

Colorado Child Support Commission

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Colorado Child Support Commission

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Colorado Child Support Commission Report

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INTRODUCTION

Purpose of the Report

This report summarizes the findings of the Colorado Child Support Commission during its first three months of operation. In addition to reporting the Commission's findings to the Governor and General Assembly as required by statute and recommending statutory changes, the report outlines concerns regarding the Child Support Guidelines that have been identified to date. The Commission plans to circulate this report to solicit further input on these issues and any additional issues that have not yet been identified.

Creation of the Commission

The Colorado Child Support Commission was appointed by Governor Romer by Executive Order on July 19, 1990 and August 27, 1990 pursuant to H.B. 90-1254. The Commission is composed of 15 members and is required by statute to include representation of the following groups and individuals:

- A custodial parent
- A non-custodial parent
- A judge
- A court referee
- The state court administrator or his designee
- The director of the division of child support enforcement or his designee
- A representative of the family law section of the Colorado Bar Association
- An attorney knowledgeable in child support
- A director of a county department of social services
- An administrator of a county delegate child support enforcement unit, and
- Two legislators

Commission members serve as uncompensated volunteers and are reimbursed only for travel and mileage expenses connected with Commission meetings and hearings. The creation of the Commission was designed to meet the federal requirement contained in the Family Support Act of 1988 (Public Law 100-485) that all states review their guidelines at least once every four years.

Charge of the Commission

The purpose of the Commission is to review the Colorado Child Support Guidelines which are used to calculate the amount of child support orders. The Commission is required to report the

results of this review and any recommended changes in the guidelines to the Governor and the General Assembly by December 1, 1990. Additionally, the Commission is required to conduct a review and submit a report on the child support guidelines every four years thereafter to ensure that their application results in the determination of appropriate child support order amounts. More specifically, for the report to be completed by December 1, 1990, the General Assembly required that the commission study two issues: (1) The issue of prohibiting or limiting an increase in the basic child support obligation of a non-custodial parent based solely on an increase in income of the custodial parent, and (2) The issue of establishing and enforcing child support orders with respect to children whose mother or father is under the age of 18 years by ordering the parents of the minor mother and father to support the children until the mother or father reaches the age of 18 years.

Meetings

The Commission met every other week, beginning August 23, 1990 through November 27, 1990, on Tuesday evenings from 5:00 p.m. to 8:00 p.m. The Commission was staffed by Andrea Baugher, Division of Child Support Enforcement, Colorado Department of Social Services. Ms. Baugher's invaluable assistance to the Commission included providing written materials on the guidelines to the Commission; recording and preparing minutes from Commission meetings; coordinating travel of Commission members; and implementing the public notice required for Commission public hearings.

The first major task for the Commission was study of the Colorado Child Support Guidelines. The broad-based Commission membership provided a diversity of experience, expertise and perspectives for the Commission to begin its study. In addition to reviewing extensive written materials related to the guidelines compiled by the staff, Commission members received briefings from its own members and from outside experts. During the course of its meetings, the Commission developed a comprehensive list of issues relating to the guidelines. Subsequently, the Commission divided these issues into those which could reasonably be addressed in time for inclusion in the report due December 1, 1990, and those which would require further study.

Public Hearings

The Commission conducted two public hearings on the Child Support Guidelines. The first public hearing was held in Denver, Colorado, on September 25, 1990, from 5:00 p.m. to 8:00 p.m. at

the Marriott Hotel, 1701 California Street in conjunction with Colorado Child Support Week. The second public hearing was held in Grand Junction, Colorado, on October 10, 1990, from 5:30 p.m. to 8:30 p.m. at the City and County Building, 520 Rood Avenue. Notices of the public hearings were sent to a targeted mailing list of interested individuals and agencies and press releases were sent to all of the Colorado daily newspapers, 15 of the major weekly papers and the newsrooms in the State Capitol and to the Associated Press. In addition, legal notices were run in the Denver Post and Rocky Mountain News. Approximately 100 persons attended and 32 testified at the Denver hearing and 40 attended with 19 testifying in Grand Junction. Public testimony raised a broad range of issues including: the application of the guidelines to self-employed persons; accessibility of the courts; attorneys' fees; and non-custodial parent concerns about the amount of the orders calculated under the guidelines. Custodial parents had serious concerns about enforcement of support orders which are not within the scope of the Commission's charge and which are therefore not addressed in the recommendations. The Commission does wish to note that it is clear from the public input that enforcement of support orders is a serious, chronic problem.

Interest Group Meetings

The Commission took comments from interested groups and organizations. These included the Family Law Section of the Colorado Bar Association, the American Academy of Matrimonial Lawyers, the Colorado Association of Child Support Enforcement Administrators, and the IV-D Attorneys Association (referring to Title IV-D of the Social Security Act which relates to child support). It should be noted that these were brainstorming sessions with the members of these groups and that the comments made do not reflect an official policy of the group. The comments noted here are illustrative and do not attempt to set forth in detail the substance of these lengthy meetings.

Child Support Enforcement Administrators

The Child Support Administrators group noted that the guidelines have been an extremely beneficial tool in helping to reduce the litigation and emotions involved in determining support amounts. They questioned the guideline amounts at the low range of incomes, saying that these amounts might be too high. Many of them desired a return to the law prior to July 1, 1990, concerning voluntary underemployment, because they felt that some obligors regularly quit jobs to avoid paying child support. Finally, the administrators felt that the age of majority should remain age 21.

American Academy of Matrimonial Lawyers

The matrimonial lawyers organization expressed their unanimous disagreement with any requirement that custodial parents account for child support money received and spent. They also expressed concern about the changes made to the guidelines statute during the 1990 legislative session relating to higher education expenses. There was considerable discussion regarding the age of emancipation and its relationship to support for higher education. It was suggested that the Commission investigate the laws of states with an age of emancipation of 18. The college expense adjustment was noted to be unworkable in its present form.

The members inquired as to the appropriate treatment of a business that is losing money. Should a parent who has two businesses be able to deduct losses from one business from profits in the other business for calculating support? What is the appropriate treatment of capital gains which will not recur? Should income be imputed to a parent with non-producing assets? For example, why should a parent with a \$250,000 bank account earning \$1800 be treated differently than a parent with an unencumbered \$250,000 house?

The income question was also raised regarding overtime. Should parents be penalized for being "overemployed" because they work long hours to make ends meet? Should expenses for private boarding school be treated similarly to the adjustment for higher education?

The members who were present unanimously opposed changing the treatment of maintenance as a deduction from income. The group also felt that health insurance premiums paid by parents for children need to be given more weight in the guidelines calculation.

IV-D Attorneys

The consensus of the IV-D Attorneys group was that the age of majority should remain age 21; the issue of parental accountability for child support payments can be addressed by the periodic exchange of financial affidavits between the parties; and no provisions should be made for the liability of grandparents for the support of their children's children. This group discussed but did not reach consensus on issues relating to the second family adjustment, higher education costs, and the imputation of income to the custodial parent past a child's second birthday.

Family Law Section

The Family Law Section of the Colorado Bar Association members expressed concerns regarding college expenses. Some stated that children in college should be expected to contribute a

certain amount toward the cost of their education, perhaps the amount used for calculating financial aid. The question was raised as to why a child in a divorced family can enforce a right to higher education when a child in an intact family could not.

The question of accountability had adherents on both sides. Supporters of accountability felt that there is a fiduciary responsibility to the children while opponents felt it would be burdensome and create conflict.

Several individuals supported guidance in the statute for incomes above the current tables, suggesting that this would increase settlements and reduce the burden on the court. Support was expressed for establishing criteria for deviation from the guidelines.

