2005 State of Colorado
Child Support Commission Report

Child Support Commission

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Part I
The Work of the 2005 Child Support Commission

SECTION 1: INTRODUCTION

This report presents the findings of the 2005 Colorado Child Support Commission in its review of the Colorado child support guidelines (the guidelines) and related issues. The guidelines contain the presumptive formula that is used to set the amount of child support for children whose parents are unmarried, separated, or divorced. With 139,000 single parent households in Colorado (2000 Census), the guidelines are an important instrument in reducing child poverty, improving the self-sufficiency of single parent households, and generally providing for the economic well-being of children in the State. Fair and equitable guidelines help promote voluntary settlement of legal actions involving child support, thereby reducing the demands on court time and mitigating the adversarial impact of such proceedings.

The Commission's report is composed of two parts. Part I presents the Commission's findings and recommendations. Part II presents the Commission's suggested format for reorganizing §14-10-115 Colorado Revised Statutes (C.R.S.), the child support guidelines.

The terms "IV-D" and "non-IV-D" occur throughout this report with reference to child support cases. A IV-D case is one in which a county delegate child support enforcement unit is providing services pursuant to §26-13-106, C.R.S. A non-IV-D case is one in which child support is an issue but services are not being provided by a county delegate child support enforcement unit. The term "Title IV-D program" is used to refer to the child support enforcement program in Colorado, which is supervised by the Division of Child Support Enforcement, Department of Human Services, and administered by county delegate child support enforcement units. "Title IV-D" refers to Title IV-D of the federal social security act which contains the legislation creating the federal child support enforcement program.

SECTION 2: PURPOSE OF THE CHILD SUPPORT COMMISSION

The Child Support Commission was created pursuant to §14-10-115(18)(a), C.R.S. The statute states that the Commission is to review the guidelines and general child support issues and make recommendations for changes to the Governor and to the General Assembly.

The review conducted by the Child Support Commission also meets the requirements of the Family Support Act of 1988, which mandates that states must review their guidelines every four years. [45 CFR 302.56], Furthermore, the review is consistent with federal regulations which require that the review must include an assessment of the most recent economic data on child-rearing costs and a review of case data to ensure that deviations from guidelines are limited. [45 CFR 302.56],

SECTION 3: OVERVIEW OF THE COMMISSION ISSUES AND FINDINGS

During 2005, the Commission met eleven times. All Commission meetings were open and advertised under the Colorado Open Records Act.

Two non-custodial parents talked with the Commission about problems they were experiencing in paying child support. The Commission felt that the issues were specific to the individual cases and that it did not have the authority to directly address the circumstances. The cases were referred to staff at the state office to assist the parent in resolving the issues with their county office of child support enforcement.

The Commission also attempted to solicit input from other stakeholders including the Family Law Section of the Colorado Bar Association. The Commission thanks all stakeholders for the input. All information received was valuable to Commission in choosing, which issues to review other than those mandated by statute and in making decisions on issues reviewed.

A. Summary of Issues

The issues considered by the Commission in 2005 can be organized into two categories, which are set forth below:

1. Mandated Issues - the Commission reviewed three issues as required by the §14-10-115 (18), C.R.S.:

    a. Reviewing the economic data on the costs of raising children;

    b. Judicial deviations from the Child Support Guidelines;

    c Issues related to the enforcement of support judgments:

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

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

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

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

The mandated issues are discussed in Section 4 of Part I.

2. Commission and Public Issues - the Commission considered a number of issues on its own initiative based upon input from members and the comments received from various stakeholders, and selected the following for review:

   a. Reorganizing the contents (but not the substance) of the guidelines;
   b. Issues related to the minimum order;
   c. Imputing income to parents;
   d. Imputation of income for incarcerated parents;
   e. Changing the statutory provision on the allocation of the dependency exemption;
   f. Changing the guideline schedule to consider the pre-tax deduction for child care;
   g. Making changes to the allow adjustments to a parent's income for all additional children;
   h. Changing the threshold for determining whether a child support order should be modified;
   i. Issues related to extraordinary medical expenses; and
   j. Refining the definition of "reasonable cost" for medical insurance;

The Commission and public issues are discussed in Section 5 of Part I.

B. Summary of Findings and Recommendations

1. Issues Mandated by §14-10-115 (18) C.R.S.

   a. *Reviewing the economic data on the costs of raising children.* Pursuant to federal regulation, states must consider economic data on the costs of child rearing in the review of the child support guidelines conducted every four years. 45 CFR §302.56Colorado's child support guideline schedule was last updated in 2003. The economic data used at this time was based upon 1980-1986 costs of raising children updated to 2001 dollars. Since that time, new data on the costs child rearing has become available using a study conducted from 1996 to 1999. The Commission determined that updating the schedule of basic support obligations with the new data on the costs of child rearing would have little effect on the actual amounts of child support ordered in Colorado. The Commission does not recommend updating the child support guideline schedule at this time.

   b. *Judicial deviation from the guidelines.* Deviations from the child support guidelines remain infrequent. The Commission's 2001 report indicated that data from both the Colorado Department of Human Services Title IV-D Program (IV-D) and Colorado's 22 judicial districts show a combined deviation rate of about six percent. A review of 2005 IV-D data and another judicial survey showed no change in the deviation rate. This suggests that the guidelines continue to be applied consistently by the courts, and that no changes are needed.

   c. *Issues relating to the enforcement of support judgments.* The legislature referred four questions on this issue to the Commission in 2000. These issues are set forth below:

(I) *Time limitations on support judgments.* Two issues were addressed: 1) the merits of a shorter statute of limitations; and 2) the merits of applying some form of equitable relief to child support judgments. The Commission does not recommend changing the current statute.

(II) *Limitations based on payment methods.* The issue is whether a different statute of limitations should apply based upon payment method. The Commission feels that making such a distinction would raise equal protection issues.

(III) *Support judgments arising automatically.* The issue is whether support judgments should continue to arise by operation of law in Colorado. This statutory provision is mandated by the federal child support enforcement laws, so the Commission does not recommend changing it.

(IV) *Notice to obligor of verified entry of judgment.* Under the current Colorado statute, the obligor does not receive further notice when a child support judgment is verified. The Commission recommends mailing a copy of the verified entry of judgment to the obligor when it is filed with the court.

2. Commission and Public Issues

The following issues were raised by members of the Commission and the public.

a. *Reorganizing the contents (but not the substance) of the guidelines*. The current version of the guidelines dates back several decades. Since 1985, amendments have been made in every legislative session except two. As a result, the guidelines have become increasingly difficult for both professionals and members of the public to read and understand. Especially in light of the great increase in *pro se* litigants in family law cases over the last 20 years, the guidelines should be reorganized to make them easier to research and understand. To avoid confusion, no substantive changes to the statute should be made in any bill presented for this purpose.

b. *Issues related to the minimum order*. The availability of a $50.00 minimum order, designed to ensure that obligors can meet their own basic living expenses, is cut off at a specific income level ($850.00 per month adjusted gross income), rather than tapering up gradually. Because the Commission lacked specific data on minimum orders, members could not determine if this is causing problems for a significant number of obligors. The issue will be reconsidered after information is gathered and studied.

Currently, qualifying for the minimum order means that an obligor will not share in the cost of daycare and/or health insurance expenses. This seems to put the burden of the obligor's low income onto the obligee. However, in these cases the obligee also gets tax deductions, child care is often provided by family members, and children usually qualify for health care benefits, which lessens the burden on the low income custodial parent. The Commission decided that changing the minimum order threshold would likely defeat

the purpose of the minimum order by rendering the obligor unable to support himself at a poverty level

c. *Imputing income to parents*. When a parent is voluntary unemployed or under employed, the current statute provides only basic guidelines for imputing income. This may cause confusion as to when it is appropriate to impute income and how to determine the earning ability of a voluntarily unemployed or under employed parent. The Commission considered whether the statute should be amended to provide more guidance. It was noted the courts have been asked to address this issue several times in recent years. Members decided that a 2003 Colorado Supreme Court decision In re the interest of Martinez, provides the needed guidance and therefore no statutory change is needed. 70 P3d 474.

d. *Imputing income to incarcerated parents*. Many people believe that an obligor who commits a crime should not reap benefit of a reduced child support order. However, others note that the child support arrears that build up during the period of incarceration can make it impossible for a parent to re-enter society upon release. The Commission discussed this issue extensively, and the majority believes that the greatest long-term benefits to an obligor's family will be realized, if he or she can successfully re-enter society after incarceration. If child support arrears can be kept at a manageable level, the majority of members believe that the obligor will be less likely to disappear permanently from the lives of his or her family. Therefore, the Commission supports in principal not imputing income to individuals incarcerated for more than two years. Specific language to accomplish this will be drafted and reviewed by the Commission in the future.

e. *Changing the statutory provision on the allocation of the dependency exemption.* The current statutory language regarding dependency exemptions conflicts with tax assumptions made in developing the guideline schedule of basic support obligations. In cases of sole physical care allowing an obligor to claim some or all of the dependency exemption is contrary to the intent of the formula of the child support guidelines, and could be inequitable to the obligee. However, members decided that because the statute allowing allocation of the exemption has been in place for a number of years and this is a point of contention in many domestic relations cases a change would be impractical. Other solutions, such as changing to guideline formula, are not practical either. Therefore, the Commission recommends no change.

