. 401 et seq., due to the disability of the noncustodial parent or receives employer-paid retirement benefits from the federal government due to the retirement of the noncustodial parent, the noncustodial parent shall notify the custodial party, and the delegate child support enforcement unit, if a party to the case, within sixty days after the noncustodial party receives notice of such benefits.

(II) Absent good cause shown, the custodial parent must apply for dependent benefits for the child or children within sixty days after the custodial parent receives notification pursuant to subsection (11)(c)(I) of this section, and shall cooperate with the appropriate federal agency in completing any application for benefits.

(III) In cases where the custodial parent receives periodic disability benefits granted by the federal "Old-age, Survivors, and Disability Insurance Act", 42 U.S.C. sec. 401 et seq., 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 must be reduced in an amount equal to the amount of the benefits.

(d) In cases where the custodial parent receives a lump sum retroactive award for benefits granted by the federal old-age, survivors, or disability insurance benefits program, 42 U.S.C. sec. 7, on behalf of a dependent child due to the disability of the noncustodial parent, or receives a lump sum retroactive award for employer-paid retirement benefits from the federal government on behalf of a dependent child due to the retirement of the noncustodial parent, the lump sum award received by the custodial parent must be credited against any retroactive support judgment or any past-due child support obligation, regardless of whether the past-due obligation has been reduced to judgment owed by the noncustodial parent. This credit must not be given against any amounts owed by the noncustodial parent for debt as defined in section 14-14-104 or for any retroactive support or any arrearage that accrued prior to the date of eligibility for

disability or retirement benefits as determined by the social security administration. Any lump sum retirement or disability payments due to the retirement or disability of the noncustodial parent, received by the custodial parent as a result of the retirement or disability of the noncustodial parent, paid for a period of time that precedes the date of such benefit date eligibility, or any amount in excess of the established child support order or judgment, must be deemed a gratuity to the child.

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

(13) Emancipation.

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

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

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

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

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

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

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

(14) Annual exchange of information.

(a) When a child support order is entered or modified, unless otherwise ordered by the court, the parties shall exchange information relevant to child support calculations on changes that have occurred since the previous child support order, and other appropriate information once a year or less often, 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 parents shall include the forms 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 with the forms and shall file the documents 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, a modification pursuant to this paragraph (a) shall not 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) Postsecondary 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;

(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 must be reviewed at least once every four years by a child support commission, which commission is hereby created. After the periodic review described in this section, the commission shall submit a report to the governor and to the general assembly explaining the commission's recommendations.

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

(c) The child support commission consists 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 must also include the director of the division in the state department of human services who is responsible for child support enforcement, or his or her designee, a director of a county department of human or social services, the child support liaison to the judicial department, interested parties, a certified public accountant, and parent representatives. In making his or her appointments to the commission, the governor may appoint persons as parent representatives. In making his or her appointments to the commission, the governor shall attempt to assure geographical diversity. The remaining two members of the commission are 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 must not be members of the same political party.

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

(d.5) and (e) (Deleted by amendment, L. 2013.)

History

Source:

L. 71: R&RE, p. 527, Section 1. C.R.S. 1963: Section 46-1-15.L. 85: (2) added, p. 592, Section 10, effective July 1.L. 86: (3) to (16) added, p. 718, Section 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, Sections 5, 7, 38, 9, 6, 8, effective July 10.L. 89: (7)(d.5) added and (17) amended, p. 792, Sections 14, 15, effective July 1.L. 90: (18) added, p. 890, Section 10, effective June 7; (7)(a)(I)(A), (7)(c), and (13)(a)(III) amended and (7)(b)(III) added, pp. 564, 890, 889, Sections 35, 10, 9, effective July 1.L. 91: (18)(a) amended, p. 359, Section 21, effective April 9; (1.5) added and (7)(b), (13), (14) (b), and (18) amended, p. 234, Section 1, effective July 1.L. 92: (17) amended, p. 2171, Section 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, Sections 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, Sections 1, 7, effective July 1; (1.5)(b)(I), (2), and (10)(c) amended and (3.5) and (18)(e) added, pp. 1559, 1560, Sections 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, Section 5, effective July 1; (18)(a) amended, p. 2645, Section 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, Section 7, effective July 1.L. 97: (1.5) amended and (1.6) and (1.7) added, p. 565, Section 20, effective July 1; (1.5), (3.5), (7)(b), and (18)(a) amended and (1.6) and (1.7) added, pp. 1264, 1312, Sections 8, 49, effective July 1; (5) and (17) amended, p. 561, Section 5, effective July 1; (7)(a)(I)(B) amended, p. 1240, Section 37, effective July 1.L. 98: (3)(a), (7)(d.5)(I), and (13)(a)(II) amended, p. 768, Section 21, effective July 1; (7)(a)(I)(A) amended, p. 921, Section 7, effective July 1; (4)(c), (8), (9), (10)(c), and (14) amended, p. 1398, Section 42, effective February 1, 1999.L. 99: (3.5) amended, p. 1085, Section 2, effective July 1; (7)(a)(I)(A) amended, p. 621, Section 15, effective August 4.L. 2000: (18) amended, p. 1709, Section 6, effective July 1.L. 2001: (18)(a) amended and (19) added, p. 721, Section 4, effective May 31.L. 2002: (10)(a)(II), (10)(b), and (13.5)(h)(II) amended, p. 286, Section 1, effective January 1, 2003.L. 2003: (3)(b)(III) amended, p. 1011, Section 15, effective July 1; (10)(a)(II)(B), (10)(a)(II)(C), and (10)(a)(II)(D) amended, p. 1264, Section 51, effective July 1.L. 2004: (5), (10)(a)(II)(A), (13.5)(h)(II), and (19) amended, p. 385, Section 1, effective July 1.L. 2005: (1.6) amended, p. 80, Section 1, effective August 8.L. 2006: IP(1.6) amended, p. 516, Section 1, effective August 7.L. 2007: Entire section amended with relocated provisions, p. 73, Section 1, effective March 16; (16)(d.5) added, p. 178, Section 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, Sections 5, 3, effective May 31; (6)(b)(I) and (10)(a) amended, p. 1651, Section 7, effective January 1, 2008.L. 2008: (4)(b) and (5)(b)(I) amended, p. 1347, Section 1, effective July 1.L. 2009: (5)(a)(I)(H) amended, (SB 09-282), ch. 288, p. 1397, Section 59, effective January 1, 2010.L. 2013: (5)(a)(I)(D), (5)(a)(I)(O), (5)(a)(I)(W), (6)(b)(I), (7)(a)(II)(B), (7)(a)(II)(C), (7)(a)(II)(D), and (16) amended, (5)(a)(II)(E) and (11)(d) added, and (7)(b) R&RE, (HB 13-1209), ch. 103, pp. 327, 332, Sections 1, 2, effective January 1, 2014.L. 2014: (16)(d) amended, (SB 14-153), ch. 390, p. 1961, Section 7, effective June 6.L. 2016: (6), (8)(e), (10)(g), and (14)(a) amended, (HB 16-1165), ch. 157, pp. 493, 494, 495, Sections 4, 5, 6, 7, effective January 1, 2017.L. 2017: (3)(f) and (3)(g) amended, (SB 17-294), ch. 264, p. 1391, Section 29, effective May 25; (10)(h)(II) amended, (SB 17-242), ch. 263, p. 1295, Section 113, effective May 25; (16)(a) amended, (SB 17-234), ch. 154, p. 520, Section 1, effective August 9.L. 2018: (3)(a), IP(5)(a)(I), and (5)(a)(I)(Y) amended and (5)(a)(I.5) added, (HB 18-1385), ch. 251, p. 1546, Section 2, effective August 8; (16)(c) amended, (SB 18-092), ch. 38, p. 400,