The members of the bar stated that there is confusion and conflict in rulings on calculating extraordinary and ordinary medical expenses. An example was given in which a judge ruled that the first \$100 each month spent on a chronic condition was an ordinary expense and therefore the sole responsibility of the custodian. A suggestion was made to divide all medical expenses in proportion to income.

Concern was also expressed over the shared custody calculation in that it encourages parents to fight over visitation because it impacts child support. The suggestion was made to give credit for all overnights rather than only those in excess of 25 percent.

It was also suggested that income for purposes of calculating child support should not include overtime or a second job. The idea behind this suggestion was that a child is entitled to a portion of the full-time income of a parent, but that a parent should be entitled to the benefits of work beyond full-time.

Guidance was requested on the treatment of the self-employed. What are appropriate deductions from gross income?

Background of the Guidelines

The idea of using child support guidelines as a set formula for determining support order amounts grew out of the notion that children, custodial parents, and non-custodial parents would all benefit from an approach which would yield consistent order amounts in similar factual and financial circumstances. Unfairness would be reduced and compliance increased by a neutral mathematical procedure reflecting the actual costs of raising children. Early success with the use of formulas in states such as Wisconsin and Delaware led Congress to include a provision requiring all states to use child support guidelines in the Child

Support Enforcement Amendments of 1984, a piece of legislation which passed both houses unanimously in a rare display of bipartisan unity.

In Colorado, the Commission on Child Support included in its 1985 final report a recommendation that the state adopt a formula developed by the Commission, known as the Colorado Child Support Guidelines. The Commission said the guidelines would meet the objectives of establishing an adequate standard for the support of children, making awards consistent, and improving the efficiency of the court process by promoting settlements and giving judges and referees guidance in determining award levels.

The General Assembly agreed with these arguments and enacted House Bill 1275 which became effective in 1986. The guidelines are codified at Section 14-10-115, 6B C.R.S. (1987).

The Colorado Child Support Guidelines are based on the Income Shares model developed by the National Center for State Courts. They are the result of intensive review of the economic evidence relating to the average levels of spending on children in intact households. The guidelines are predicated on the notion that the child should receive the same proportion of parental income that he or she would have received if the parents lived together.

The Income Shares model was selected by the Commission for a number of reasons. First, this model bases the child support obligation on the parents' ability to pay, ensuring that the child shares in his or her parents' standard of living. Second, the guidelines take into account the income of both parents in determining the support award. Finally, the Income Shares model promotes the involvement of both parents in the child's upbringing by allowing adjustments for shared physical custody situations.

The Colorado General Assembly also determined that the child support guidelines should create a rebuttable presumption in the determination of support obligations. This allows the guidelines to serve as a standard against which agreements regarding support can be measured. Courts are free to deviate from the guidelines in instances in which their application would be inequitable, provided that such deviation is accompanied by findings specifying the reasons for the deviation.

The few amendments to the 1986 statute have made changes in the way the guidelines treat second families, college expenses, and underemployment of non-custodial parents. However, the dollar amounts contained in the support schedule have not changed, and the overall scheme of the Income Shares model remains intact.

Existing Child Support Framework

The Income Shares model operates on the following basic principles:

- A child of separated parents should receive the same basic support that he or she would receive in an intact family.
- That support is determined by reference to a table in the statute that reflects the basic support needs of a child in a family with a given level of income.
- Expenses for child care, education and extraordinary medical care are added to the basic support amount.
- The resulting total support amount is then divided between parents in proportion to their respective incomes. (See the Worksheets in Appendix 1 for illustration of this process.)

Variations on this theme occur when the children spend substantial time with each parent or when physical custody of one or more children is with each parent. An adjustment is made for shared physical custody when a child is with each parent at least 25% of the time. The basic support amount is increased by 50% to reflect the increased costs when the child spends substantial time in each household and an adjustment is made to reflect the time the child spends with each parent. A split custody adjustment is made when at least one child resides with each parent.

STATUS OF THE COMMISSION'S WORK

The Commission has determined that a number of significant issues require study and probable changes. These issues are set out in the Issues and Recommendations sections below. The three month time period between the appointment of the Commission and the due date for the first report did not permit the research and analysis that would be required for an adequate treatment of all of these issues.

The Commission has chosen five issues for immediate action based on perceived urgency and the ability to reach conclusions in the time available. These issues, together with specific recommendations, are included in the Recommendations section of the Report. Although the enabling legislation for the Commission only requires reports every four years, the urgency of pending issues will require the second report in 1991. The remaining issues which have been identified but not yet investigated are on the Commission's agenda for 1991. These issues may be supplemented by others that are raised in the course of the Commission's work.

The Commission plans to submit its next report by December 1, 1991.

COMMISSION AGENDA FOR 1991

The Commission has conducted an extensive investigation to identify problems in the child support guidelines. This investigation included the public hearings and meetings with interest groups outlined above as well as the internal deliberations of the Commission.

Each issue area includes a definition of the issue and a background discussion. Interested individuals and groups are encouraged to submit suggestions to the Commission on these and other issues for consideration for the 1991 report. The issues are not listed in order of importance. The Commission will set priorities for study early in 1991.

Criteria for Deviation

The mathematically computed guideline amount is the presumptive amount of child support. The court may deviate from this amount where the application of the guideline would be inequitable. Any such deviation must be accompanied by findings specifying the reasons for deviation.

A parent wishing to deviate from the presumptive amount faces a dilemma. The concept of deviation implies a standard that must be distinguished to justify a different amount. What is the "standard" against which the deviation is measured? A standard is never defined in the statute nor are any criteria set forth that would justify deviation. Some public input to the Commission indicates that contested deviations are rare. This may in part be due to the lack of guidance regarding deviation. The Commission intends to explore the development of statutory criteria for deviation.

Use of Net Versus Gross Income

The starting point for the support calculation is the income of each parent. The Colorado statute uses before tax (gross) income rather than after tax (net) income in this computation. The argument in favor of using gross income is that it excludes complex tax issues from the support litigation. The argument in favor of using net income is that excluding tax considerations may lead to inequitable results. It has been suggested that the real impact on low income obligors is less apparent when gross income is used and that recipients of tax-free income receive a windfall under this computation method.

Linking the Imputation of Income and Child Care

When a parent is voluntarily unemployed or underemployed, child support is calculated based upon imputed income (a determination of potential income). The statute does not specify what happens when the custodian would need to pay for child care in order to earn the income that has been imputed to them. This is significant because child care is added to the basic support amount and therefore substantially increases the child support order. The Commission will explore whether child care costs should be imputed when income is imputed to the custodian and the evidence shows that child care would be necessary to earn the imputed income.

Treatment of Maintenance

Certain adjustments are made to income prior to the calculation of support. One of the most significant adjustments is that maintenance is deducted from the income of the payor and added to the income of the payee prior to calculating the child support.

It has been suggested that the child support calculation should come first so that maintenance can take into account the resources remaining after payment of child support. An alternative view is that the Income Shares model is premised on allocating the costs of children in proportion to income and that to ignore the income redistribution effect of maintenance would contradict that principle.

Effect of Additional Dependents

Support of dependents, other than those involved in the computation before the court, is deducted from the income of the parent responsible for support. This is computed by deducting the amount of an order for support or, if there is no order, by computing the support from the guideline table. Some members of the public have stated that the effect of such additional dependents on child support is too small and others have stated that it is too great.

Low Income Obligors

The table for the basic support obligation is based on research data regarding expenditures for children in intact families. Some members of the public have commented that this is unrealistic because the expenses involved in operating two households preclude expenditures at that level. To the extent that criticism has validity, the impact is most acute for low income obligors: the lower the discretionary income, the greater the impact of the child support obligation.