f. *Changing the guideline schedule to consider the pre-tax deduction for child care.* The tax choices made by a parent can affect the amount of child support owed; conversely choices regarding child care and child support can also affect the amount of tax owed by a parent. The Commission considered issues related to the treatment of pre-tax expenses for both child care and medical care elections when the parent uses a "cafeteria" plan. It decided that the issue needs further study, which will be undertaken in the future.

g. *Making changes to the allow adjustments to a parent's income for all additional children*. Prior to 1998, the Child Support Guidelines allowed all of a parent's current

children to be taken into account in the child support calculation. However, as result of a 1998 legislative change the current guidelines limit use of this adjustment to children born prior to those for whom support is being determined. Based on its review and analysis, the Commission finds that allowing a deduction against gross income of 75% of the guidelines support calculation for the all additional children would lead to more equitable results for all families in Colorado.

h. *Changing the threshold for determining when a child support order should be modified*. The Commission received a proposal to raise the threshold for modifying a child support order from at least a ten percent change in the amount of the support order, to require at least a fifteen percent or twenty percent change. This proposal was presented as a way to decrease (or prevent an increase in) the number of modification cases filed in the courts simply for the purpose of harassing the other parent. After reviewing different case scenarios, the Commission concluded that such a change is not warranted at this time.

i. *Issues related to extraordinary medical expenses*. This issue deals with how un-reimbursed medical expenses are shared by the parents when they share physical care of the children. Currently, both courts and parents can handle the issue in various ways. A statutory clarification would standardize the practice in this area, and eliminate a potential source of conflict between the parents, as well as reduce court time. The Commission recommends a change to §14-10-115 (13.5)(h)(I), C.R.S. to clarify the issue. The Commission also reviewed issue of whether a parent should receive credit on the guideline worksheet if a step-parent is paying for the health insurance. The Commission recommends changing statute to allow credit in this circumstance.

j. *Refining the definition of "reasonable cost" for medical insurance*. As the cost and availability of medical insurance continues to change, the definition of "reasonable" cost of medical insurance becomes harder to standardize. The Commission believes the issue to be an important one, and will study it further in the future.

The issues summarized in this Section 3 are discussed in more detail in Sections 4 and 5 of this report.

SECTION 4: MANDATED ISSUES

The 2005 Commission considered three issues referred by the General Assembly in §14-10-115 (18), C.R.S. The Commission's research, analysis and recommendations on each issue are set forth below.

A. Reviewing the economic costs of raising children.

Pursuant to 45 CFR §302.56, each state must consider the economic data on the costs of child rearing when conducting a guidelines review every four years to determine if the guideline schedule should be updated.

The current schedule of basic support obligations contained in the Colorado child support guidelines was reviewed by the 2001 Child Support Commission. At this time, the Commission choose to update the schedule of basic support obligations. The basis for the update recommended in 2001 was a 1980 through 1986 study of the costs of child rearing done by Dr. David Betson of Notre Dame University for the Federal Office of Child Support Enforcement. This study was mandated by Congress in the Family Support Act of 1988 to provide data to states for the express purpose of updating their child support guidelines. The 2001Commission considered the Betson study to be the most recent credible data on child rearing costs available for the development of child support guidelines. The 2001 Commission used this study to updateed to 2001 dollars as the basis for its updated schedule of basic support obligations. Based upon the 2001's Commission's recommendations, this updated schedule was adopted by the Colorado Legislature in 2002 and went into effect on January 1, 2003.

Prior to 2003, the schedule of basic support obligations had not been updated by the Legislature since 1991. The 1991 version was based on economic estimates in a study of child rearing expenditures published in 1984, which was at that time the study most commonly used for development and revision of state guidelines.

Since the Commission met in 2000 and 2001, and recommended the changes, Dr. Betson has published a new report in 2001 based on data from 1996 to 1999 on the costs of child rearing. The 2005 Commission analyzed whether or not they should recommend an update to Colorado's schedule of basic support obligations based upon this new study. Only 5 states have updated their child support guidelines using Dr. Betson's new 2001 study. Sixteen states, including Colorado, are still using Dr. Betson's 1990 study as the basis for the guidelines schedule. The Commission reviewed the schedules of basic support obligations from states who are using new study including Tennessee, South Dakota and Missouri.

A summary of the likely effects of updating economic factors in Colorado's schedule of basic support obligations found at §14-10-115(10)(b) C.R.S. is as follows:

- Small increases due to increases in price levels
- Small increases due to decreases in federal tax rates

- Most of the changes are eclipsed by the new measurements of child-rearing costs, which would
  - **i.** Increase orders at low and middle incomes
  - **ii.** Decrease orders at high incomes
- Updating low-income adjustment would increase base support by approximately $20-50 per month.

Recommendation: Given the recent changes to the schedule of basic support obligations and the minimal effects any new change would have, the Commission does not recommend any changes at this time.

B. Judicial deviations from the Guidelines.

C.R.S. §14-10-115 (18) (a) provides that "……..As part of it's review, the Commission must consider …… deviations from the guidelines……to ensure that deviations from the guidelines are limited."

As the Child Support Commission found in 2001, deviations from the child support guidelines continue to be infrequent. Judges, magistrates and family court facilitators from all twenty-two of Colorado's judicial districts were surveyed in 2005 regarding the deviation rate in non-IV-D cases. Fifteen districts responded. The results indicate that the deviation rate in non-IV-D cases is below eight percent. The most common reason cited by judicial officers was that the parties desired the deviation.

In IV-D cases, the deviation rate is recorded along with the reason for the deviation. That rate remains at five percent, as it was in 2001. In calendar year 2003, 6,609 support orders were modified and 351 had a deviation. The most common reasons listed in the State's child support enforcement database were extraordinary medical expenses and gross disparity in incomes. In 2004, 7,582 IV-D orders were modified and 397 included a deviation from the presumptive guideline amount. Similarly, the majority of those deviations were due to extraordinary medical expenses and gross disparity in income.

Recommendation: The low rate of deviation in both IV-D and non IV-D cases suggests that the courts are applying the Guidelines consistently. The continuing low rate of deviation for any one given factor implies that there is not a particular element of the guidelines that needs to be changed at this time.

C. Enforcement of support judgments.

C.R.S. §14-10-115 (18) (f) provides that "In reviewing the child support guidelines …… the child support commission shall study the following issues:

> (II) The merits of a statutory time limitation or the application of the doctrine of laches or such other time-limiting provisions on the enforcement of support judgments that arise pursuant to the provisions of §14-10-122, C.R.S.;

(III) Whether different time limitations on the enforcement of support judgments should apply depending on whether support payments are made directly to an obligee or whether such payments are made through the family support registry;
(IV) The merits of support judgments arising automatically as provided in §14-10-122, (1) (c), C.R.S.; and
(V) Whether support obligors should receive additional notice and an opportunity for hearing prior to execution on such judgments."

Background.

Currently, a child support payment becomes a judgment by operation of law when due and not paid pursuant to C.R.S §14-10-122. This judgment is good for twenty years and can be renewed as many times as necessary. C.R.S §13-52-102(2)(a). A verified entry of judgment is entered without giving notice to the obligor, and without the signature of an attorney. The judgment can be executed immediately. The current twenty year statute of limitations for child support judgments is the same as the statute of limitations for civil judgments in Colorado.

The Commission heard testimony from an affected constituent and his attorney in 2001. Many stakeholders have an interest in how support judgments are handled in Colorado. These include parents (both obligors and obligees), children, the judiciary, taxpayers, and the family law bar. In reaching its recommendations on the four questions referred by the legislature, the Colorado Child Support Commission attempted to balance these interests.

Question (I) Limitations on the Duration of Support Judgments - For this two part question, the Commission considered [a.] the merits of a statutory time limitation, Or, [b.] the application of the doctrine of laches or such other time-limiting provisions on the enforcement of support judgments that arise pursuant to the provisions of §14-10-122, C.R.S.;

a. The merits of a different time limitation. Research shows that the trend in other states is to increase the statute of limitations for child support judgments rather than to decrease it. Twenty-four states have no statute of limitations on child support judgments. Seven states, including Colorado, have a twenty year statute of limitations and eight states have a ten year statute. Traditionally, child support has been given special priority and treatment as compared with other types of debt because it benefits of the debtor's minor children. Based upon current trends and the special circumstances surrounding child support debt, the Commission did not feel that the current statute limitations should be changed.

b. Application of the doctrine of laches or other equitable relief. Under existing case law precedent, the court can apply the doctrine of laches or other provide equitable relief if certain criteria are met. Anecdotal evidence received by the Commission from the judiciary, parents, and family law attorneys indicates that equitable relief is being granted in appropriate circumstances, so no statutory change is recommended.

Recommendation: no statutory change.

Question (II) Limitations Based on Payment Method - Whether different time limitations on the enforcement of support judgments should apply depending on whether support payments are made directly to an obligee or whether such payments are made through the family support registry.

