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State of Colorado

Child Support Commission Supplemental Report



September 2002

SUPPLEMENT TO 2001 REPORT

The Child Support Commission was created pursuant to Colorado Statute §14-10-115(18) (a). The statute requires that the commission is to review the child support guidelines and general child support issues and make any recommendations for changes to the governor and to the general assembly. The commission met in 2000 and 2001 to address these issues. As result of these meetings the commission presented a two part report of the findings of the 2001 Colorado Child Support Commission in its review of the Colorado Child Support Guidelines and other issues referred by the Colorado Legislature. Because of the technical complexity of the Child Support Guidelines, as well as their significance in the family law system, review and updating of the Guidelines was the primary focus of the 2001 Child Support Commission.¹

During 2001, the Commission met ten times, with its meetings publicized under the requirements of the State's sunshine laws. The Commission addressed several issues and made recommendations to the legislature and the governor regarding these issues. One issue analyzed was the method of calculation and payment of child support by low-income obligors. This analysis resulted in a recommendation to the legislature for a major revision of the low-income adjustment already contained in the current schedule.² The Commission found that an obligor parent earning minimum wage could be pushed significantly below the poverty line by application of the current guidelines while the custodial obligee parent's income increased to slightly above poverty.³ In light of this disturbing prospect, the Commission proposed a major revision to the low-income range of the Schedule to produce more equitable and thereby, payable support orders. The Commission's recommendation as to the low-income adjustment as well as the other recommendations contained in the Commission's report was enacted into legislation in the form of Senate Bill 02-021.

The work undertaken by the Commission in 2000 and 2001 was of a very technical nature, particularly the process of updating the Schedule of Basic Support Obligations.⁴ The task of determining whether to revise the low-income adjustment and, the manner of implementing such revisions was in itself a challenging project. In addition, the Commission's membership is diverse and many of the participants do not have direct experience with calculating child support orders. Due to these and other factors, the Commission's December 2001 report did not address the question of whether the revised low-income adjustment was intended to apply in cases of shared physical care where each parent keeps the child overnight more than 92 overnights each year as defined 14-10-115(8), C.R.S.

This report is intended to clarify the position of the Colorado Child Support Commission on the application of the low-income adjustment in shared physical custody situations.

In order to understand to 2001 Commission's intention as to the low-income adjustment, it is important to understand the history of the low-income adjustment in Colorado. The existing Schedule incorporates a "self support reserve" that is intended to keep a noncustodial parent's

income from being lowered below the poverty line due to the impact of the child support obligation. By application, the “self support reserve” operates to ensure that:

- 1) Child support is set only at a minimum level below the poverty line; and
- 2) For income levels not far above the poverty line, child support is set at reduced levels to prevent a situation in which payment of the child support will reduce the noncustodial parent’s income below the poverty line. ⁵

This concept is sound, but the current guidelines use a self-support reserve based on the 1985 poverty guidelines for individual income.⁶ There has been no revision of the self support reserve since its inception therefore the current guidelines no longer protect a poverty level of income for one person. Instead, routine application of the current guidelines for low-income noncustodial parents can reduce their incomes well below the current poverty level. The current guidelines can have the effect of impoverishing low-income noncustodial parents and can also create inequitable results relative to low-income custodial parents.⁷ This leads to the establishment of unrealistic orders that foster non-compliance, or create a punitive result if they are paid. ⁸

To address these obvious inequities, the Commission recommended that a revised low-income adjustment be incorporated into the guidelines in a two-pronged fashion. The adjustment is based on an updated self support reserve amount and application of the self support reserve concept to the custodial parent household as well as the noncustodial parent. The current self support reserve is based on federal poverty guidelines for 2001.

It is clear from a review of the commission’s report that the self-support reserve and its level is an integral part of the low-income adjustment and the minimum order anticipated. The Commission intended that the combination of the minimum order and the low-income adjustment would insure that the self-support reserve is protected for low-income obligors. ⁹

As stated above, the Commission’s December 2001 report does not clearly address whether the low-income adjustment should apply to a shared physical custody situation where each parent exercises more than 92 overnights with the children each year, a parenting scenario that implicates Worksheet B of the child support guidelines. However, the commission did discuss the application of the self-support reserve and low-income adjustment to Worksheet B situations. The Commission’s December 2001 report, at page II-21, identifies the reasoning behind the low income adjustment as follows, “The Child Support Commission sought a low-income adjustment that balanced the after-tax after-child support incomes relative to poverty level of the obligor and obligee-household, assuming both parents earn minimum wage. (The poverty level of the obligee would vary with the number of child to factor in the children, whereas, it is assumed that obligor supports him or herself.)” ¹⁰ In addition, the Commission discussed the application of the self-support reserve at its June 22, 2001 meeting. It was the consensus of those Commission members present at this meeting that the self-support reserve should only apply to Worksheet A parenting scenarios. ¹¹ Thus it logically follows that, if the

initial prong of the low-income adjustment, the self support reserve, only applies to Worksheet A then it necessarily follows that the second prong, the structured income levels for obligors earning between \$900 and \$1,850 per month, should also apply only to Worksheet A.

Furthermore, there are sound reasons not to apply the self-support reserve to shared physical custody situations. For example, a parent in a shared physical custody situation already receives a discount in the amount of child support paid to the other parent to account for the fact that these parents are sharing physical custody of the child. (See C.R.S. 14-10-115 (10) (c) and (14) (b)). In adopting an income shares model for Colorado's child support guidelines, the original 1985 Child Support Commission recognized the need to accommodate for shared physical custody situations based upon each parent's share of time spent with the children.¹² Thus the guidelines as originally drafted required that a child support obligation be computed for each parent based on the amount of time the children spend with the other parent.¹³ "This adjustment presumes that the costs for the child are divided between the parents based on the proportion of time that each parent has physical custody."¹⁴

Based on all of the foregoing, it is the Commission's position that, although not specifically addressed in the December 2001 report, the revised low-income adjustment should not apply to a shared physical custody situation under Worksheet B of the child support guidelines.

¹ Child Support Commission Report, December 2001 at page I-1.

² Child Support Commission Report, December 2001 at page I-3.

³ Child Support Commission Report, December 2001 at page I-3.

⁴ Child Support Commission Report, December 2001 at page I-1.

⁵ Child Support Commission Report, December 2001 at page I-5.

⁶ Child Support Commission Report, December 2001 at page I-6.

⁷ Child Support Commission Report, December 2001 at page I-6 and 7.

⁸ Child Support Commission Report, December 2001 at page I-7.

⁹ Child Support Commission Report, December 2001 at page I-7.

¹⁰ Child Support Commission Report, December 2001 at page II-21.

¹¹ Child Support Commission, June 22, 2001 meeting minutes.

¹² Report of the Colorado Commission on Child Support, "Child Support Guideline" November 27, 1985 at page 7

¹³ Report of the Colorado Commission on Child Support, "Child Support Guideline" November 27, 1985 at page 7

¹⁴ Report of the Colorado Commission on Child Support, "Child Support Guideline" November 27, 1985 at page 7