The public input and examples explored by the Commission

indicated many instances of unrealistically high levels of support for low income obligors. The Commission will explore the possibility of adjusting the support at low income levels in connection with the revision of the guideline tables discussed below.

Income Above Guideline Levels

The tables used to calculate support stop at a combined gross income for both parents of \$10,000 per month. Above that level the support is calculated on a case-by-case basis. While the number of families at this level is relatively small, they are more likely to have attorneys and to be able to litigate the calculation of child support. The lack of guidance at these higher income levels therefore leads to additional litigation and consumption of judicial resources. This is the same argument that supported the creation of the guidelines in the first place. Additional guidance in the form of an extension of the tables or more specific rules for calculation of support would ease the burden on the courts and encourage settlement of these cases. The Commission will explore extending the upper limit of the table in connection with the revision of the table discussed below.

Revision of Guideline Table

The basic support obligation used in the computation is derived from a table in the statute based on the combined income of the parents and the number of children. This table was constructed by applying percentages of income expended on child-rearing from the 1972-73 Consumer Expenditure Survey to 1984 income levels and adjusting the results to 1986 dollars by means of a Consumer Price Index adjustment.

Time and inflation have the potential to cause discrepancy between the table and the reality it seeks to reflect. By way of example, the percentage expenditure on children is generally higher at lower income levels. As inflation causes families to move up the table without any increase in real earnings, the child support amount will be reduced in real dollars.

It may also be appropriate to revisit the underlying data to determine whether the tables still represent the most accurate picture of expenditures on children. The public input to the Commission thus far also suggests the need to review the appropriateness of the presumptive amount of support at various levels.

A caveat in this analysis is that the investigation of these issues will be limited by the quality of the research data and the professional time available to the Commission.

Payment of Child Care Costs

The child support calculation divides expenditures on children into two categories: “basic” expenditures and “add-on” expenditures. Basic expenditures include food, clothing, housing, routine medical care and transportation. These items are included in the basic support amount derived from the table and are the same for all children whose parents have the same income, regardless of actual expenditures.

The add-on expenditures include child care, extraordinary medical care and education expenses. These items are based on actual expenditures. The rationale for separating these items is that they do not occur in every family and may vary widely in cost. It is also relatively straightforward to determine the actual expenditures for these items.

Child care payments create several problems. There is the question of whether the payments are actually made. Some witnesses at public hearings believed that custodial parents alleged child care expenses for purposes of child support calculation that they did not continue to incur. One solution may be to provide for direct contribution by the obligor to the child care expenditures. A countervailing consideration is that this might increase accounting problems and place a burden on a custodian if the obligor did not make the payments.

Another issue related to child care is that the obligor may also incur child care costs which should be included in the calculation. While current law provides for this calculation, the existing forms do not lend themselves to this calculation.

Other witnesses questioned the reasonableness of expenditures on child care. The statute limits these costs to “the level required to provide quality care from a licensed source.” It has been suggested that a presumptive level for such costs would assure reasonableness and reduce litigation.

Adjustment for Split Custody

A special calculation is required when at least one child resides with each parent. (See Worksheet C, Appendix 1.) This calculation is cumbersome and there is no guidance in the statute for certain situations, such as a split custody arrangement with more than 25 percent visitation with one or more children. The calculation should be simplified and guidance inserted in the statute for hybrid time-sharing arrangements.

Entitlement to Tax Exemption

Parents are entitled to dependency exemptions on their tax returns which may have a significant financial impact. While the court may issue orders allocating the exemptions, the statute neither addresses the economic impact of the exemption nor guides the court on the allocation of exemptions between the parents. The Commission will explore whether it is appropriate to address these issues in the statute.

Age of Majority

The age of emancipation controls the period of time during which a child is entitled to support. The Commission has received input indicating that Colorado is in the minority of states with an age of emancipation of 21. The Commission will investigate the emancipation patterns of other states and whether a change is warranted.

Accountability of Custodian

The Commission received pointed requests for accountability on the part of child support recipients. The nature of the argument is that one who spends funds that are not voluntarily provided by a third party has a fiduciary responsibility to account for the use of those funds. Analogies were suggested to trustees and beneficiaries of Social Security survivors benefits.

The opposing arguments held that requiring an accounting would place an unreasonable burden on the obligee, that it is apparent that the costs of children exceed the usual child support payment and that it would create a source of ongoing conflict.

Health Insurance

Under current law, health insurance premiums are treated as deductions from the monthly gross income of the obligor or obligee when the premium includes health insurance coverage for the child. The commission has obtained feedback from its meetings and public hearings that this deduction should be moved from section one of the worksheet to section four and treated as an adjustment to the child support obligation.

The health insurance premium is much like day care costs in that it is variable, but often a substantial, direct cost. The obligor currently receives minimal credit for this expenditure.

The costs in section four of the worksheet are the major costs attributable to raising the child. These costs are to be shared proportionately by both parents. When the health insurance premium is a cost directly attributable to the child, then that direct cost should be a "below the line" adjustment in section four, shared by both parents.

If the health insurance premium is factored in as a "below the line" adjustment, three issues must be addressed: (1) the determination of the actual cost for the insurance for the child; (2) consequences if the health insurance premium is not paid; and, (3) the definition of reasonable cost for the insurance.

RECOMMENDATIONS OF THE 1990 REPORT

Grandparent Support

ISSUE

The legislation which created the Commission mandated consideration of imposing a duty of support on grandparents whose minor children have children:

“[T]he Child Support Commission shall study the issue of establishing and enforcing child support orders with respect to children whose mother or father is under the age of eighteen years by ordering the parents of the minor mother and father to support the children until the mother or father reached the age of eighteen years. The Commission shall also study the recovery from parents of minor mothers and fathers of any payments of public assistance made to or for the benefit of any dependent child whose mother is under eighteen years of age until the minor mother or father reached the age of eighteen.”

RECOMMENDATION

The commission has studied the issue of grandparent liability and after careful consideration recommends that child support orders not be established against the parents of minor children when their children have children.

This recommendation is based upon the following: (1) information obtained by the commission at public hearings; (2) input from the Family Law Section of the Colorado Bar Association and the Colorado Association of Child Support Administrators; (3) review of grandparent liability legislation and studies in the state of Wisconsin; and (4) an analysis of cost versus benefits. The commission found that information obtained from all sources dovetailed into the cost benefit analysis.

At the interest group meetings there was consensus that parents of minor children, whether those minor children are receiving public assistance benefits or not, should not be held liable for the financial support of their grandchildren. This is based primarily on the fact that the benefits would not justify the cost to establish and enforce the orders. It would be very expensive to collect a small amount of child support for the relatively short period between the establishment of the order and when the children reach the age of

eighteen years.

Drafting a fair statute would be extremely complex. Among the factors which would need to be considered in such a statute are the following:

- Treatment of couples where one parent is over 18 and the other is not
- Cases in which the father is unknown or paternity is not established
- Low income grandparents
- Grandparents residing out of state
- Grandparents who are deceased or incarcerated
- Treatment of a non-custodial grandparent
- Cases in which a child would become 18 before an order could be established

Even if a fair statute could be drafted, it would need to accomplish worthwhile objectives. The Commission has identified some objectives that might justify such a statute:

- Reduce the number of teen pregnancies
- Recover AFDC expenditures
- Promote shared grandparent support
- Increase communication between parents and teenagers
- Educate teenagers about sexual behavior
- Educate teenagers about family responsibility

In a report published by the Wisconsin Department of Health and Social Services in November 1988, it was found that the grandparent liability law had virtually no measurable effect. Since it appears that few cases would be affected, excessive resources would be required and few if any benefits are to be anticipated, the Commission recommends against the enactment of a grandparent liability statute.