Although there are many benefits to payment through the family support registry, there are also valid reasons, including convenience and privacy, why parents might request the court to order payments made directly to the obligee. Regardless of the merits of the issue, the Commission believes that applying a shorter statute of limitations to child support payments in direct-pay cases would be subject to equal protection challenges under the United States and Colorado Constitutions.

Recommendation: no statutory change.

Question (III) Support Judgments Arising Automatically - The merits of support judgments arising automatically as provided in §14-10-122, (1) (c), C.R.S.

C.R.S.§14-10-122 (1) (c) states that a child support payment becomes a judgment when due and not paid. This language complies with 42 U.S.C. 666 (a) (9), which provides that:

"…any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)-- **(A)** a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,…"

Any change, which would prevent the child support payment from becoming a judgment when due and not paid, would violate 42 U.S.C. 666 (a) (9). In addition, changing the verified entry of judgment process and giving the obligors more notice before entering the judgment would not address the proof issues related to having a twenty year statute of limitations. It would simply require them to be addressed up front before any execution on the judgment. Finally, eliminating the judgment by operation of law provisions might be in violation of the prohibition against retroactive modifications of child support. 42 U.S.C. 666(a) (9) (C) provides that states must have "[p]rocedures which require that any payment or installment of support under any child support order, . . . is (on and after the date it is due)--**(C)** not subject to retroactive modification by such State or by any other State; "

Recommendation: no statutory change.

Question (IV) Notice to Obligor of Verified Entry of Judgment - Whether support obligors should receive additional notice and an opportunity for hearing prior to execution on such judgments.

In researching this issue and hearing testimony, the Commission determined that the *ex parte* nature of the verified entry of judgment process was the problem. Because the obligor is not noticed at the time the verified entry of judgment is made, the obligor can not dispute the

amounts owed until a later time when it may be difficult to prove that payments have actually been made. If a copy of the verified entry of judgment was mailed to obligor when the judgment was verified with the court, this would allow the obligor to come forward at that time to dispute the amount owed.

Recommendation: The Commission proposes that the following underlined language be added to 14-10-122 (1)(c), C.R.S.

"(1) (c) In any action or proceeding in any court of this state in which child support, maintenance when combined with child support, or maintenance is ordered, a payment becomes a final money judgment, referred to in this section as a support judgment, when it is due and not paid. Such payment shall not be retroactively modified except pursuant to paragraph (a) of this subsection (1) and may be enforced as other judgments without further action by the court; except that an existing child support order with respect to child support payable by the obligor may be modified retroactively to the time that a mutually agreed upon change of physical custody occurs pursuant to subsection (5) of this section. A support judgment is entitled to full faith and credit and may be enforced in any court of this state or any other state. In order to enforce a support judgment, the obligee shall file with the court that issued the order a verified entry of support judgment specifying the period of time that the support judgment covers and the total amount of the support judgment for that period. A COPY OF THE VERIFIED ENTRY OF SUPPORT JUDGMENT SHALL BE MAILED BY THE OBLIGEE OR THE DELEGATE CHILD SUPPORT ENFORCEMENT UNIT TO THE OBLIGOR AT THE TIME IT IS FILED WITH THE COURT. The obligee or the delegate child support enforcement unit shall not be required to wait fifteen days to execute on such support judgment. A verified entry of support judgment is not required to be signed by an attorney. A verified entry of support judgment may be used to enforce a support judgment for debt entered pursuant to section 14-14-104. The filing of a verified entry of support judgment shall revive all individual support judgments that have arisen during the period of time specified in the entry of support judgment and that have not been satisfied, pursuant to rule 54 (h) of the Colorado rules of civil procedure, without the requirement of a separate motion, notice, or hearing. Notwithstanding the provisions of this paragraph (c), no court order for support judgment nor verified entry of support judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or to the department of revenue for purposes of intercepting a federal or state tax refund or lottery winnings."

SECTION 5: COMMISSION AND PUBLIC ISSUES

On its own initiative and based on input from Commission members and various public stakeholders, including parents and the Family Law Section of the Colorado Bar Association, the 2005 Commission research and analyzed the following guideline-related issues.

A. *Reorganizing the contents (but not the substance) of the guidelines.*

The issues relating to the proposed reorganization of the child support guidelines statute are addressed in part II of this report.

B. *Issues related to the minimum order.*

The 2001 Child Support Commission studied the issue of a low income obligor, whose child support order, the obligor without an adequate monthly income to support themselves at poverty level. The 2001 Commission recommended and the Legislature adopted in 2003, an amendment to the child support guidelines that; (1) made a graduated adjustment for obligors whose monthly gross income is between $850.00 and $1,850.00; and (2) set a monthly order (known as a *minimum order*) of $50.00 for obligors whose monthly adjusted gross income is less than $850.00.

The 2005 Commission considered two issues related to the minimum order:

a) Under current law, an obligor with a monthly adjusted gross income of $849.00 qualifies for the minimum order of $50.00. However, an obligor with an income of $850.00 does not qualify for the minimum order of $50.00 and instead would be ordered to pay between $75.00 and $350.00 per month, depending on the number of children. *Is this fair, or should the increase in month child support order be more gradual?*

b) In a minimum order case, should the obligor still share daycare and health insurance expenses?

On the first issue, data was not available to determine whether this is indeed a problem. The Commission decided to gather information about the number of obligors receiving a minimum order as a first step in deciding whether changes are needed.

Regarding the second issue, if an obligor's monthly adjusted gross income is less than $850.00, the statute directs that "a child support *payment* [emphasis added] of fifty dollars per month shall be required of the obligor." This has the effect of relieving the obligor of any obligation to contribute to child care or medical insurance expenses for the children.

However, in most cases where the obligor qualifies for a minimum order the obligee is receiving the income tax deduction for the children and also the child care tax credit. In addition, many low income families, relatives care for the children and their health care is covered by the State Children's Health Insurance Plan. Furthermore, even if those expenses exist, the Commission

felt that forcing a very low income obligor to share in their payment could easily defeat the purpose of having a minimum order by rendering that person unable to support him or herself.

Recommendations:
(a): Gather data to determine whether the current qualifying cutoff negatively impacts a significant number of obligors, and reconsider at a later date.
(b): No change to the current statutory language of C.R.S. §14-10-115 (10) (a)(II) (B) and (D).

C. *Imputing income to parents.*

Does additional guidance need to be added to §14-10-115 (7), C.R.S. regarding how to determine if a parent is voluntarily underemployed and if so how to determine earning potential for the purposes of imputing income?

The language regarding imputation of income when a parent is voluntarily unemployed or underemployed has not changed since the guidelines were enacted. It provides that income must be imputed to a parent who is voluntarily underemployed, but provides no guidance for determining whether a parent meets that criteria. Furthermore, if a parent is determined to be voluntary underemployed or unemployed, the current statute does not address how to determine a parent's earning potential. Research showed that the statutes of other states using the same income-shares model as Colorado include guidance for determining voluntary underemployment and earning potential. The Commission discussed making changes to §14-10-115 (7)(b), C.R.S. to add language that would address the imputation of income to voluntarily underemployed/unemployed parents. It also discussed an issue raised by several family law practitioners on whether to allow the imputation of child care expenses, if income is imputed to a custodial parent.

The recent Colorado Supreme Court decision In re Martinez, clarified when income can be imputed and how a parent's earning potential is determined. 70 P.3d 474 (Colo. 2003). The Commission felt that this decision makes it unnecessary to amend the statute. The Martinez case provides that before a parent can be found to be voluntarily underemployed, it must be determined that he or she is "shirking" their responsibility to pay child support. Id. The Martinez case takes a multifaceted approach to making this determination and provides a list of eight factors to be used to determine voluntary underemployment. Id. The factors are; (1) the parent's firing and post-firing conduct; (2) the amount time the parent spent looking for a job of equal caliber before accepting a lower paying job; (3) whether the parent refused an offer of employment at a higher salary; (4) whether the parent sought a job in the field in which he or she has experience and training; (5) the availability of jobs for a person with the parent's level of education, training and skills; (6) the prevailing wage rates in the region (7) the parent's employment experience and history and (8) the parent's history of child support payments. Id. The Commission also determined that it would be difficult to come up with guidelines for imputing childcare costs as they can vary widely depending on the age of the children and the locale.

Recommendation: no statutory change.

D. *Imputing income to incarcerated parents.*

Is a parent who is incarcerated voluntarily underemployed and if so, should income be imputed to this parent based their earning ability prior to incarceration?

The child support guidelines at §14-10-115(7)(b), C.R.S. provide that "[i]f a parent is voluntarily unemployed or underemployed, the child support shall be calculated based on a determination of potential income." It is common practice when establishing or modifying a child support order for an incarcerated individual, to assume they are voluntary underemployed and to impute wages to the individual based upon their earning ability prior to incarceration. In order to be enforceable and fair to all parties, child support amounts should be based upon a party's ability to pay the ordered amount. With some exceptions, an incarcerated individual's actual earning ability is minimal.