Section 14, effective August 8.L. 2019: (5)(b)(I) and (5)(b)(III) amended and (5)(b)(I.5) and (5)(b.5) added, (HB 19-1215), ch. 270, p. 2521, Section 1, effective July 1; (16)(a) amended, (HB 19-1215), ch. 270, p. 2552, Section 2, effective July 1; (3)(c.5) and (8)(g) added and (6)(b), (7)(a)(II)(B), (7)(a)(II)(C), (7)(a)(II)(D), (7)(b), IP(11)(a), (11)(a)(I), and (11)(c) amended, (HB 19-1215), ch. 270, p. 2521, Section 1, effective July 1, 2020.

▼ Annotations

Notes

Editor's note: (1) This section was amended in Senate Bill 07-015, resulting in the relocation of provisions. For a detailed comparison of relocated provisions, see the table located in the back of the index.

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

(3) Provisions of this section were amended in 2013, effective January 1, 2014. For the versions of such provisions that were effective until January 1, 2014, see <https://tinyurl.com/child-support-pre2014>.

(4) Section 9 of chapter 270 (HB 19-1215), Session Laws of Colorado 2019, provides that the act:

(a) Changing subsections (5)(b)(I) and (5)(b)(III) and adding subsections (5)(b)(I.5) and (5)(b.5) applies to orders entered on or after July 1, 2019; and

(b) Adding subsections (3)(c.5) and (8)(g) and changing subsections (6)(b), (7)(a)(II)(B), (7)(a)(II)(C), (7)(a)(II)(D), (7)(b), IP(11)(a), (11)(a)(I), and (11)(c) applies to orders entered on or after July 1, 2020.

Cross references: (1) For provisions concerning deductions for health insurance from wages due an obligor ordered to provide health insurance, see Section 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. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

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

Case Notes

ANNOTATION

I. General Consideration.

II. Duty of Support.

III. Award of Support.

A. Amount.

B. Discretion of Court.

C. Modification.

D. Termination upon Emancipation.

IV. Past Due Support.

I. GENERAL CONSIDERATION.

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

"Retroactive Child Support: Conflicting Decisions and Practical Advice", see 41 Colo. Law. 91 (Aug. 2012). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017).

Annotator's note. Since Section 14-10-115 is similar to Section 14-10-115 as it existed prior to the 2007 amendment relocating provisions, Section 46-1-5 (1)(c), C.R.S. 1963, Section 46-1-5, CRS 53, and CSA, C. 56, Section 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. $\$=L01706000363001059*001059$ *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. $\$=L01706000604000701*000701$ *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. $\$=L01706000536001135*001135$ 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 $\$=L01706000601000632*000632$ Smith v. Casey, 198 Colo. 433, 601 P.2d 632 (1979); $\$=L01706000612001163*001163$ In re Hartford, 44 Colo. App. 303, 612 P.2d 1163 (1980); In re Dickey, 658 P.2d 276 (Colo. App. 1982); In re Steele, 714 P.2d 497 (Colo. App. 1985); In re Stone, 749 P.2d 467 (Colo. App. 1987).

II. DUTY OF SUPPORT.

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

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

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

Only the parents' incomes and not the guardians' are to be included in the determination of child support, as supported by Section 15-14-209 (2), which states, "A guardian need not use the guardian's personal funds for the ward's expenses". Sidman v. Sidman, 240 P.3d 360 (Colo. App. 2009).

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

Child must reside and be supported by spouse granted custody and support. Wife who has been granted child custody is only entitled to support payments when the children were actually with her and supported by her. $\$=L01706000516001129*001129$ 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. $\$=L01706000073001375*001375$ 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.

§=L01706000367000594*000594 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. §=L01706000522000752*000752 Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, §=L01706000536001135*001135 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.

