

Advanced Family Law Practice for Paralegals:

PREPARING CHILD
SUPPORT WORKSHEETS
AND ORDERS

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Changes to the Child Support Statute (C.R.S. §14-10-115)

I. Senate Bill 07-15

Senate Bill 07-15 recodified the Child Support Statute (relocated the provisions of the child support statute), but did not make substantive changes. Senate Bill 07-15 became law effective March 16, 2007.

II. House Bill 07-1349

House Bill 07-1349 became law effective May 31, 2007, though some provisions will not be effective until January 1, 2008.

Important Changes To be Aware Of:

- a. Emancipation-Effective date: October 1, 2007. The statute includes additional conditions to define emancipation, including marriage and active military duty.

SECTION 5. **14-10-115** (13) (a), Colorado Revised Statutes, as amended by Senate Bill 07-015, enacted at the First Regular Session of the Sixty-sixth General Assembly, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS to read:

14-10-115. Child support - guidelines - schedule of basic child support obligations. (13) **Emancipation.** (a) For child support orders entered on or after July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates without either party filing a motion when the last or only child attains nineteen years of age unless one or more of the following conditions exist:

(IV) IF THE CHILD MARRIES, THE CHILD SHALL BE CONSIDERED EMANCIPATED AS OF THE DATE OF THE MARRIAGE. IF THE MARRIAGE IS ANNULLED, DISSOLVED, OR DECLARED INVALID, CHILD SUPPORT MAY BE REINSTATED.

(V) IF THE CHILD ENTERS INTO ACTIVE MILITARY DUTY, THE CHILD SHALL BE CONSIDERED EMANCIPATED.

SECTION 3. The introductory portion to **14-10-115** (15) (b), Colorado Revised Statutes, as amended by Senate Bill 07-015, enacted at the First Regular Session of the Sixty-sixth General Assembly, is amended, and the said 14-10-115 (15) (b) is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, to read:

14-10-115. Child support - guidelines - schedule of basic child support obligations. (15) (b) For child support orders entered prior to July 1, 1997, unless a court finds that a child is otherwise emancipated, emancipation occurs and child support terminates WITHOUT EITHER PARTY FILING A MOTION when the LAST OR ONLY child attains nineteen years of age unless one or more of the following conditions exist:

(IV) IF THE CHILD MARRIES, THE CHILD SHALL BE CONSIDERED EMANCIPATED AS OF THE DATE OF THE MARRIAGE. IF THE MARRIAGE IS ANNULLED, DISSOLVED, OR DECLARED INVALID, CHILD SUPPORT MAY BE REINSTATED.

(V) IF THE CHILD ENTERS INTO ACTIVE MILITARY DUTY, THE CHILD SHALL BE CONSIDERED EMANCIPATED.

- b. The legislature eliminated the “Prior Born” children language, but now there is a possibility for later born children to affect child support calculation-Effective Date: January 1, 2008.

SECTION 7. 14-10-115 (6) (b) (I) and (10) (a), Colorado Revised Statutes, as amended by Senate Bill 07-015, enacted at the First Regular Session of the Sixty-sixth General Assembly, are amended to read:

14-10-115. Child support - guidelines - schedule of basic child support obligations. (6) Adjustments to gross income. (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 the 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 schedule of basic support obligations listed in this section. An amount equal to the amount listed under the schedule of basic child support obligations in paragraph (b) of subsection (7) of this section that would represent a support obligation based only upon the responsible parent's gross income, without any other adjustments, for the number of other children for whom the parent is also responsible shall be subtracted from the amount of the parent's gross income prior to calculating the basic child support obligation based on both parents' gross income as provided in subsection (7) of this section. FOR A PARENT WITH A GROSS INCOME OF ONE THOUSAND EIGHT HUNDRED FIFTY DOLLARS OR LESS PER MONTH, THE ADJUSTMENT SHALL BE SEVENTY-FIVE PERCENT OF THE AMOUNT CALCULATED USING THE LOW-INCOME ADJUSTMENT DESCRIBED IN SUB-SUBPARAGRAPHS (B) AND (C) OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (7) OF THIS SECTION BASED ONLY UPON THE RESPONSIBLE PARENT'S INCOME, WITHOUT ANY OTHER ADJUSTMENTS FOR THE NUMBER OF OTHER CHILDREN FOR WHOM THE PARENT IS RESPONSIBLE. FOR A PARENT WITH GROSS INCOME OF MORE THAN ONE THOUSAND EIGHT HUNDRED 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 (7) OF THIS SECTION THAT WOULD REPRESENT A SUPPORT OBLIGATION BASED ONLY UPON THE RESPONSIBLE PARENT'S INCOME, WITHOUT ANY OTHER ADJUSTMENTS FOR THE NUMBER OF OTHER CHILDREN FOR WHOM THE PARENT IS RESPONSIBLE. THE AMOUNT CALCULATED AS SET FORTH IN THIS SUBPARAGRAPH (I) 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 (7) OF THIS SECTION.

c. Health Insurance coverage paid by a new spouse receives a credit on the Child Support Worksheet as if the Parent was actually paying the premium-Effective Date: May 31, 2007.

(10) (a) **Adjustments for health care expenditures for children.** In orders issued pursuant to this section, the court shall also provide for the child's or children's current and future medical needs by ordering either parent or both parents to initiate medical or medical and dental insurance coverage for the child or children through currently effective medical or medical and dental insurance policies held by the parent or parents, purchase medical or medical and dental insurance for the child or children, or provide the child or children with current and future medical needs through some other manner. IF A PARENT HAS BEEN DIRECTED TO PROVIDE INSURANCE PURSUANT TO THIS SECTION AND THAT PARENT'S SPOUSE PROVIDES THE INSURANCE FOR THE BENEFIT OF THE CHILD OR CHILDREN EITHER DIRECTLY OR THROUGH EMPLOYMENT, A CREDIT ON THE CHILD SUPPORT WORKSHEET SHALL BE GIVEN TO THE PARENT IN THE SAME MANNER AS IF THE PREMIUM WERE PAID BY THE PARENT. At the same time, the court shall order payment of medical insurance or medical and dental insurance deductibles and copayments.