Arguments for imputing income and entering a higher order, are that while it is not presently collectible, the higher order amount will build up past due support amounts which might be collected once the parent is released. In practice, this build up of arrears during incarceration may inhibit a recently released felon from reintegrating into the mainstream. An ex-felon has many demands on their income, in addition to payment of current child support and arrears that are required upon release. Often the costs of treatment programs, restitution, and repeated testing are part of the parole arrangements and must be paid by the parolee to remain on parole. The problem is exacerbated because many recently released felons have difficulty finding and keeping jobs that pay wages sufficient for meeting their expenses.

Arguments against imputing income to incarcerated obligors hold that the children will ultimately benefit if the obligor can successfully reintegrate into society, both because of the greater financial support the parent can provide, and because of the parent's availability to play an active role in his or her children's' lives.

After an extended discussion, the Commission agreed in principal that when an individual is incarcerated for a period of more than two years, his or her *actual* income will be used for calculating the child support order under the Colorado Child Support. However, members acknowledge that drafting the specific language to effect this result will be difficult.

Recommendation: the Commission will consider draft language in the future.

E. *Changing the statutory provision on the allocation of the dependency exemption.*

Does the current language regarding the dependency exemption conflict with tax assumptions made in developing the guidelines schedule? If so, should it be changed?

§14-10-115 (14.5) C.R.S. contains the following language relating to allocation of the dependency exemption:

> *"Unless otherwise agreed upon by the parties, the court shall allocate the right to claim dependent children for income tax purposes between the parties. These rights shall be allocated between the parties in proportion to their contributions to the costs of raising*

> *the children. A parent shall not be entitled to claim a child as a dependent if he or she has not paid all court-ordered child support for that tax year or if claiming the child as a dependent would not result in any tax benefit."*

This language was added to the guidelines statute during the 1992 Legislative Session with House Bill 1230, based on recommendations from the 1991 Colorado Child Support Commission. The 1991 Child Support Commission Report contained the following language regarding tax exemptions.

> "The theory of the guidelines is that the parents pay for the costs of the children in proportion to their gross income. The purpose of the dependency exemption is to provide a financial benefit to those who bear the costs of dependents, including children. Case law now provides that the court can direct the allocation of dependency exemptions between the parties, but provides little guidance on how this is to be done. This results in unnecessary confusion and litigation."

The Commission's report went on to recommend:

> "The appropriate rule regarding allocation of the dependency exemptions is that, in so far as possible, they be allocated in proportion to the contribution to the costs of the children, provided that the support is actually paid and tax benefits are not wasted."

The schedule of basic support obligations starts with net income, which is converted to gross income. The taxes considered in developing this schedule are: 1) federal income tax; 2) FICA; 3) Earned Income Tax Credit; and 4) Colorado income tax. In converting the schedule to a gross income base it is assumed that the obligor claims one exemption for filing, two exemptions for withholding, and the standard deduction. The schedule presumes that the non-custodial obligor does not claim the dependency exemptions for the child(ren) due support.

Allowing the obligor to take some or all of the dependency exemptions is contrary to the assumptions made in developing the current schedule of basic support obligations. Under the current schedule, if the obligor takes the dependency exemptions there is a two-fold benefit of (1) a lower order and (2) a lower taxable income and the resultant tax savings. The obligee, on the other hand, receives less child support and loses the right to take dependency exemption, which might compensate for lowered support amount.

The Commission researched two options. The first would delete the language allowing the dependency exemption to be allocated between the parties. This is not a feasible solution as the allocation language has been in the statute for well over 10 years and the allocation of the dependency exemptions are a point of contention in almost every divorce case in Colorado. A second option would be to adjust the schedule of basic support obligations to assume that the obligor is taking the dependency exemptions. An analysis done for the state of Utah in 2003 found that the percentage increase to the schedule of basic support obligations using this assumption would be minimal. Some other states using the income-shares model, like Colorado, also allow for the allocation of the dependency exemption. After much discussion, during which the many different approaches to this issue taken by other states were noted, the Commission decided that there was not a compelling reason to alter Colorado's approach.

Recommendation: no statutory change.

F. *Changing the guideline schedule to consider the pre-tax deduction for child care.*

Should the Commission make a recommendation on how to calculate child support when a parent is paying for the child care through an employer sponsored cafeteria plan?

Both income tax and child support calculation choices will impact the final amount of money owed in taxes and in a support order. For example, if a child resides with a parent 51% of the time, that parent may file as "Head of Household", the value of which is nearly equal to the value of married filing jointly. This parent would also be eligible for a child tax credit, which is a direct credit against taxes owed. The dependency exemption amounts to approximately $3,200 per child. Finally, the parent can use a federally-approved "cafeteria plan", which allows up to $5,000 per year to be put into a pre-tax holding account from which child care can be paid.

The Colorado child support guidelines currently provide that a parent who pays for work-related child care can have this amount included on the child support guideline worksheet as an additional expense to be apportioned between the parties based upon income. However, the federal income tax credit for child care is deducted from the child care costs to arrive at a net child care cost, which is used in the child support guideline worksheet. The federal child care credit allows a parent who has paid work related child care to receive credit against the amount of tax owed. This credit is subtracted from the amount of tax owed and can result in tax savings. For example, the tax credit for a parent earning $43,000 per year with one child in care is $600 per year if the parent expends $3,000 or more on child care. This $600 credit would be subtracted from the parent's child care cost of $3,000 and the parent would be allowed to have $2,400 in child care costs included in the child support guideline calculation. Although, parent's have had the ability to deduct moneys from their pay on a pre-tax basis to set aside in a cafeteria plan from the purposes of work related child care for a number of years, the Colorado child support guidelines have never been amended to accommodate for this.

The Commission reviewed worksheets prepared using different scenarios on parents paying child care through a cafeteria plan, and it did appear that in certain circumstances it could make a significant different in the final child support calculation. The Commission reviewed the issue of whether it would be more appropriate to use the parent's gross income after pre-tax deductions of the amount put into the cafeteria plan for child care or prior to pre-tax deductions. There is currently no guidance on this issue in the statute. From the child care discussion, arose similar issues regarding medical cafeteria plans and the treatment of those pre-tax expenses. It was noted by the Commission that it is not only the benefit of the pre-tax deduction that must be reviewed, but also the lowering of the parent's gross income, which could reduce a parent's taxable income. The Commission felt as though the solution to this issue could not be so complicated that it made the child support guidelines difficult to use, particularly keeping in mind *pro se* parties.

Recommendation: Continue to review this issue in the future and attempt to propose an equitable and simple solution.

G. *Making changes to the allow adjustments for all additional children.*

Should an adjustment pursuant to §14-10-115 (7) (d.5) C.R.S. be available only in those cases where the "other children" are prior-born, or in all cases where a parent has other children?

In Colorado, the law regarding adjustments to a parent's gross income for child support paid to "other children" (i.e., children to whom a parent owes a duty of support, but who are not the subject of the present child support determination) is found at C.R.S. §14-10-115 (7). Sub-paragraph (d) deals with situations involving "a parent with an order for support of other children." Sub-paragraph (d.5) involves circumstances where a parent is "legally responsible" for prior born children but does not have a support order.

Sub-paragraph (d) reads in full:

The amount of child support actually paid by a parent <u>with an order</u> [emphasis added] *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.*

Sub-paragraph (d.5) (1) says:

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 <u>born prior to</u> [emphasis added] *the children who are the subject of the child support order and 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 if the children are living in the home of the parent seeking the adjustment or if the children are living out of the home, and the parent seeking the adjustment provides documented proof of money payments of support of those children. The amount shall not exceed the guidelines listed in this section. 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.*

Over the years, the General Assembly has considered and re-considered whether a parent should get a deduction for *all* "other children" for whom the parent does not have an order, or only for those who were born prior to the children who are the subject of the instant child support determination. The following bills and their outcomes track the history:

- HB89-1180: authorized an adjustment to each parent for ANY child for whom the parent is legally responsible;
- SB98-139: authorized an adjustment to a parent's income prior to the calculation of the basic child support obligation if that parent is legally responsible for children BORN PRIOR TO the children who are the subject of the child support order.

The 2005 Child Support Commission has agreed to consider, once again, whether in situations where a parent has a legal responsibility but not an order, he or she should receive an adjustment to the gross income only for other prior-born children or for all other children.

Since the July 1, 1998 implementation of SB98-139, the Colorado Child Support Commission, the Division of Child Support Enforcement (CSE), the county CSE units, and the Judiciary have received numerous complaints regarding the hardships of supporting second families as a result of the change in the law. Seventy-five percent of divorced persons re-marry and have additional children after they re-marry.

In its review of the guideline treatment of other children for whom a parent is legally responsible, the 2000 Commission reviewed other states' statutory language concerning adjustments to a parent's income in the guideline calculation for children for whom the parties are legally responsible. South Carolina's guideline schedule uses a seventy five percent adjustment, North Carolina's guideline schedule uses a 50 percent adjustment, Vermont's guideline schedule uses a one hundred percent adjustment. Colorado's 2000 Commission concluded that an amount that equalizes support between two sets of children is the most fair. Various statistical scenarios were reviewed. The fifty percent adjustment favors the children subject to the order. Higher amounts work in situations where the obligee has no or low-income. Lower amounts work in situations when the obligee's income is equal to or greater than the obligor's income or when the obligor's income is high. The relative number of dependents had a smaller impact than income. Lower amounts work better with more additional dependents. After careful consideration, the 2000 Commission agreed on a seventy five percent adjustment to the responsible parent's gross income. It is the most fair and it treats all children equally.