§=L01706000372000149*000149 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. §=L01706000381000455*000455 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. \$=L01706000492000081*000081 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. \$=L01706000492000081*000081 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. \$=L01706000492000081*000081 Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

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

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

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

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

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

A motion to quash subpoenas issued to third persons allegedly contributing to support of children was properly granted where the voluntary donations of such parties had nothing to do with a defendant's duty to support children. \$=L01706000382000809*000809 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. $\$=L01706000514000073*000073$ 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. $\$=L01706000497001006*001006$ 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. $\$=L01706000326000662*000662$ Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

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

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

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

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

Trial court did not err in excluding adoption subsidies and foster care payments from mother's gross income in child support considerations. These payments are income of the children on whose behalf the mother receives them and are not part of mother's income. In re Dunkle, 194 P.3d 462 (Colo. App. 2007).

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

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

Determination of conscionability of support provisions. To determine whether the child support provisions of a separation agreement which has been incorporated into a prior dissolution decree are fair, reasonable, and just, a trial court should consider and apply all the criteria provided by the general assembly for judicial evaluation of the provisions of property settlement agreements: the economic circumstances of the parties, Section 14-10-112; the division of property, Section 14-10-113(1); and the provisions for maintenance, Section 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. \$=L01706000283000951*000951 Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955); \$=L01706000310000554*000554 Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957); \$=L01706000382000809*000809 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. \$=L01706000391000361*000361 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. \$=L01706000522000752*000752 Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, \$=L01706000536001135*001135 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. \$=L01706000492000081*000081 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. \$=L01706000541001274*001274 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. \$=L01706000541001274*001274 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. \$=L01706000514000073*000073 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. \$=L01706000604000701*000701 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. \$=L01706000598000524*000524 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, Section 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.

§=L01706000598000524*000524 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. §=L01706000598000524*000524 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. §=L01706000530001001*001001 In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, §=L01706000540001076*001076 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. §=L01706000363001059*001059 Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

Where there was no verification of the father's income as required by this section, the trial court was directed to take additional evidence to determine the income and to modify the support order. In re Velasquez, 773 P.2d 635 (Colo. App. 1989).

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

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

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

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

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

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

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

Court abused its discretion in finding that mother's underemployment was voluntary where mother worked only 32 hours per week so that she would have time to take the parties' child, who had cerebral palsy, to physical therapy. In re Foss, 30 P.3d 850 (Colo. App. 2000).

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

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

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

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

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

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

In order to impute income based upon a parent's voluntary underemployment, the trial court must examine all relevant factors bearing on whether the parent is shirking his or her child support obligation by unreasonably foregoing higher paying employment that he or she could obtain, and, if the parent is, the trial court must determine what he or she can reasonably earn and contribute to the child's support. If the trial court does not find that the parent is shirking his or her child support obligation by unreasonably foregoing higher paying employment, the court should calculate the amount of child support from actual gross income only. *People v. Martinez*, 70 P.3d 474 (Colo. 2003).

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

The court must make findings sufficient to support a determination of underemployment. Imputing support without factual findings supporting a determination of underemployment is in error. *In re Martin*, 42 P.3d 75 (Colo. App. 2002); *In re Garrett*, 2018 COA 154, -- P.3d --.

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

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

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

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

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

In computing child support, the trial court erred in failing to consider either the wife's income as represented by the monthly maintenance award or her ability to earn income from the marital property distributed to her under the court's decree. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

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

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

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

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

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

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

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

The amount received as gross income from lottery winnings is used to calculate child support for the year in which the income is received. Thereafter, if a parent invests a portion of the funds which were received as income in one year, any interest earned in the subsequent years is properly included as gross income for purposes of calculating child support in those years. In re Bohn, 8 P.3d 539 (Colo. App. 2000).

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

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

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

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

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

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

Person who is involuntarily terminated from his position due to his own misconduct is not voluntarily unemployed or underemployed. Whether a person lost a job because of willful or knowing misconduct is not determinative of whether the person is voluntarily unemployed or underemployed. What is determinative is the person's subsequent course of action and decision making. A person who has been involuntarily terminated from a position may thereafter become voluntarily unemployed or underemployed by not attempting in good faith to obtain new employment at a comparable salary or by refusing to accept suitable employment offers. People ex rel. J.R.T., 55 P.3d 217 (Colo. App. 2002), aff'd sub nom. People v. Martinez, 70 P.3d 474 (Colo. 2003).