ISSUE

This issue is mandated for consideration by H.B. 90-1254. Under the current statute there is the possibility, at low income levels, that a child support order for a non-custodial parent could be increased solely because of increased income of the custodian. The Commission has heard testimony and is generally in agreement that this situation is not equitable.

A "quick fix" solution to the problem would be to simply prohibit an increase in child support due solely to increased income of the custodian. This solution would create another problem because families with similar economic circumstances would have different

Prohibiting or Limiting an Increase in Child Support Based Solely on an Increase in the Custodian's Income

child support orders depending on whether it was a first order or a modification. This differential runs contrary to the foundations of the guidelines and certainly does not seem to provide more fair child support orders.

RECOMMENDATION

The Commission recommends that this problem be solved as part of the overall revision of the basic support obligation table and a detailed review of the computation process. This review and revision is part of the 1991 agenda of the Commission.

Voluntary Underemployment

ISSUE

The most crucial step in the calculation of child support is the determination of income. The goals of the guidelines would be frustrated if a parent could evade the support obligation by being voluntarily unemployed or underemployed. The statute deals with this problem by providing for imputation of income to a parent who is voluntarily unemployed or underemployed based on their potential income. (C.R.S. 14-10-115(7)(b)(I), 6B C.R.S. (1987).) Prior to July of 1990, there was a belief that in practice the imputation of income had made it nearly impossible for an obligor to take a lower paying job, no matter how laudable the reasons, because he or she could not afford to pay the support level at the imputed income level. By contrast, a custodial parent could choose a lower paying job so long as he or she were willing to accept somewhat reduced child support.

A 1990 amendment eliminated this issue by preventing imputation of income for any parent gainfully employed on a full-time basis. This swing of the pendulum has created yet another problem. So long as the full-time employment test is met, an obligor can choose very low income employment for the purpose of depriving a child of support or without consideration for the child's needs. This gives an angry parent excessive power to reduce needed support.

RECOMMENDATION

The Commission recommends an intermediate position between the extremes which explicitly provides for a voluntary reduction in income in certain circumstances but gives the court the power to protect children from economic hardship due to the actions of a spiteful or irresponsible parent. The recommended language provides protection from imputation of income only where employment is full-time and (1) temporary leading to an increase in income; or (2) a good faith career change which is not intended

to deprive a child of support and does not unreasonably reduce the support available to the child.

While the Commission is concerned about potential evasions of child support responsibility that might arise under existing statutory language, it also recognizes the need not to penalize parents who change employment for appropriate reasons. There are three types of appropriate reasons that the Commission is attempting to recognize with its proposed language. First is a change in employment that may lead to a temporary reduction in earnings, but is calculated to result in increased earnings at a later time. Examples might include taking a different job which facilitates more schooling, starting a business which has reasonable prospects of increasing a parent's income after an initial start-up period, and accepting a legal clerkship or medical residency intended to increase skills and subsequent employment prospects. Second is a change in employment which has the primary purpose of increasing occupational fulfillment and does not unduly diminish the support available to the child. Examples might include a job change from a stockbroker to a teacher, an accountant to a minister, or a business executive to administrator of a non-profit organization. Third is a job change which is intended to increase parental involvement with the child's upbringing, while not unduly diminishing economic support available to the child. Examples might include a parent who takes a job with less demand for consistent overtime, a parent who accepts a lower-paying job to be closer to the child, or a parent who accepts a lower-paying job to reduce travel demands.

The proposed statutory language is intended to reduce potential abuse that can arise under existing law, but balance the child's current need for economic support with bona fide parental job changes that may temporarily or even permanently reduce the amount of child support that will be ordered. The Commission recognizes that the proposed language will require careful judicial discretion to achieve an equitable and consistent balancing of the interests of parents and children. Given the variety and complexity of these types of situations that can arise, the Commission believes that the proposed language is appropriate, and that a significant measure of judicial discretion is needed in its application.

ENACTING LANGUAGE

Repeal and reenact C.R.S. 14-10-115(7)(b)(III) to read:

(b)(III) For the purposes of this section, a parent shall not be deemed "underemployed" if: (1) the employment is temporary and is reasonably intended to result in higher income within the foreseeable future, or (2) the employment is a good faith career choice which is not primarily intended to deprive a child of support and does not unreasonably reduce the support available to a child.

Limiting Shared Custody Support to Sole Custody Level

ISSUE

The amount of child support is calculated differently when the number of overnights with each parent exceeds 25 percent. This takes into account the increased expenses of the parent with less time and the reduced burden on the parent with the majority of time. Due to an idiosyncrasy in the statute, the shared custody adjustment sometimes results in an increase in child support instead of a decrease, contrary to legislative intent.

RECOMMENDATION

The statute should be amended so that the amount of support for a parent with shared custody can never exceed the amount for a parent with less than 25 percent of the overnights.

ENACTING LANGUAGE

Amend 14-10-115 (14)(b) by ADDING A NEW SENTENCE:

In no case shall the amount of child support ordered to be paid exceed the amount of child support which would otherwise be ordered to be paid if the parents did not share physical custody.

College Adjustment

ISSUE

The guidelines were amended in 1990 to adjust the payment of child support to the custodial parent when a child is away from home attending college. The current language provides an equitable adjustment when the child support order is for one child only. The adjustment eliminates the duplication of expenses associated with housing paid by the obligor.

A problem exists when the order applies to two or more children when less than the total number are attending an institution of higher education. The language is ambiguous as to how the

reduction is calculated in this situation. If the statute is read literally the adjustment becomes disproportionately large and the child support obligation insufficient to meet the needs of the remaining children. Therefore, the higher education adjustment should affect only the portion of the child support order attributed to the child away from home.

RECOMMENDATION

Because the basic support table does not add an equal share for each child, we must determine the portion of the basic support subject to the college adjustment. Since there are fixed costs to the custodial parent, whether it is one child or more, the adjustment should be applied to the portion for the last child, or children, affecting the order. If there are two children and one is attending an institution of higher education then the adjustment would apply to the difference in basic support between one child and two children in the table.

ENACTING LANGUAGE

Amend C.R.S. 14-10-115(13) to read:

14-10-115(13) Extraordinary adjustments to schedule. (a)(III) The expenses for any institution of higher education, minus contributions of the child that actually reduce expenditures, including employment and scholarships or grants. If the expenses for higher education include room and board, then the basic child support obligation shall be reduced by an amount equal to THE PORTION OF the basic child support obligation, as derived from the schedule contained in paragraph (b) of subsection (10) of this section, ATTRIBUTABLE TO THE CHILD OR CHILDREN ATTENDING THE INSTITUTION OF HIGHER EDUCATION multiplied by the percentage of the time the child resides at the institution of higher education or is away from the home of the custodial parent. AS USED IN THIS SECTION THE PORTION OF THE BASIC CHILD SUPPORT OBLIGATION ATTRIBUTABLE TO THE CHILD OR CHILDREN ATTENDING THE INSTITUTION OF HIGHER EDUCATION IS THE DIFFERENCE BETWEEN THE BASIC CHILD SUPPORT OBLIGATION FOR ALL OF THE CHILDREN AND THE BASIC CHILD SUPPORT OBLIGATION FOR THE SAME NUMBER OF CHILDREN LESS THE NUMBER OF CHILDREN ATTENDING AN INSTITUTION OF HIGHER EDUCATION.

**Next Commission
Report December 1,
1991**

ISSUE

The Commission has made considerable progress in the identification and solution of problems with the Child Support Guidelines. However, the three months available in the first year of operation were not sufficient to deal with the many complex issues that exist.

RECOMMENDATION

That the Commission continue its work through 1991 and issue its next report to the Governor and General Assembly on December 1, 1991.