The traditional argument for allowing an adjustment only for prior-born children is the "first families first" contention. That is, some believe that children born first in time have a superior claim to their parents' resources if one or both of the parents go on to have a subsequent family. The belief seems to be that one should not, by the creation of succeeding children, jeopardize the financial security of children from the first family, who are both powerless and blameless in a parent's decision to break up their family unit.

Others argue that <u>all</u> children deserve their parents' support, and that the subsequent children are equally powerless and blameless; it is not fair, when resources are short, to penalize them for an act of fate or a parent's lack of judgment or responsibility.

The lines may have seemed clearer when more children were born inside a marriage, and when divorce rates were low. Although the rate of divorce has stayed fairly constant, or even decreased, in the years since the legislature last considered this issue in 1998. The 2005 Commission feels that other changes in family structure, such as the increasing number of children born out of wedlock, and an apparent increase in the number of children raised in fluid and sequential "family" environments, have tipped the balance in favor of a more inclusive public policy. The Commission also discussed the fact the language in paragraph (7) (d.5) seems to conflict with the language in (7) (d), which provides that we a parent is actually paying ordered child support for other children that the amount paid will be subtracted from a parent's gross income before calculating child support. The language in paragraph (7)(d) seems to include all other children regardless of their birth order. The Commission finds no compelling

reason for there to be a distinction in the two adjustments based upon birth order and feels that the language in both paragraph (7)(d) regarding the adjustment for ordered child support and the adjustment in paragraph (7)(d.5) regarding children living in a parent's household should be consistent. Based upon these considerations, the 2005 Commission has adopted the recommendation of the 2001 Commission on this issue.

Recommendation: Amend §14-10-115,(7)(d.5)(I), C.R.S., to allow a deduction of seventy-five percent of the amount listed on the schedule for all other children for whom the parent is legally responsible, and for whom the parents do not share joint legal responsibility.

14-10-115 (7)(d.5) (I), C.R.S., 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 ~~born prior to the children who are the subject of the child support order and~~ 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 if the children are living in the home of the parent seeking the adjustment or if the children are living out of the home, and the parent seeking the adjustment provides documented proof of money payments of support of those children. The amount shall not exceed the guidelines listed in this section. ~~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 or 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.~~ FOR A PARENT WITH A GROSS INCOME OF ONE THOUSAND EIGHT HUNDRED AND FIFTY DOLLARS OR LESS PER MONTH THE ADJUSTMENT SHALL BE SEVENTY FIVE PERCENT OF THE AMOUNT CALCULATED USING THE LOW-INCOME ADJUSTMENT IN PARAGRAPHS (10)(a)(II), (B) and (C) BASED ONLY UPON THE RESPONSIBLE PARENT'S INCOME, WITHOUT ANY OTHER ADJUSTMENTS, FOR THE NUMBER OF OTHER CHILDREN FOR WHOM THE PARENT IS RESPONSIBLE. FOR A PARENT WITH GROSS INCOME OF MORE THAN ONE THOUSAND EIGHT HUNDRED AND FIFTY DOLLARS PER MONTH THE ADJUSTMENT SHALL BE SEVENTY FIVE PERCENT OF THE AMOUNT LISTED UNDER THE SCHEDULE OF BASIC SUPPORT OBLIGATIONS IN PARAGRAPH (b) of subsection (10) OF THIS SECTION WHICH WOULD REPRESENT A SUPPORT OBLIGATION BASED ONLY UPON THE RESPONSIBLE PARENT'S INCOME, WITHOUT ANY OTHER ADJUSTMENTS, FOR THE NUMBER OF OTHER CHILDREN FOR WHOM THE PARENT IS RESPONSIBLE. THE AMOUNT CALCULATED AS SET FORTH ABOVE SHALL BE SUBTRACTED FROM THE AMOUNT OF THE PARENT'S GROSS INCOME PRIOR TO CALCULATING THE BASIC SUPPORT OBLIGATION BASED UPON BOTH PARENTS' GROSS INCOME AS PROVIDED IN SUBSECTION (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.

H. *Changing the threshold for determining whether a child support order should be modified.*

Should the threshold for allowing a child support order to modified be increased?

Currently, pursuant to C.R.S. §14-10-122(1)(a), someone attempting to modify child support must show that there is a substantial and continuing change in circumstances since the entry of the last order. Further, C.R.S. §14-10-115(1)(b) states:

> *"application of the child support guideline set forth in section 14-10-115(3) to (16) to the circumstances of the parties at the time of the motion for modification of the child support order which results in less than a ten percent change in the amount of support due per month shall deemed not to be substantial and continuing change of circumstances."*

The Commission reviewed a proposal to increase the threshold from the current statutory rate of ten percent to either a fifteen percent or twenty percent change in the child support order. The thought behind this proposal was that ten percent can be a nominal amount of money in some cases, and that raising the threshold may decrease the number of modification motions filed. The Commission reviewed worksheets that included different incomes and varying amounts of daycare to review what the higher threshold for a modification would look like in different scenarios. The results of those worksheets were concerning in that a parent may incur a significant increased child care cost and this will not result in a ten percent change in the amount of child support due. Based upon these concerns, the Commission did not feel it would appropriate to raise the threshold for modification of a child support order.

Recommendation: The Commission agreed not to pursue an increased threshold for modifications of child support at this time.

I. *Issues relating to extraordinary medical expenses.*

A. Should the formula for sharing out-of-pocket medical expenses differ depending on whether the guideline calculation is based on sole or shared physical care?

Currently §14-10-115(13.5)(h)(I), C.R.S. states that any extraordinary medical expenses incurred on behalf of the children shall be added to the basic child support obligation and divided between the parents in proportion to their adjusted gross incomes. Further, §14-10-115(13.5(h)(II), C.R.S. states that:

> *"extraordinary medical expenses are uninsured expenses, including co-payments and deductible amounts, in excess of $250.00 per child per calendar year. Extraordinary medical expenses shall include but need not be limited to, such reasonable costs as are*

reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any uninsured chronic health problem. At the discretion of the court, professional counseling or psychiatric therapy for diagnosed mental disorders may also be considered as an extraordinary medical expense."

Therefore, the custodial parent is responsible for the first $250 per child per year in out-of-pocket medical expenses. This responsibility was considered by the Commission when re-calculating the child support guidelines in 2001, to reduce the number of cases in which courts are asked to adjudicate disputes involving medical expenses. However, as the number of shared parenting arrangements is growing, the equity of the current statute as related to that class of cases is being questioned.

The 2005 Commission was asked to determine how to share these unreimbursed medical expenses when there is a shared parenting time arrangement, or a Worksheet B scenario. The Courts and parties are currently handling this issue in different ways: sometimes one parent pays the entire $250.00, sometimes each parent pays $125.00, and sometimes all out-of-pocket extraordinary medical expenses are split, without a $250.00 threshold.
The Commission decided that in a shared parenting time (worksheet B) scenario, all out-of-pocket medical expenses should be considered extraordinary expenses and should be shared by the parties in proportion to each person's share of the combined adjusted gross income.

Recommendation: Change C.R.S. §14-10-115(13.5)(h)(I) and (II) to read as follows:

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

(A) Extraordinary medical expenses are OUT-OF-POCKET expenses, including copayments and deductible amounts, AFTER THE PRIMARY CARE PARENT HAS PAID two hundred fifty dollars per child per calendar year

(B) UNDER A SHARED OR SPLIT PARENTING TIME CALCULATION, EXTRAORDINARY MEDICAL EXPENSES ARE ALL OUT-OF-POCKET EXPENSES, INCLUDING COPAYMENTS AND DEDUCTIBLE AMOUNTS.

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

B. Should §14-10-115(13.5) C.R.S. be amended to allow a parent to receive credit on the child support guideline worksheet for providing health insurance when the health insurance is carried by the parent's new spouse (the child's step-parent)?

In today's world of blended family's, health insurance for the whole family is important, and a good source may be the present spouse's employment. This would include insurance that a parent wants or needs to provide for children from another relationship, even if those children are not living in the same household. While the current language in §14-10-115 (13.5) (b) which provides that the payment of a premium to provide health insurance coverage on behalf of the children subject to the order shall be added to the basic child support obligation, it is not clear if insurance provided and ostensibly paid for by a step-parent can be added to the basic support obligation in this way. This is a frequent issue in child support cases and it needs to be formally clarified in statute, in order to provide consistent outcomes. The argument for allowing a parent ordered to provide health insurance to get credit for insurance provided by a step-parent is that the parent's household income is reduced because the present spouse's net income is reduced to pay for the insurance, which otherwise would have had to be paid by the parent. It would be correct to say that when the children's health insurance is provided by the present spouse of one of the parents, that the cost to do so will be credited as a "household" expense and be handled in the same manner that it would if it were provided by the parent in that same household. Given that the objective of paragraph (13.5) is to provide health insurance for children it seems that a policy allowing a parent to receive credit in the child support calculation for providing insurance regardless of the source would be appropriate. This is especially true in light the high number of uninsured children in Colorado.

