

Addendum
to the
2011 Child Support Commission Report
December 1, 2012

Findings of the Commission:

This Commission previously addressed retroactive modification of child support orders in its 2011 report. Section C.R.S. 14-10-122(5) allows for a retroactive modification of an order when parties have “mutually agreed” to a change in a physical care arrangement of a child. The Commission adopts the following supplemental recommendations regarding retroactive order modification. Since the publication of that report, courts have addressed another related situation involving retroactive modification of child support orders.

Over the last few years, there has been an increased effort by child protection services and the courts to place a child that had been removed from a parent or caretaker with a family member. These placements are sometimes called “kinship care” placements and do not involve the expenditure of public assistance in the form of foster care placement costs. Sometimes, the placement is made voluntarily by the parent or caretaker. In these cases, the child is not taken into custody by the county but simply placed with a relative.

A child support order may already exist at the time of the kinship care placement, but often, the new caretaker will delay in seeking a modification of the existing child support order. This delay can be months or even years. Eventually the new caretaker may apply for services or be mandatorily referred to a county delegate child support enforcement unit because the caretaker obtains public assistance in the form of Temporary Assistance for Needy Families or obtain benefits under the Colorado Child Care Assistance Program.

Section C.R.S. 14-10-122 addresses child support modification and generally provides that a child support order may only be retroactively modified back to the date the motion to modify was filed with the court. Section C.R.S. 14-10-122(5) provides an exception to this rule and authorizes a court to retroactively modify an order back to the date of the “mutually agreed” change in physical care.

As stated above, sometimes the change in physical care is not “mutually agreed,” but is made pursuant to a court order. The statute does not authorize a court to retroactively modify the existing child support order beyond the date a motion to modify was filed. This can result in a child being without child support for a period of time.

The Commission finds that the number of these types of cases is on the rise as reported by the Colorado Department of Human Services, Division of Child Support Enforcement. The Commission finds that it would be in the best interest of the children in these types of cases to expand a court’s authority to retroactively modify a child support order when a change in physical care is made pursuant to a court order.

Recommendations:

The Commission recommends that C.R.S. 14-10-122 (5) be amended to authorize a court to retroactively modify a child support order if the change in physical care was pursuant to a court order.

Suggested Amendment Language:

14-10-122. Modification and termination of provisions for maintenance, support, and property disposition - automatic lien – repeal

(1) (a) Except as otherwise provided in [section 14-10-112 \(6\)](#), **AND SECTION 14-10-115(11)(c)**, the provisions of any decree respecting maintenance may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unfair, and, except as otherwise provided in subsection (5) of this section, the provisions of any decree respecting child support may be modified only as to installments accruing subsequent to the filing of the motion for modification and only upon a showing of changed circumstances that are substantial and continuing or on the ground that the order does not contain a provision regarding medical support, such as insurance coverage, payment for medical insurance deductibles and copayments, or unreimbursed medical expenses. The provisions as to property disposition may not be revoked or modified unless the court finds the existence of conditions that justify the reopening of a judgment.

(5) Notwithstanding the provisions of subsection (1) of this section, when a **COURT ORDERED OR*** mutually agreed upon change of physical care occurs, the provisions for child support of the obligor under the existing child support order, if modified pursuant to this section, will be modified as of the date when physical care was changed. **THE PROVISIONS FOR THE ESTABLISHMENT OF A CHILD SUPPORT ORDER BASED ON A COURT ORDERED OR VOLUNTARY CHANGE OF PHYSICAL CARE MAY ALSO BE ENTERED RETROACTIVELY TO THE DATE WHEN THE PHYSICAL CARE WAS CHANGED.** When a mutually agreed upon change of physical care occurs, parties are encouraged to avail themselves of the provision set forth in [section 14-10-115 \(14\) \(a\)](#) for updating and modifying a child support order without a court hearing.

* The red all caps indicates suggested amendment language from the 2011 Child Support Commission Report. The red all caps with double underlining indicate additional suggested amendment language to be included based on this Addendum.