ENACTING LANGUAGE

The Colorado Child Support Commission shall deliver its next report to the Governor and General Assembly on December 1, 1991.

MINORITY REPORT

In order to provide the broadest range of input to this report, the Commission decided to include as a minority report the comments of any member or members who wished to diverge from or add to the majority position of the Commission. This section presents those comments with the names of members supporting the position following.

RECOMMENDATION

The Commission adopted as one of its short-term goals revising the existing statutory language regarding reduction of the basic child support obligation to reflect room and board expenses paid on behalf of a child attending an institution of higher education.

The current statute provides as follows:

14-10-115 (13) Extraordinary adjustments to schedule. (a)(III) The expenses for any institution of higher education, minus contributions of the child that actually reduce expenditures, including employment and scholarships or grants. If the expenses for higher education include room and board, then the basic child support obligation shall be reduced by an amount equal to the basic child support obligation as derived from the schedule contained in paragraph (b) of subsection (10) of this section multiplied by the percentage of the time the child resides at the institution of higher education or is away from the home of the custodial parent.

The Commission received information indicating this provision is causing considerable confusion. Some of the issues inherent in this provision are as follows:

1. 14-10-115 (13) allows "division" of certain expenses "between the parents in proportion to their adjusted gross income," by agreement of the parties or order of the court. The first sentence of (13)(a)(III) allows the division of expenses of higher education. The second sentence apparently requires that the basic support obligation be reduced by the entire amount attributable to room and board. Thus there is an inherent inconsistency between the "voluntary" or court-ordered "division" of higher education expenses (first sentence) and the mandatory reduction of the basic support obligation apparently required under the second sentence.

2. The second sentence can be construed to require a

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reduction in support to an amount lower than the obligor would otherwise be required to pay. If the obligor is paying support on behalf of two or more children living in the same household, and one of those children begins attending an institution of higher education, the obligor could theoretically reduce his or her support payments below the amount which would otherwise be payable on behalf of the children not attending an institution of higher education.

This language does not limit the amount by which overall (combined) support may be reduced to help offset the direct room and board expenses of any child or children attending an institution of higher education.

3. The second sentence is not limited to room and board expenses actually paid by the obligor.

4. The second sentence says the basic support obligation shall be reduced by the room and board expenses "multiplied by the percentage of the time the child resides at the institution of higher education or is away from the home of the custodial parent." It is not clear whether this time is to be computed using individual days ("overnights"), weeks, or months, or how weekends, holidays, or vacations are to be treated. Thus each case becomes a difficult factual determination.

The Commission was provided an affidavit filed by the sponsor of the second sentence of 14-115-13 (a)(III), State Senator Jeff Wells, outlining his apparent intent in drafting this language. According to Senator Wells, "The intent of the amendment was to prohibit the non-custodial parent from having to pay for the child's room and board both at home and at the institution of higher education for the same time period." Senator Wells further states, "The amendment was not intended to reduce the payment of combined child support and room and board below the child support level established by the state guidelines, nor was it intended to apply in cases where the non-custodial parent is not paying the expense of room and board at an institution of higher education in addition to child support according to the state guidelines."

I would recommend that the second sentence of 14-10-115 (a)(III) be deleted, leaving the parties and the court the option to apportion all expenses of an institution of higher education. I would recommend that the General Assembly consider enacting a new subsection (14-10-115 (15) C.R.S.) dealing specifically with the expenses incurred for room and board at an institution of higher education, and allowing a reduction for those

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expenses for an obligor who pays such expenses directly. The reduction should not reduce the obligor's overall child support payment to an amount lower than he or she would otherwise owe for children remaining in the household (not attending college), and should also apply only for the time period during which the expenses are actually paid. Also outlined is a suggested expedited procedure for implementing such a reduction.

I also believe that the General Assembly should establish a presumption that a child is "emancipated" when the child reaches his or her 18th birthday. If the child is actively pursuing an education through the 12th grade (or its equivalent), emancipation would occur upon completion of that education. For a child who is not actively pursuing education, the age of majority should be the child's 18th birthday.

If this presumption were to be enacted, references to support for a child attending an institution of higher education could generally be deleted from the statute. The first sentence of 14-10-115 (13)(a)(III) could be left in place, allowing the parents or the court to apportion higher education costs, but the second sentence of that subsection (and the language being recommended by the Commission) could be eliminated. It would then be up to the parent(s) and the child(ren) to determine how college expenses will be paid. In my opinion, the responsibility for determining how college costs will be paid most properly rests with the parent(s) and child(ren) and should not be regulated under state law.

Therefore, although I concur with the Commission's actions in clarifying the existing law, I strongly recommend that the Commission consider the "age of emancipation" issue during 1991 and recommend any appropriate action to the Colorado General Assembly.

John B. Rigg, Jr.

ENACTING LANGUAGE

Current Language: 14-10-115 (13) Extraordinary adjustments to schedule. (a)(III) The expenses for any institution of higher education, minus contributions of the child that actually reduce expenditures, including employment and scholarships or grants. (DELETE 1990 LANGUAGE: IF THE EXPENSES FOR HIGHER EDUCATION INCLUDE ROOM AND BOARD, THEN THE BASIC CHILD SUPPORT OBLIGATION SHALL BE REDUCED BY AN AMOUNT EQUAL TO THE BASIC CHILD SUPPORT OBLIGATION AS DERIVED FROM THE SCHEDULE CONTAINED IN

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PARAGRAPH (b) OF SUBSECTION (10) OF THIS SECTION MULTIPLIED BY THE PERCENTAGE OF THE TIME THE CHILD RESIDES AT THE INSTITUTION OF HIGHER EDUCATION OR IS AWAY FROM THE HOME OF THE CUSTODIAL PARENT.)

ADD NEW SUBSECTION 14-10-115 (15) TO READ AS FOLLOWS:

14-10-115 (15) Expenses for higher education. (a) A parent obligated to pay child support may notify the court in a sworn affidavit that the parent will pay expenses for higher education for a child or children for whom support has been ordered under this section. A copy of the affidavit shall be provided to the other parent of such child or children.

(b) The affidavit shall state the name of the institution of higher education which each child is attending, the expenses attributable to room and board and the time period for which those expenses are to be paid, and the arrangements made by the parent to pay those expenses directly on behalf of each child. The affidavit shall also contain any information and calculations necessary to show how child support payments will be affected by the reduction allowed under paragraph (c) of this subsection.

(c) Unless an objection has been filed as provided in paragraph (d) of this subsection, effective 30 days after the affidavit is filed the parent obligated to pay child support may reduce the basic child support obligation by an amount equal to the room and board expenses which that parent is actually paying directly on behalf of each child. Such reduction shall only be made for child support payments during the time period for which the expenses are actually paid. In no case shall the basic child support obligation be reduced to an amount less than the parent would otherwise be required to pay for other children not attending an institution of higher education or for whom the parent is not paying such room and board expenses directly.

(d) The parent entitled to receive child support may file a sworn statement within 15 days of receipt of the affidavit, objecting to the proposed reduction in the basic support obligation. Objections may only be made on the following grounds:

(i) That the affidavit does not contain the information required under paragraph (b) of this subsection;

(ii) That the child is not attending or will not attend the institution of higher education stated in the affidavit;

(iii) That the parent filing the affidavit has not made arrangements to pay the room and board expenses directly on behalf of

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the child; or

(iv) That the proposed reduction would cause an extraordinary financial hardship for the other children for whom child support is payable.

(e) Within 30 days of receipt of the statement objecting to the reduction, the court shall conduct a hearing and determine whether the basic support obligation shall be reduced as provided in paragraph (c) of this subsection. The court may award attorneys' fees and costs to the prevailing party.