Recommendation: Amend paragraph (13.5) of §14-10-115, C.R.S. to allow a parent ordered to provide insurance to receive credit for health insurance provided by a step-parent.

J. *Refining the definition of "reasonable cost" for medical insurance.*

Should the definition of "reasonable cost" be made more explicit?

The specification of reasonable cost for medical insurance is within the discretion of each state as long as the definition does not conflict with federal regulations. (45 CFR 303.32) Currently, C.R.S. §14-10-115(13)(g) provides that where the application of the premium payment on child support guidelines results in a child support order of fifty dollars or less, or the premium payment is twenty percent or more of the parent's gross income, the court or delegate child support enforcement unit may elect not to require the parent to include the child(ren) on an existing policy or to purchase insurance. The parent shall, however, be required to provide insurance when it does become available at reasonable cost.

Nationally, the child support community has not yet reached consensus as to what constitutes "reasonable cost", and state definitions vary widely. The Medical Child Support Working Group, which is composed of state and federal program personnel appointed by the Office of Child Support Enforcement (OCSE), has been studying this issue and is expected to recommend changes to the federal statute in the near future. Some states have defined "reasonable" as a health insurance premium that does not exceed five percent of the parent's net or gross income, based on the standard used in the State Child Health Insurance Program (SCHIP) program. Other states have made different public policy decisions. OSCE has drafted a regulation currently in the clearance process that will provide further guidance on "reasonable cost".

The Commission discussed the effects on Medicaid of lowering the standard for reasonable cost, and decided that it needed further research and data on this issue. Other ways that the non-custodial parent who cannot obtain medical insurance at a reasonable cost could still contribute to medical expenses were also discussed.

Currently, if the non-custodial parent is not required to provide health insurance because it is not available at "reasonable cost," that parent has no further obligation to contribute to the cost of health insurance. Some states now require that if neither parent carries health insurance, the non-custodial parent is required to provide a monthly cash contribution to medical support. Cash medical support can be defined as "*a court or administratively ordered monetary contribution payable by the non-custodial parent on a regular basis that is intended to fully or partially offset the costs of healthcare expenses paid by publicly funded health insurance or the custodial parent*."

The idea is that when neither party has health insurance available at a reasonable cost, the non-custodial parent would be ordered to contribute cash in addition to his or her regular child support payment each month. If the custodial parent were receiving Medicaid or Colorado Health Plan Plus (CHP+), the support would be paid to the State as partial reimbursement, and if the child was not covered by a state funded insurance program, the cash would be distributed to the custodial parent. If the custodial parent provides insurance, the guideline already provides that the non-custodial parent makes a cash contribution to the cost of the insurance. The amount of a cash medical support obligation could be determined in accordance with a "reasonable cost calculation" formula determined specifically for Colorado.

As background, Child Health Plan Plus (CHP+), created by the Colorado Legislature in 1997 as the Children's Basic Health Plan (CBHP), is a full service health and dental plan for Colorado's uninsured children age 18 and under whose families meet income eligibility requirements. CHP+ is for uninsured Colorado families who earn or own too much to qualify for Medicaid, but cannot afford private insurance. CHP+ is a public-private partnership administered by the Colorado Department of Health Care Policy and Financing.

One benefit of instituting cash medical orders might be to boost the IV-D agency's role in cost avoidance for Medicaid and CHP+ programs, thus increasing the number of people those programs could serve. A recent Medial Support Special Improvement Project conducted by New Jersey in a test environment estimated approximately $18 million in annual savings through collection of cash medical support for IV-D children enrolled in the State's Family Care (SCHIP) and Medicaid programs. In an October 2004 article entitled, "How the AG Helps Parents Meet Their Children's Medical Needs," Texas Attorney General Greg Abott reported collection of $10.4 million in cash medical support from parents with children on Medicaid.

In its September 2004 Update on Health Care Coverage for Low Income Children, the Kaiser Family Foundation reported that the average cost per child in Medicaid for FFY 2003 totaled $1,700 or $141.60 per month. Of course, a monthly cash medical contribution of $141.60 on top of an existing child support order is likely more than many non-custodial parents can afford.

However, to demonstrate how cash support collections can help offset costs of publicly funded healthcare costs, consider the following scenario:

> A single mother and three children live in the same household. Each child has a different biological father, and each is eligible for CHP+ benefits. The State CHP+ program requires a premium of $20 per household that is paid by the mother. Average monthly costs to the State for each child are $110 for a total of $330 per month per household.
>
> Each father is required to pay a cash medical support order based on his ability to pay, toward the cost of CHP+. Father 1 pays $40; father 2 pays $50; and father 3 pays $50. The obligations of the three fathers total $140, which coupled with the custodial parent's premium of $20, reduce state costs from $330 per month to $170 per month.
>
> The reduced costs attributed to this family allow the program to accommodate an additional one and one-third children in the CHP+ program.

The Commission decided to study this issue further in the future, so that the final recommendations of OCSE's National Medical Support Group can be factored into the decision. Some of the preliminary activities that should be undertaken to lay the ground work include:

- Review existing laws and regulations to determine if:
  - The State IV-D agency has sufficient authority to assess and collect cash medical support.
  - An assignment by the custodial parent to the Medicaid or CHP+ agency is needed in order for the State to recoup cash medical support.
  - The State can account for such collections within the State Medicaid/CHP+ programs and utilize funding to offset costs of public health insurance.
  - The custodial parent can be ordered to enroll his or her child in an employer sponsored or publicly funded health insurance plan (optional);
- Review the national SCHIP and Medicaid regulations issued by the Centers for Medicaid and Medicare Services (CMS) to ensure proper treatment of and accounting for cash medical support payments when used to offset costs of publicly funded benefits;
- Develop a reasonable cost standard to determine the amount a parent can pay toward healthcare coverage or cash medical support;
- Develop a decision matrix to determine appropriate coverage for each child;
- Develop a priority schedule for distributing cash medical support payments. Sometimes the amount of cash collected through the income withholding process is not sufficient to cover all of a parent's current and past due obligations. This situation can arise when the earnings of the non-custodial parent are low, when the non-custodial parent is responsible for supporting multiple families, or when the combined amount of the monthly payments exceed federal wage withholding limits established under the Consumer Credit Protection Act. Under these circumstances, a policy needs to be in place to prioritize allocation of the amounts collected through income withholding. This is a decision with complex public policy implications that require careful consideration. Current child support, whether due to a family or the State, takes precedence under federal law. However, whether to give priority to collections toward arrearages or cash medical support is within each state's discretion. Generally, since cash medical support payments and employer

sponsored health plans are mutually exclusive, cash medical support will likely have the same weight in a distribution scheme as regular medical support payments for children covered by private health insurance.

Recommendation: **The Commission should resume research on this issue in the future while awaiting the recommendations of the OCSE's National Medical Support Working Group**.

Part II
Reorganization of the Child Support Guidelines Statute

Section 1: Introduction and Background

Should the guideline statute be reorganized to make it more accessible to pro se parties, attorneys, and judicial officers?

The current version of the child support guidelines, C.R.S. §14-10-115, was enacted over twenty years ago. Since that time, amendments have been made in every legislative session except two. At the same time, the number of *pro se* litigants (i.e., persons representing themselves without an attorney) in family law cases has risen dramatically to over seventy percent in some parts of the State. These parties are held to the same standard as an attorney in reading and arguing the law to support their position in a guidelines dispute.

As a result of the many changes to the statute over the years, the guidelines have become increasingly difficult for both professionals and members of the public to read and understand. For example, the complex provisions regarding post-secondary education are currently located in the first section of the statute, where people expect to find more basic information that will lay the groundwork for the details to follow. Questions regarding the age and conditions of emancipation are among the most frequently asked, but they are currently found in the post-secondary education section; not an intuitive guess for someone trying to locate them. The guidelines should be reorganized to make them easier to research and understand.

The Commission suggests that, as far as possible, reorganization should follow the usual process of a case. It is especially important that those filling out the Child Support Guideline worksheets be able to consult the statute effectively. If statutory information regarding the various lines of the worksheet is referenced sequentially in the statute, *pro se* parties, legal professionals and judicial officers will all benefit.

The Commission also suggests that to avoid confusion, no substantive changes to the statute should be made in any bill presented for reorganization purposes. All language currently in the statute should appear in the reorganized version, except for small changes (e.g., in conjuctions and articles) necessary to maintain coherent sentence structure.

Recommendation: The Legislature should reorganize the child support guideline statute, C.R. S. §14-10-115. A proposed format is provided in Section 2 of this Part II.

Section 2: Proposed Format

14-10-115. Child support - guidelines - schedule of basic child support obligations.

(1) (a) **Purpose .** 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.

(b) **Application**. The child support guideline does the following:

(I)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;

(II)Adjusts the child support based upon the needs of the children for extraordinary medical expenses and work-related child care costs;

(III)Allocates the amount of child support to be paid by each parent based upon physical care arrangements.