III. Preparing a Child Support Worksheet:

a. Overnights:

i. Multiple Children on Multiple Schedules:

1. *In re the Marriage of Quam*, 813 P.2d 833 (Colo. App. 1991).
2. Determine the number of overnights each child has.
3. Add together the number of overnights each child has, and divide by the number of children to determine the actual number of overnights.
4. Ex: Abby spend every Sunday and Monday overnights with Dad. Brian spends every Sunday and Monday overnight with Dad, plus ever other Thursday. Cathy spend has dinner with Dad every Friday night. How many overnights for the Worksheet?
5. Ans: Abby = 104; Brian = 130; Cathy = 0.
Total Overnights: $(104+130+0)/3 = 78$ =Worksheet A

b. Gross Income:

- i. Overtime pay is included as gross income if it is required as a condition of employment. *In re the Marriage of Rice and Foutch*, 987 P.2d 947 (Colo. App. 1999). Voluntary overtime is not includable.
- ii. Pension money (ie. PERA) is includable in gross income, even if the party never receives the money and does not have access to it. *In re the Marriage of Zappanti*, 80 P.3d 889 (Colo. App. 2003) (Even if retirement is divided as a

property asset in a dissolution, its status as an income producing asset is still taken into account for child support purposes.)

- iii. Income from a second job is not includable in gross income. For example, if Husband is a professor and he accepts as a consultant for research grants, income from this consulting position is not includable in gross income if the consulting work constituted a second job. *In re the Marriage of Salby*, 126 P.3d 291 (Colo. App. 2005). But if the consulting work was “an integral part of this full time employment” and an “expectation” of his full time position, it should be included in gross income. *Salby*. Alternatively, when Father chose to stop teaching the additional summer school classes he had taught in the past, the court was able to look to these historical earnings to determine gross income. *In re the Marriage of Hannum*, 796 P.2d 57 (Colo. App. 1990).
- iv. Historical income can be imputed to a party for the purpose of calculating child support. *In re the Marriage of Bregar*, 952 P.2d 783 (Colo. App. 1997).
- v. Post-decree inheritance can be included as gross income for the purpose of calculating child support. *In re the Marriage of Armstrong*, 831 P.2d 501 (Colo. App. 1992). To fill in the child support worksheet, you should use the amount of income that the inheritance is expected to generate each month.

vi. Actual exercise of vested stock options should be included in gross income for the year in which the income was earned. This same rule applies to capital gains. *In re the Marriage of Campbell*, 905 P.2d 19 (Colo. App. 1995).

c. Work Related Child Care and Education Related Child Care:

i. These are costs that are actually incurred on behalf of the children. For instance, if Wife is going back to work, or back to school, we cannot impute childcare costs if the children are not enrolled in childcare. This has to be added to the child support worksheet when these costs are actually being incurred. *In re the Marriage of Mackey*, 940 P.2d 1112 (Colo. App. 1997); *In re the Marriage of Ikeler*, 148 P.3d 347 (Colo. App. 2006).

d. Health Insurance Premium Costs:

- i. First, determine if the Client knows what portion of the premium actually provides for the children.
- ii. Second, determine how many people are covered by the policy, and divide the premium cost by the total number of people covered to determine the cost per person. Multiply the cost per person by the number of children.
- iii. Ex. Mom pay \$504 for health insurance for her family. The insurance covers Mom, Stepfather, 3 children and 2 stepchildren. The cost of insurance for her 3 children is \$216.

iv. Ex. Stepmother pays \$350 for health insurance for herself, Father, Stepmother's child and Father's two children. Father can get the credit for health insurance for his two children for \$140, even though he does not pay for it himself.

e. Extraordinary Medical Expenses (uninsured only):

C.R.S. 14-10-115(13.5)(h) (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.

- i. The amounts attributed to the extraordinary medical expenses are to be divided in proportion to each party's adjusted gross incomes.
- ii. It is assumed that the party with the majority of the parenting time pays for the first \$250 of uninsured extraordinary medical expenses, though it is not specified in the statute.

- f. Extraordinary expenses (agreed to by parents or by order of the court):
- i. This includes private school, specific classes/tutors to meet the educational needs of the children, transportation costs for parenting time.
 - ii. The amounts attributed to the extraordinary expenses are to be divided in proportion to each party's adjusted gross incomes.
- g. Extrapolation: Calculating child support when the parties joint adjusted gross income exceeds \$20,000.
- i. Extrapolation is discretionary and the court must consider the children's needs, including the costs of food, shelter, education and recreation enjoyed by the children at the time of dissolution. *Ludwig v. Ludwig*, 122 P.3d 1056 (Colo. App. 2005).
- h. Children in College:
- i. Ex: Peter is a freshman in college out of state. He lives in an apartment off campus with two other roommates. On breaks from school, and for the summer, Peter will return to Colorado to live with his mother. Does Father still have to pay the same child support for Peter? Yes.
 - ii. Ex. In Mother and Fathers' Separation Agreement the parties agreed that Father would pay for postsecondary education for Peter. Peter is a freshman in college out of state. He lives in an apartment off campus with two other

roommates. On breaks from school, and for the summer, Peter will return to Colorado to live with his mother. Does Father still have to pay the same child support for Peter?
No.

IV. Drafting Support Orders:

a. Court Form JDF 1117

b. Be sure to include interest in the child support and maintenance arrears.