(f) If the court determines that either party has filed a false affidavit, statement, or other information required under this subsection, the court shall hold such party in contempt and may order such remedies, including reimbursement to the other party for attorneys' fees and costs, as the court may deem appropriate.

John B. Rigg, Jr.

APPENDIX 1

Worksheet A - Child Support Obligation: Sole Custody

Worksheet B - Child Support Obligation: Shared Physical Custody

Worksheet C - Child Support Obligation: Split Custody

Child Support Guidelines, 14-10-115, C.R.S.

INSTRUCTIONS: Use this Worksheet **ONLY** if any of the Expenses/Income listed in lines 9a, 9b, 9c or 9d is directly paid out or received by the parents in a different proportion than the percentage share of income entered on line 3 of Worksheet B. Example: If the wife pays all of the day care, or parents split education/medical costs 50/50 and line 3 is other than 50/50. If there is more than one 9c expense, the calculations on lines E and F below must be made for each expense.

WORKSHEET FOR LINE 12 ADJUSTMENTS

	Petitioner	Respondent
A. Total amount of direct payments made for line 9a expenses times each parent's percentage of income (Line 3) (Proportionate share)	\$	\$
B. The excess amount of direct payments made by the parent who pays more than the amount calculated on line A above. (Difference between amount paid and proportionate share)	\$	\$
C. Total amount of direct payments made for 9b expenses times each parent's percentage of income (Line 3)	\$	\$
D. The excess amount of direct payments made by the parent who pays more than the amount calculated on line C above.	\$	\$
E. Total amount of direct payments made for 9c expenses times each parent's percentage of income (Line 3)	\$	\$
F. The excess amount of direct payments made by the parent who pays more than the amount calculated on line E above.	\$	\$
G. Total amount of items for line 9d times each parent's percentage of income (Line 3)	\$	\$
H. The excess amount received by the parent who receives more than the amount calculated on line G above.	\$	\$
I. For each parent, add lines B, D and F Subtract line H. Enter result on line 12 of Worksheet B, on front.	\$	\$

DISTRICT COURT, _____ COUNTY _____, COLORADO
CASE NO. _____ Div/CtRm _____

WORKSHEET C — CHILD SUPPORT OBLIGATION: SPLIT CUSTODY

In re the Marriage of: _____ and _____

Petitioner

Respondent

Children with Petitioner	Date of Birth	Children with Respondent	Date of Birth
TOTAL	With Petitioner	TOTAL	With Respondent
		Petitioner	Respondent
			Combined
1. MONTHLY GROSS INCOME	\$	\$	
a. Minus preexisting child support payment	-	-	
b. Minus health insurance premium (if child included)	-	-	
c. Minus maintenance paid	-	-	
2. MONTHLY ADJUSTED GROSS INCOME	\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Line 2. Each parent's income divided by Combined Income)	%	%	
4. BASIC CHILD SUPPORT OBLIGATION (Apply line 2 Combined to Child Support Schedule.)			\$
5. PRORATED PERCENTAGE (Number of children with each parent divided by the total number of children)	%	%	
6. PRORATED BASIC OBLIGATION FOR CHILDREN WITH EACH PARENT (Multiply line 5 by line 4 for each parent)	\$	\$	
a. Work-Related Child Care Costs [Actual costs minus Federal Tax Credit. CRS 14-10-115(11)]	+	+	
b. Extraordinary Medical Expenses [Uninsured only. CRS 14-10-115(12)]	+	+	
c. Extraordinary Expenses [Agreed to by parties or by order of court. CRS 14-10-115(13)]	+	+	
d. Optional: Minus extraordinary adjustments. [Child's income if substantial. CRS 14-10-115(13)(b)]	-	-	
7. TOTAL PRORATED CHILD SUPPORT OBLIGATION (Add lines 6, 6a, 6b, and 6c. Subtract line 6d.)	\$	\$	
8. ALLOCATION TO PARTIES			
9. PERCENTAGE SHARE OF INCOME (Line 3)	%	%	
10. PETITIONER'S OBLIGATION TO RESPONDENT (Line 7 times line 9 as arrows indicate)	\$		
11. RESPONDENT'S OBLIGATION TO PETITIONER (Line 7 times line 9 as arrows indicate)		\$	
12. RECOMMENDED CHILD SUPPORT ORDER (Subtract lesser amount from greater amount in lines 10 and 11 and place result under greater amount)	\$	\$	

PREPARED BY:

DATE:

Use reverse side for comments, calculations, or rebuttals (including any additional adjustments for sharing or if one parent directly pays extraordinary expenses (Lines 6a, 6b, 6c, 6d) for children in custody of other parent.)

SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS

Combined Monthly Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
\$ 100	\$20-\$50 Per Month. Based on Resources and Living Expenses of Obligor and Number of Children Due Support					
200						
300						
400						
500	\$ 20	\$ 31	\$ 39	\$ 44	\$ 48	\$ 51
600	89	109	119	134	138	141
700	157	187	199	224	228	232
800	171	265	279	314	318	323
900	184	286	359	404	408	414
1000	198	307	385	434	473	505
1100	210	327	410	463	504	538
1200	223	346	434	490	534	570
1300	235	366	459	517	563	602
1400	248	385	483	544	593	634
1500	260	404	506	570	622	665
1600	271	422	528	595	649	695
1700	282	440	550	620	676	724
1800	293	457	572	645	704	753
1900	305	475	595	671	731	782
2000	318	494	619	698	761	814
2100	330	513	642	725	790	845
2200	343	531	666	752	819	876
2300	355	550	690	779	849	907
2400	368	569	714	806	878	939
2500	380	588	738	833	908	970
2600	392	606	761	859	936	1001
2700	404	625	784	885	965	1031
2800	415	644	808	911	994	1062
2900	427	662	831	937	1023	1092
3000	439	681	855	964	1052	1123
3100	451	700	878	990	1080	1154
3200	463	718	901	1016	1109	1184
3300	474	737	925	1042	1138	1215
3400	486	756	948	1068	1167	1245
3500	498	775	972	1095	1196	1276
3600	508	790	990	1115	1219	1301
3700	516	802	1005	1132	1237	1320
3800	524	814	1020	1149	1255	1340
3900	532	826	1035	1166	1274	1360
4000	540	838	1050	1183	1292	1380
4100	548	850	1065	1201	1310	1399
4200	556	862	1080	1218	1329	1419
4300	564	875	1096	1235	1347	1439
4400	572	887	1111	1252	1366	1458
4500	580	899	1126	1269	1384	1478
4600	588	911	1141	1286	1402	1498
4700	596	923	1156	1303	1421	1517
4800	604	935	1171	1320	1439	1537
4900	612	947	1186	1337	1458	1557
5000	620	959	1201	1354	1476	1577
5100	628	971	1216	1372	1494	1596
5200	636	983	1231	1389	1513	1616
5300	644	996	1247	1406	1531	1636

14-10-115. Child support - guidelines - schedule of basic child support obligations. (1) 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 his support, without regard to marital misconduct, after considering all relevant factors including:

- (a) The financial resources of the child;
- (b) The financial resources of the custodial parent;
- (c) The standard of living the child would have enjoyed had the marriage not been dissolved;

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(d) The physical and emotional condition of the child and his educational needs; and

(e) The financial resources and needs of the noncustodial parent.

(2) In orders issued pursuant to this section, the court may order that either parent or both parents initiate the inclusion of the child under a medical insurance policy currently in effect for their benefit, purchase medical insurance for the child, or in some other manner provide for the current or future medical needs of the child. At the same time, the court may make a determination of whose responsibility it shall be to pay required medical insurance deductibles and copayments.

(3) (a) In any action to establish or modify child support, whether temporary or permanent, the child support guideline as set forth in this section shall be used as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guideline where its application would be inequitable. Any such deviation shall be accompanied by written or oral findings by the court specifying the reasons for the deviation.