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

(d) Courts may deviate from the guideline where its application would be inequitable, unjust, or inappropriate. Any such deviation shall be accompanied by written or oral findings by the court specifying the reasons for the deviation and the presumed amount under the guidelines without a deviation. These reasons may include, but are not limited to, the extraordinary medical expenses incurred for treatment of either parent or a current spouse, extraordinary costs associated with parenting time, the gross disparity in income between the parents, the ownership by a parent of a substantial nonincome producing asset, consistent overtime not considered in gross income under sub-subparagraph (C) of subparagraph (I) of paragraph (a) of subsection (7) of this section, or income from employment that is in addition to a full-time job or that results in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment. The existence of a factor enumerated in this section does not require

the court to deviate from the guidelines, but is a factor to be considered in the decision to deviate. The court may deviate from the guidelines even if no factor enumerated in this section exists.

(e) 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.

(2) (Deleted by amendment, L. 96, p. 594, § 7, effective July 1, 1996.) Ask Legislative Council how to handle?

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

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

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

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

(5) All child support orders entered pursuant to this article shall provide the social security numbers and dates of birth of the parties and of the children who are the subject of the order and the parties' residential and mailing addresses.

(6) The child support guideline may be used by the parties as the basis for periodic updates of child support obligations.

(7) **Definitions:**

(a) **Shared physical care**. For the purposes of this section, "shared physical care" means that each parent keeps the children overnight for more than ninety-two overnights each year and that both parents contribute to the expenses of the children in addition to the payment of child support. Because shared physical care presumes that certain basic expenses for the children will

be duplicated, an adjustment for shared physical care is made by multiplying the basic child support obligation by one and fifty one-hundredths (1.50).

(b) Split physical care. For the purposes of this section, "split physical care" means that each parent has physical care of at least one of the children by means of that child or children residing with that parent the majority of the time.

(8) 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, including tips declared by the individual for purposes of reporting to the federal internal revenue service or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater; commissions; payments received as an independent contractor for labor or services; bonuses; dividends; severance pay; pensions and retirement benefits, including but not limited to those paid pursuant to article 64 of title 22, C.R.S., articles 51, 54, 54.5, 54.6, and 54.7 of title 24, C.R.S., and article 30 of title 31, C.R.S.; royalties; rents; interest; trust income; annuities; capital gains; any moneys drawn by a self-employed individual for personal use; social security benefits, including social security benefits actually received by a parent as a result of the disability of that parent or as the result of the death of the minor child's stepparent, but not including social security benefits received by a minor child or on behalf of a minor child as a result of the death or disability of a stepparent of the child; workers' compensation benefits; unemployment insurance benefits; disability insurance benefits; funds held in or payable from any health, accident, disability, or casualty insurance to the extent that such insurance replaces wages or provides income in lieu of wages; monetary gifts; monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office; taxable distributions from general partnerships, limited partnerships, closely held corporations, or limited liability companies; and alimony or maintenance received. "Gross income" does not include child support payments received.

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

(C) "Gross income" includes overtime pay only if the overtime is required by the employer as a condition of employment. "Gross income" does not include income from additional jobs that result in the employment of the obligor more than forty hours per week or more than what would otherwise be considered to be full-time employment.

(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.

(C) Expense reimbursements or in-kind payments received by a parent in the course of employment, 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 parent who is physically or mentally incapacitated or is caring for a child under the age of thirty months for whom the parents owe a joint legal responsibility.

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

(A) Private or public sector employment;

(B) Job search activities;

(C) Community service;

(D) Vocational training; or

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

(II) Repealed. (Currently 7(b)(II) Need to ask legislative council know how to handle repealed sections?)

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

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

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

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

(c) Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. A copy of wage statements or other wage information obtained from the computer data base maintained by the department of labor and employment shall be admissible into evidence for purposes of determining income under this subsection (7).

(d) Social security benefits received by the minor children, or on behalf of the minor children, as a result of the death or disability of a stepparent are not to be included as income for the minor children for the determination of child support. However, any social security benefits actually received by a parent as a result of the disability of that parent, or as the result of the death of the minor child's stepparent, shall be included in the gross income of that parent.

(e) Repealed and deleted by amendment, L. 92, pp. 198, 166, § § 3, 1, effective August 1, 1992. (Current 7(e). Need to ask Legislative Council how to handle repealed sections?)

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

(b) (I) At the time of the initial establishment of a child support order, or in any proceeding to modify a support order, if a parent is also legally responsible for the support of other children born prior to the children who are the subject of the child support order and 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 if the children are living in the home of the parent seeking the adjustment or if the children are living out of the home, and the parent seeking the adjustment provides documented proof of money payments of support of those children. The amount shall not exceed the guidelines listed in this section. 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.

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

(II) (A) 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. For combined gross income amounts falling between amounts shown in the schedule, basic child support amounts shall be interpolated. 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.

(B) Except as otherwise provided in sub-subparagraph (D) of this subparagraph (II), in circumstances in which the parents' combined monthly adjusted gross income is less than eight hundred fifty dollars, a child support payment of fifty dollars per month shall be required. The minimum order of fifty dollars shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(C) Except as otherwise provided in sub-subparagraph (D) of this subparagraph (II), in circumstances in which the parents' combined monthly adjusted gross income is eight hundred fifty dollars or more, but in which the parent with the least number of overnights per year with the child has a monthly adjusted gross income of less than one thousand eight hundred fifty dollars, the court or delegate child support enforcement unit, pursuant to section 26-13.5-105 (4), C.R.S., shall perform a low-income adjustment calculation of child support as follows: The court or delegate child support enforcement unit shall determine each parent's monthly adjusted gross income, as that term is defined in sub-subparagraph (A) of this subparagraph (II). Based upon the parents' combined monthly adjusted gross incomes, the court or delegate child support enforcement unit shall determine the monthly basic child support obligation, using the schedule of basic child support obligations set forth in paragraph (b) of this subsection (10) and shall determine each parent's presumptive proportionate share of said obligation. The court or delegate child support enforcement unit shall then adjust the income of the parent with the fewest number of overnights per year with the child by subtracting nine hundred dollars from that parent's monthly adjusted gross income. The court shall multiply the resulting amount by a factor of forty percent. The product of the multiplication shall be added to the following basic minimum child support amount as additional minimum support, unless the product of the multiplication amount is zero or a negative figure, in which case the court shall add zero to the following basic minimum child support amount: Seventy-five dollars for one child; one hundred fifty dollars for two children; two hundred twenty-five dollars for three children; two hundred seventy-five dollars for four children; three hundred twenty-five dollars for five children; and three hundred

fifty dollars for six or more children. The court or delegate child support enforcement unit shall compare the product of this addition to the parent's presumptive proportionate share of the monthly basic support obligation determined previously from the schedule of basic child support obligations. The lesser of the two amounts shall be the basic monthly support obligation to be paid by the low-income parent, as adjusted by the low-income parent's proportionate share of the work-related and education-related child care costs, health insurance, extraordinary medical expenses, and other extraordinary adjustments as described in subsections (11) to (13.5) of this section. The low-income adjustment shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(D) In any circumstance in which the obligor's monthly adjusted gross income is less than eight hundred fifty dollars, regardless of the monthly adjusted gross income of the obligee, the obligor shall be ordered to pay fifty dollars per month in child support. The minimum order of fifty dollars shall not apply when each parent keeps the children more than ninety-two overnights each year as defined in subsection (8) of this section. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

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

(b) Schedule of basic child support obligations:

[Add schedule here]

(11) **Computation of child support.** (a) Except in cases of shared physical care or split physical care 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 parent receiving a child support payment shall be presumed to spend his or her total child support obligation directly on the children. The parent paying child support to the other parent shall owe his or her total child support obligation as child support to the other parent minus any ordered payments included in the calculations made directly on behalf of the children for work-related net child care costs, extraordinary medical expenses, or extraordinary adjustments to the schedule.

(b) In cases of shared physical care, 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. In no case, however, shall the amount of child support ordered to be paid exceed the amount of child support that would otherwise be ordered to be paid if the parents did not share physical custody.

(c) (I) In cases of split physical care, a child support obligation shall be computed separately for each parent based upon the number of children living with the other parent in accordance with subsections (10), (11), (12), and (13) of this section. The amount so determined shall be a theoretical support obligation due each parent for support of the child or children for whom he or she has primary physical custody. The obligations so determined shall then be offset, with the parent owing the larger amount owing the difference between the two amounts as a child support order.

(II) If the parents also share physical care as outlined in paragraph (b) of this subsection (14), an additional adjustment for shared physical care shall be made as provided in paragraph (b) of this subsection (14).

(12) (a) **Health care expenditures for children.** In orders issued pursuant to this section, the court shall also provide for the child's or children's current and future medical needs by ordering either parent or both parents to initiate medical or medical and dental insurance coverage for the child or children through currently effective medical or medical and dental insurance policies held by the parent or parents, purchase medical or medical and dental insurance for the child or children, or provide the child or children with current and future medical needs through some other manner. At the same time, the court shall order payment of medical insurance or medical and dental insurance deductibles and co-payments.