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

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

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

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

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

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

The court must consider the father's and the child's financial resources in addition to considering the mother's resources in deciding the appropriate amount of the parents' contributions to the child's college expenses. In re Eaton, 894 P.2d 56 (Colo. App. 1995) (decided under law in effect prior to 1993 amendment).

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

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

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

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

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

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

P.2d 18 (Colo. App. 1990).

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

Husband's personal injury settlement payments are a financial resource that constitutes "gross income" under the child support guidelines. In re Fain, 794 P.2d 1086 (Colo. App. 1990).

Proper for court to base child support calculation on father's monthly income from his railroad annuity despite that income deriving from a previously divided asset since the property division does not change the status of those monthly payments as an income source to be considered in determining the husband's child support obligation. In re Zappanti, 80 P.3d889 (Colo. App. 2003).

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

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

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

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

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

The employer denominated the VERP benefit as a retirement benefit, credited the benefit to the father's retirement account in its pension plan, and calculated the amount using age and years of service, therefore the VERP benefit was an employer-contributed pension or retirement benefit. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

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

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

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

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

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

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

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

Meaning of "extraordinary medical expenses". Extraordinary medical expenses, as defined in subsection (12)(b), must be "uninsured". Where psychological counseling services were insured expenses under the father's medical insurance plan, trial court erred in requiring him to pay for child's counseling by a psychologist not participating in the plan absent a finding that such counseling was not adequately or reasonably covered by the plan. In re Ahrens, 847 P.2d 257 (Colo. App. 1993).

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

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

Military housing and food allowances are part of gross income under the plain language of subsection (5)(a)(I)(X). \$=L01742000410000492*000492 In re Parental Responsibilities of L.K.Y., 2013 COA 108, 410 P.3d 492.

Military housing and food allowances that are not paid to children or on behalf of the children but rather are paid to the parent as part of parent's salary should not be deducted under subsection (11)(b) as financial resources of the children despite the fact that the parent is the recipient of temporary child support. $\$=L01742000410000492*000492$ In re Parental Responsibilities of L.K.Y., 2013 COA 108, 410 P.3d 492.

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).

Where parties' income exceeded the highest combined gross income level set forth in the guidelines, the amount set for child support at the highest combined gross income level reflects the minimum, not maximum, presumptive amount. In such circumstances, the court may use its discretion to determine a higher amount based on the factors set forth in subsection (2)(b). In re Boettcher, 2018 COA 34, -- P.3d --.

Because the children's needs are of paramount importance in determining the child support obligation, in calculating the appropriate amount of child support, the court should look at, among other things, the costs of food, shelter, clothing, medical care, education, and recreational costs at the level enjoyed before the dissolution. In re Schwaab and Rollins, 794 P.2d 1112 (Colo. App. 1990).

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

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

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

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

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

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

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

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

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

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

B. Discretion of Court.

Determination of child support is in the sound discretion of the trial court, and in the absence of an abuse of that discretion, not shown here, it will not be disturbed on review. \$=L01706000346000302*000302 Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959); \$=L01706000351000845*000845 Lanz v. Lanz, 143 Colo. 73, 351 P.2d 845 (1960); \$=L01706000353000379*000379 Huber v. Huber, 143 Colo. 255, 353 P.2d 379 (1960); \$=L01706000497001006*001006 Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Ferguson v. Ferguson, Colo. App. , 507 P.2d 1110 (1973); \$=L01706000522000752*000752 Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, \$=L01706000536001135*001135 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. \$=L01706000497001006*001006 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. \$=L01706000391000473*000473 *Menor v. Menor*, 154 Colo. 475, 391 P.2d 473 (1964); \$=L01706000423000328*000328 *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. \$=L01706000391000473*000473 *Menor v. Menor*, 154 Colo. 475, 391 P.2d 473 (1964); \$=L01706000423000328*000328 *Giambrocco v. Giambrocco*, 161 Colo. 510, 423 P.2d 328 (1967).