(b) (I) Stipulations presented to the court shall be reviewed by the court for approval. No hearing shall be required; however, the court shall use the guideline to review the adequacy of child support orders negotiated by the parties as well as the financial affidavit which fully discloses the financial status of the parties as required for use of the guideline.

(II) When a child support order is entered or modified, the parties may agree, or the court may require the parties to exchange financial information pursuant to paragraph (c) of subsection (7) of this section and other appropriate information once a year or less often, by regular mail, for the purpose of updating and modifying the order without a court hearing. The parties shall use the approved standardized child support guideline forms in exchanging such financial information. Such forms shall be included with any agreed modification or an agreement that a modification is not appropriate at the time. If the agreed amount departs from the guidelines, the parties shall furnish statements of explanation, which shall be included with the forms and shall be filed with the court. The court shall review the agreement pursuant to this subparagraph (II) and inform the parties by regular mail whether or not additional or corrected information is needed, or that the modification is granted, or that the modification is denied. If the parties cannot agree, no modification pursuant to this subparagraph (II) shall be entered; however, either party may move for or the court may schedule, upon its own motion, a modification hearing.

(c) The child support guideline has 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.

- (4) The child support guideline does the following:
- (a) Calculates 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;
 - (b) Adjusts the child support based upon the needs of the children for extraordinary medical expenses and work-related child care costs;
 - (c) Allocates the amount of child support to be paid by each parent based upon physical custody arrangements.
- (5) The child support guideline shall be used with standardized child support guideline forms to be issued by the supreme court on or before November 1, 1986, which shall be periodically updated when necessary.
- (6) The child support guideline may be used by the parties as the basis for periodic updates of child support obligations.
- (7) **Determination of income.** (a) For the purposes of the guideline specified in subsections (3) to (14) of this section, "income" means 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 the following guidelines:
- (I) (A) "Gross income" includes income from any source and includes, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workmen's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and alimony or maintenance received.
 - (B) "Gross income" does not include benefits received from means-tested public assistance programs, including but not limited to aid to families with dependent children, supplemental security income, food stamps, and general assistance.
 - (II) (A) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses 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.
 - (III) Expense reimbursements or in-kind payments received by a parent in the course of employment or self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses.
- (b) (I) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income; except that a determination of potential income shall not be made for a

(b) Schedule of basic child support obligations:

COMBINED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX OR MORE CHILDREN
	\$20 - \$50 PER MONTH, BASED ON RESOURCES AND LIVING EXPENSES OF OBLIGOR AND NUMBER OF CHILDREN DUE SUPPORT					
100						
200						
300						
400						
500	20	31	39	44	48	51
600	89	109	119	134	138	141
700	157	187	199	224	228	232
800	171	265	279	314	318	323
900	184	286	359	404	408	414
1000	198	307	385	434	473	505
1100	210	327	410	463	504	538
1200	223	346	434	490	534	570
1300	235	366	459	517	563	602
1400	248	385	483	544	593	634
1500	260	404	506	570	622	665
1600	271	422	528	595	649	695
1700	282	440	550	620	676	724
1800	293	457	572	645	704	753
1900	305	475	595	671	731	782
2000	318	494	619	698	761	814
2100	330	513	642	725	790	845
2200	343	531	666	752	819	876
2300	355	550	690	779	849	907
2400	368	569	714	806	878	939
2500	380	588	738	833	908	970
2600	392	606	761	859	936	1001
2700	404	625	784	885	965	1031
2800	415	644	808	911	994	1062
2900	427	662	831	937	1023	1092
3000	439	681	855	964	1052	1123
3100	451	700	878	990	1080	1154
3200	463	718	901	1016	1109	1184
3300	474	737	925	1042	1138	1215
3400	486	756	948	1068	1167	1245
3500	498	775	972	1095	1196	1276
3600	508	790	990	1115	1219	1301
3700	516	802	1005	1132	1237	1320
3800	524	814	1020	1149	1255	1340
3900	532	826	1035	1166	1274	1360
4000	540	838	1050	1183	1292	1380
4100	548	850	1065	1201	1310	1399
4200	556	862	1080	1218	1329	1419
4300	564	875	1096	1235	1347	1439
4400	572	887	1111	1252	1366	1458
4500	580	899	1126	1269	1384	1478
4600	588	911	1141	1286	1402	1498

parent that is physically or mentally incapacitated or is caring for a child two years of age or younger for whom the parents owe a joint legal responsibility.

(II) Repealed. L. 87, p. 600, § 38, effective July 1, 1987.

(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.

(d) The amount of child support actually paid by a parent with an order for support of other children shall be deducted from that parent's gross income. For the purposes of this section, "other children" means children who are not the subject of this particular child support determination.

(e) The actual cost of the provision of adequate health insurance coverage that includes the children shall be deducted from the gross income of a parent.

(8) **Shared physical custody.** For the purposes of this section, "shared physical custody" means that each parent keeps the children overnight for more than twenty-five percent of the year and that both parents contribute to the expenses of the children in addition to the payment of child support.

(9) **Split custody.** For the purposes of this section, "split custody" means that each parent has physical custody of at least one of the children.

(10) **Basic child support obligation.** (a) (I) The basic child support obligation shall be determined using the schedule of basic child support obligations contained in paragraph (b) of this subsection (10). The basic child support obligation shall be divided between the parents in proportion to their adjusted gross incomes.

(II) The category entitled "combined gross income" in the schedule means the combined monthly adjusted gross incomes of both parents. For the purposes of subsections (3) to (14) of this section, "adjusted gross income" means gross income less preexisting child support obligations and less alimony or maintenance actually paid by a parent and the cost of health insurance coverage that includes the children. For combined gross income amounts falling between amounts shown in the schedule, basic child support amounts shall be extrapolated. The category entitled "number of children due support" in the schedule means children for whom the parents share joint legal responsibility and for whom support is being sought. The judge may use his judicial discretion in determining child support in circumstances where a parent is living below a minimum subsistence level; except that a minimum child support payment of twenty to fifty dollars per month, based on resources and living expenses of the obligor, shall be required even in such instances. The judge may use his judicial discretion in determining child support in circumstances where combined adjusted gross income exceeds the uppermost levels of the guideline.

COMBINED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX OR MORE CHILDREN
4700	596	923	1156	1303	1421	1517
4800	604	935	1171	1320	1439	1537
4900	612	947	1186	1337	1458	1557
5000	620	959	1201	1354	1476	1577
5100	628	971	1216	1372	1494	1596
5200	636	983	1231	1389	1513	1616
5300	644	996	1247	1406	1531	1636
5400	652	1008	1262	1423	1550	1655
5500	660	1020	1277	1440	1568	1675
5600	668	1032	1292	1457	1586	1695
5700	676	1044	1307	1474	1605	1714
5800	684	1056	1322	1491	1623	1734
5900	692	1068	1337	1508	1642	1754
6000	700	1080	1352	1525	1660	1774
6100	707	1092	1366	1543	1677	1793
6200	713	1101	1378	1556	1692	1808
6300	719	1110	1389	1569	1706	1824
6400	724	1119	1401	1582	1721	1839
6500	730	1128	1413	1595	1735	1854
6600	735	1137	1424	1608	1750	1869
6700	741	1146	1436	1621	1764	1884
6800	747	1155	1447	1634	1779	1900
6900	752	1164	1459	1647	1793	1915
7000	758	1173	1471	1660	1808	1930
7100	763	1182	1482	1673	1822	1945
7200	769	1191	1494	1686	1837	1960
7300	775	1200	1505	1699	1851	1976
7400	780	1209	1517	1712	1866	1991
7500	786	1218	1529	1725	1880	2006
7600	791	1227	1540	1738	1895	2021
7700	797	1236	1552	1751	1909	2036
7800	803	1245	1563	1764	1924	2052
7900	808	1254	1575	1777	1938	2067
8000	814	1263	1587	1790	1953	2082
8100	819	1272	1598	1803	1967	2097
8200	825	1281	1610	1816	1982	2112
8300	831	1290	1621	1829	1996	2128
8400	840	1302	1638	1848	2008	2150
8500	850	1318	1658	1870	2032	2176
8600	860	1333	1677	1892	2055	2202
8700	870	1349	1697	1914	2079	2227
8800	880	1364	1716	1936	2103	2253
8900	890	1380	1736	1958	2127	2278
9000	900	1395	1755	1980	2151	2304
9100	910	1411	1775	2002	2175	2330
9200	920	1426	1794	2024	2199	2355
9300	930	1442	1814	2046	2223	2381
9400	940	1457	1833	2068	2247	2406