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

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

(d) After the total child support obligation is calculated and divided between the parents in proportion to their adjusted gross incomes, the amount calculated in paragraph (c) of this subsection (13.5) shall be deducted from the obligor's share of the total child support obligation if the obligor is actually paying the premium. If the obligee is actually paying the premium, no further adjustment is necessary.

(e) Prior to allowing the health insurance adjustment, the parent requesting the adjustment must submit proof that the child or children have been enrolled in a health insurance plan and must submit proof of the cost of the premium. The court shall require the parent receiving the adjustment to submit annually proof of continued coverage of the child or children to the delegate child support enforcement unit and to the other parent.

(f) **Child residing in area not covered by health insurance policy.** If a parent who is ordered by the court to provide medical or medical and dental insurance for the child or children has insurance that excludes coverage of the child or children because such child or children reside outside the geographic area covered by the insurance policy, the court shall order separate coverage for the child or children if the court determines coverage is available at a reasonable cost.

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

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

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

(12) (Deleted by amendment, L. 96, p. 594, § 7, effective July 1, 1996.) (Current (12). Need to ask Legislative Council ho handle this?)

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

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

(14) **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, or the child and an accompanying parent if the child is less than twelve years of age, between the homes of the parents.

(III) (Deleted by amendment, L. 91, p. 234, § 1, effective July 1, 1991.)(Current(13) (a) (III). Need to ask Legislative Council how to handle?)

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

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

(15) and (16) Repealed. (Current(13) (a) (III). Need to ask Legislative Council how to handle?)

(16) In cases where the custodial parent receives periodic disability benefits granted by the federal "Old-age, Survivors, and Disability Insurance Act" on behalf of dependent children due to the disability of the noncustodial parent or receives employer-paid retirement benefits from the federal government on behalf of dependent children due to the retirement of the noncustodial parent, the noncustodial parent's share of the total child support obligation as determined pursuant to subsection (14) of this section shall be reduced in an amount equal to the amount of such benefits.

(17) Emancipation

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

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

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

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

(b) Nothing in subsection (1.5) or (1.6) of this section shall preclude the parties from agreeing in a written stipulation or agreement on or after July 1, 1997, to continue child support beyond the age of nineteen or to provide for postsecondary education expenses for a child and to set forth the details of the payment of such expenses. If such stipulation or agreement is approved by the court and made part of a decree of dissolution of marriage or legal separation, the terms of such agreement shall be enforced as provided in section 14-10-112.

(18) Emancipation and Post-secondary education for orders entered prior to July 1, 1997.

(a) This subsection (1.5) shall apply to all child support obligations established or modified as a part of any proceeding, including but not limited to articles 5, 6, and 10 of this title and articles 4 and 6 of title 19, C.R.S., prior to July 1, 1997. This subsection (1.5) shall not apply to child support orders established on or after July 1, 1997, which shall be governed by subsection (1.6) of this section.

(b) (I) For child support orders entered prior to July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates when the child attains nineteen years of age unless one or more of the following conditions exist:

(A) The parties agree otherwise in a written stipulation after July 1, 1991.

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

(C) If the child is still in high school or an equivalent program, support continues until the end of the month following graduation, unless there is an order for postsecondary education, in which case support continues through postsecondary education as provided in subparagraph (I) of paragraph (b) of this subsection (1.5). A child who ceases to attend high school prior to graduation and later reenrolls is entitled to support upon reenrollment and until the end of the month following graduation, but not beyond age twenty-one.

(b) (II) (A) (i) If the court finds that it is appropriate for the parents to contribute to the costs of a program of postsecondary education, then the court shall terminate child support and enter an order requiring both parents to contribute a sum determined to be reasonable for the education expenses of the child, taking into account the resources of each parent and the child. In determining the amount of each parent's contribution to the costs of a program of postsecondary education for a child, the court shall be limited to an amount not to exceed the amount listed under the schedule of basic child support obligations in paragraph (b) of subsection (10) of this section for the number of children receiving postsecondary education. If such an order is entered, the parents shall contribute to the total sum determined by the court in proportion to their adjusted gross incomes as defined in subparagraph (II) of paragraph (a) of subsection (10) of this section. The amount of contribution which each parent is ordered to pay pursuant to this paragraph (b) shall be subtracted from the amount of each parent's gross income, respectively,

prior to calculating the basic child support obligation for any remaining children pursuant to subsection (10) of this section.

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

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

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

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

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

(B) If the court orders support pursuant to subparagraph (I) of this paragraph (b), the court or delegate child support enforcement unit may also order that the parents provide health insurance for the child or pay medical expenses of the child or both for the duration of such order. Such order shall provide that these expenses be paid in proportion to their adjusted gross incomes as defined in subparagraph (II) of paragraph (a) of subsection (10) of this section. The court or delegate child support enforcement unit shall order a parent to provide health insurance if the child is eligible for coverage as a dependent on that parent's insurance policy or if health insurance coverage for the child is available at reasonable cost.

(III) An order for postsecondary education expenses entered between July 1, 1991, and July 1, 1997, may be modified pursuant to this subsection (1.5) to provide for postsecondary education expenses subject to the statutory provisions for determining the amount of a parent's contribution to the costs of postsecondary education, the limitations on the amount of a parent's contribution, and the changes to the definition of postsecondary education consistent with this section as it existed on July 1, 1994. An order for child support entered prior to July 1, 1997, that does not provide for postsecondary education expenses shall not be modified pursuant to this subsection (1.5).

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

(V) Postsecondary education includes college and vocational education programs. For the purposes of this section, "postsecondary education support" means support for the following expenses associated with attending a college, university, or vocational education program: Tuition, books, and fees.

(19) **Annual exchange of information**. (a) When a child support order is entered or modified, the parties may agree or the court may require the parties to exchange financial information, including verification of insurance and its costs, pursuant to paragraph (c) of subsection (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.

(b)Upon request of the noncustodial parent, the court may order the custodial parent to submit an annual update of financial information using the approved standardized child support guideline forms, including information on the actual expenses relating to the children of the marriage for whom support has been ordered. The court shall not order the custodial parent to update such financial information pursuant to this subparagraph (III) in circumstances where the noncustodial parent has failed to exercise parenting time rights or when child support payments are in arrears or where there is documented evidence of domestic violence, child abuse, or a violation of a protection order on the part of the noncustodial parent. The court may order the noncustodial parent to pay the costs involved in preparing an update to the financial information. If the noncustodial parent claims, based upon the information in the updated form, that the custodial parent is not spending the child support for the benefit of the children, the court may refer the parties to a mediator to resolve the differences. If there are costs for such mediation, the court shall order that the party requesting the mediation pay such costs.

(20) Child support commission (a) The child support guidelines and general child support issues shall be reviewed and the results of such review and any recommended changes shall be reported to the governor and to the general assembly on or before December 1, 1991, and at least every four years thereafter by a child support commission, which commission is hereby created. As part of its review, the commission must consider economic data on the cost of raising children and analyze case data on the application of, and deviations from, the guidelines to be used in the commission's review to ensure that deviations from the guidelines are limited. In addition, the commission shall review issues identified in the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, including out-of-wedlock births

and the prevention of teen pregnancy. The child support commission shall consist of no more than twenty-one members. The governor shall appoint persons to the commission who are representatives of the judiciary and the Colorado bar association. Members of the commission appointed by the governor shall also include the director of the division in the state department of human services which is responsible for child support enforcement or his or her designee, a director of a county department of social services, the child support liaison to the judicial department, interested parties, a certified public accountant, and parent representatives. In making his or her appointments to the commission, the governor shall attempt to appoint persons as parent representatives or as other representatives on the commission who include a male custodial parent, a female custodial parent, a male noncustodial parent, a female noncustodial parent, a joint custodial parent, and a parent in an intact family. In making his or her appointments to the commission, the governor shall attempt to assure geographical diversity by appointing at least one member from each of the congressional districts in the state. The remaining two members of the commission shall be a member of the house of representatives appointed by the speaker of the house of representatives and a member of the senate appointed by the president of the senate and shall not be members of the same political party. Members of the child support commission shall not be compensated for their services on the commission; except that members shall be reimbursed for actual and necessary expenses for travel and mileage incurred in connection with their duties. The child support commission is authorized, subject to appropriation, to incur expenses related to its work, including the costs associated with public hearings, printing, travel, and research.

(b) (Deleted by amendment, L. 92, p. 188, § 1, effective August 1, 1992.)

(c) (Deleted by amendment, L. 91, p. 234, § 1, effective July 1, 1991.)

(d) (Deleted by amendment, L. 92, p. 188, § 1, effective August 1, 1992.)

(e) (Deleted by amendment, L. 94, p. 1536, § 5, effective July 1, 1994.)

(f) In reviewing the child support guidelines as required in paragraph (a) of this subsection (18), the child support commission shall study the following issues:

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

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

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

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

(19) (Deleted by amendment, L. 2004, p. 385, § 1, effective July 1, 2004.) (Current (19). Need to ask Legislative Council how to handle?)