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

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

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

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

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

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

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

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

Attendance at a private school may be approved where it is necessary to meet the particular educational needs of the child. In re West, 94 P.3d 1248 (Colo. App. 2004).

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

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

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

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

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

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

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

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

Award constituted an application of, and not a deviation from, the guidelines where the evidence and the findings were sufficient to support only a partial offset of the child's income for her pro rata share of reasonable and necessary monthly expenses as well as the maintenance of a fund for vacations, one-time purchases, and other occasional expenses. In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Modification.

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

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

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

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

Substantial and continuing changed circumstances requirement and postsecondary education support orders. Absent application of the age of emancipation (Section 14-10-122 (4)) or medical insurance (Section 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 Section 14-10-122 alters this clear, unambiguous requirement. *In re Chalats*, 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 Chalats*, 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 Section 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. \$=L01706000283000951*000951 *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. \$=L01706000358000864*000864 *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 \$=L01706000391000361*000361 *Colorado. Kane v. Kane*, 154 Colo. 440, 391 P.2d 361 (1964).

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

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

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

Child's income may allow for a reduction of the support obligation if the court determines that it does "actually diminish basic needs" of child. *In re Kluver*, 771 P.2d 34 (Colo. App. 1989).

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

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

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

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

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

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

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

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

In considering a modification of child support, the trial court is bound by the facts and circumstances of the parents and the children as they exist at the time of the hearing. If there is a pending foreclosure sale, the court should await the sale's completion and complete its record on the amount of debt incurred before it determines the modification question. In re Kimbrough, 784 P.2d 852 (Colo. App. 1989).

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

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

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

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

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

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

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

In determining how much of the principal of an inheritance to include in gross income, the trial court should apply a two-part test: (1) The court must decide whether an inheritance is monetary; and, if so, (2) whether the recipient used the principal as a source of income either to meet existing living expenses or to increase the recipient's standard of living. In re A.M.D., 78 P.3d 741 (Colo. 2003).

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

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

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

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

Court should compare child support order currently in effect with child support guidelines to determine whether a substantial and continuing change of circumstances exists. Although the parties' current child support order was the result of the parties' agreement to a reduced amount of child support, the

court should have compared the current child support order with the presumed child support obligation under the guidelines at the time of mother's motion to determine if mother had shown a substantial and continuing change of circumstances sufficient to maintain her motion for modification. In re M.G.C.-G., 228 P.3d 271 (Colo. App. 2010).

D. Termination upon Emancipation.

The resolution of the question of emancipation was concerned more with the extinguishment of parental rights and duties than with the removal of the disabilities of infancy, and it occurred only when there was a complete severance of the filial tie, and the child's possession or lack of possession of the right to vote had little or no bearing on the determination as to whether such tie had or had not been severed. \$=L01706000492000081*000081 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. \$=L01706000492000081*000081 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. \$=L01706000492000081*000081 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. \$=L01706000492000081*000081 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. \$=L01706000474000800*000800 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 Section 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. \$=L01706000303000238*000238 *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. \$=L01706000391000361*000361 *Kane v. Kane*, 154 Colo. 440, 391 P.2d 361 (1964).

A trial court was without authority to forgive delinquent payments of support money. \$=L01706000339000677*000677 *Gier v. Gier*, 139 Colo. 289, 339 P.2d 677 (1959); \$=L01706000358000864*000864 *Engleman v. Engleman*, 145 Colo. 299, 358 P.2d 864 (1961); \$=L01706000385000259*000259 *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. \$=L01706000470000581*000581 *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. \$=L01706000470000581*000581 *Dorsey v. Dorsey*, 28 Colo. App. 63, 470 P.2d 581 (1970).