COMBINED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX OR MORE CHILDREN
9500	950	1473	1853	2090	2271	2432
9600	960	1488	1872	2112	2294	2458
9700	970	1504	1892	2134	2318	2483
9800	980	1519	1911	2156	2342	2509
9900	990	1535	1931	2178	2366	2534
10000	1000	1550	1950	2200	2390	2560

(c) Because shared physical custody presumes that certain basic expenses for the children will be duplicated, an adjustment for shared physical custody is made by multiplying the basic child support obligation by one and one-half.

(11) Child care costs. (a) Net child care costs incurred on behalf of the children due to employment or job search 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.

(12) Extraordinary medical expenses. (a) 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.

(b) Extraordinary medical expenses are uninsured expenses in excess of one hundred dollars for a single illness or condition. Extraordinary medical expenses shall include, but need not be limited to, such reasonable costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, and any uninsured chronic health problem. At the discretion of the court, professional counseling or psychiatric therapy for diagnosed mental disorders may also be considered as an extraordinary medical expense.

(13) Extraordinary adjustments to schedule. (a) By agreement of the parties or by order of court, the following reasonable and necessary expenses incurred on behalf of the child shall be divided between the parents in proportion to their adjusted gross income:

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

(II) Any expenses for transportation of the child between the homes of the parents;

(III) The expenses for any institution of higher education, minus contributions of the child that actually reduce expenditures, including employment and scholarships or grants.

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

(14) Computation of child support. (a) Except in cases of shared physical custody or split custody as defined in subsections (8) and (9) of this section,

a total child support obligation is determined by adding each parent's respective obligations for the basic child support obligation, work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule. The custodial parent shall be presumed to spend his or her total child support obligation directly on the children. The noncustodial parent shall owe his or her total child support obligation as child support to the custodial 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.

(b) In cases of shared physical custody, each parent's adjusted basic child support obligation obtained by application of paragraph (c) of subsection (10) 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. 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 schedule.

(c) (I) In cases of split physical custody, a basic child support obligation shall be computed jointly for all of the children in accordance with subsection (10) of this section. Such jointly determined basic child support obligation shall then be divided by the total number of children and allocated to each parent based on the number of those children for whom that parent has physical custody. Child care costs, extraordinary medical expenses, and extraordinary adjustments to schedule shall then be determined for each child in accordance with subsections (11), (12), and (13) of this section and shall be added to that child's share of the basic obligation. 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 physical custody. This theoretical support obligation shall be multiplied by the percentage that the other parent's gross income bears to the total combined gross income of both parents. 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 custody as outlined in paragraph (b) of this subsection (14), an additional adjustment for shared physical custody shall be made as provided in paragraph (b) of this subsection (14).

(15) and (16) Repealed, L. 87, p. 600, § 38, effective July 10, 1987.

(17) 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 5 and 6 of title 19, C.R.S., whether filed on, prior to, or subsequent to July 10, 1987.

Source: R & RE, L. 71, p. 527, § 1; C.R.S. 1963, § 46-1-15; L. 85, p. 592, § 10; L. 86, p. 718, § 1; L. 87, pp. 587, 588, 589, 591, 600, § § 5, 6, 7, 8, 9, 38.

14-10-115. Child support - guidelines - schedule of basic child support obligations. (7) Determination of income. (a) (I) (A) "Gross income" includes income from any source and includes, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and alimony or maintenance received.

(b) (III) For the purposes of this section, a parent shall not be deemed "underemployed" as long as he is gainfully employed on a full-time basis.

(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 (7).

(d.5) (I) At the time of the initial establishment of a child support order, or in any proceeding to modify a support order, if a parent is also legally responsible for the support of other children for whom the parents do not share joint legal responsibility, an adjustment shall be made revising such parent's income prior to calculating the basic child support obligation for the children who are the subject of the support order. An amount equal to the amount listed under the schedule of basic child support obligations in paragraph (b) of subsection (10) of this section which would represent a support obligation based only upon the responsible parent's gross income, without any other adjustments, for the number of such other children for whom such parent is also responsible shall be subtracted from the amount of such parent's gross income prior to calculating the basic child support obligation based on both parents' gross income as provided in subsection (10) of this section.

(II) The adjustment pursuant to this paragraph (d.5), based on the responsibility to support other children, shall not be made to the extent that the adjustment contributes to the calculation of a support order lower than a previously existing support order for the children who are the subject of the modification hearing at which an adjustment is sought.

(13) Extraordinary adjustments to schedule. (a) (III) The expenses for any institution of higher education, minus contributions of the child that actually reduce expenditures, including employment and scholarships or grants. If the expenses for higher education include room and board, then the basic child support obligation shall be reduced by an amount equal to the basic child support obligation as derived from the schedule contained in paragraph (b) of subsection (10) of this section multiplied by the percentage of the time the child resides at the institution of higher education or is away from the home of the custodial parent.

(17) This section shall apply to all child support obligations, established or modified, as a part of any proceeding, including, but not limited to, articles 4, 5, 6, and 10 of this title and articles 4 and 6 of title 19, C.R.S., whether filed on, prior to, or subsequent to July 10, 1987.

(18) (a) The child support guidelines shall be reviewed and the results of such review and any recommended changes shall be reported to the governor and to the general assembly on or before December 1, 1990, and every four years thereafter by a child support commission, which commission is hereby created. The child support commission shall consist of no more than fifteen members appointed by the governor. The members of the commission shall include a custodial parent, a noncustodial parent, a judge, a court referee, the state court administrator or his designee, the director of the division in the state department of social services which is responsible for child support enforcement or his designee, a representative of the family law section

of the Colorado bar association, an attorney who is knowledgeable in child support, a director of a county department of social services, an administrator of a county delegate child support enforcement unit, and two legislators. Members of the child support commission shall not be compensated for their services on the commission; except that members shall be reimbursed for actual and necessary expenses for travel and mileage incurred in connection with their duties.

(b) In reviewing the child support guidelines as required in paragraph (a) of this subsection (18), the child support commission shall study the issue of prohibiting or limiting an increase in the basic child support obligation of a noncustodial parent based solely on an increase in the income of the custodial parent.

(c) In reviewing the child support guidelines as required in paragraph (a) of this subsection (18), the child support commission shall study the issue of establishing and enforcing child support orders with respect to children whose mother or father is under the age of eighteen years by ordering the parents of the minor mother and father to support the children until the mother or father reaches the age of eighteen years. The commission shall also study the recovery from the parents of minor mothers and fathers of any payments of public assistance made to or for the benefit of any dependent child whose mother or father is under eighteen years of age until the minor mother or father reaches the age of eighteen. The commission shall include its recommendations in the report required to be made to the general assembly on or before December 1, 1990.