TITLE 14

DOMESTIC MATTERS

Cross references: For the "Colorado Children's Code", see title 19.

ADOPTION - ADULTS

Art. 1. Adoption of Adults, 14-1-101.

MARRIAGE AND RIGHTS OF MARRIED PERSONS

Art. 2. Marriage and Rights of Married Persons, 14-2-101 to 14-2-313.

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Art. 4. Domestic Abuse, 14-4-105 to 14-4-107.

DESERTION AND NONSUPPORT

Art. 5. Uniform Interstate Family Support Act, 14-5-101 to 14-5-903.

Art. 6. Nonsupport, 14-6-101 to 14-6-113.

Art. 7. Parent and Child, 14-7-101 to 14-7-104.

DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES

Art. 10. Uniform Dissolution of Marriage Act, 14-10-101 to 14-10-133.

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Art. 11. Actions Originating in Other Jurisdictions, 14-11-101.

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ADOPTION - ADULTS

ARTICLE 1

Adoption of Adults

14-1-101. Adoption of adults.

14-1-101. Adoption of adults.

(1) Any person desiring to adopt an adult as heir at law shall file his petition therefor in the juvenile court of the county of his residence or the county of the residence of the person sought to be adopted, and thereupon summons shall issue the same as provided in the Colorado rules of civil procedure and be served on the person sought to be adopted. Such person shall file in the court a written answer to the petition within the time required by the summons and shall either consent to such adoption or deny or disclaim all desire to be adopted by such person.

(2) Upon the filing, by the person sought to be adopted, of a disclaimer of all desire to become the heir at law of the petitioner, the petition shall be dismissed by the court, but upon the filing of a consent to such adoption, whether by the person sought to be adopted or by a legally qualified conservator or other representative if such person is non compos mentis at the time, the prayer of the petition shall be granted, and a decree of adoption shall be rendered and entered by the court declaring such person the heir at law of the petitioner and entitled to inherit from the petitioner any property in all respects as if such adopted person had been the petitioner's child born in lawful wedlock, and such decree may or may not change the name of such adopted person, as the court rendering the decree may deem advisable; and such decree or a certified copy thereof may be used as primary evidence in any court establishing the status of the person so adopted.

(3) Any action for adoption pursuant to this section shall follow the same procedure insofar as practicable as provided in part 2 of article 5 of title 19, C.R.S., concerning the adoption of children.

Source: L. 67: p. 1055, § 1. **C.R.S. 1963:** § 4-2-1. **L. 87:** (3) amended, p. 815, § 14, effective October 1.

ANNOTATION

Law reviews. For note, "The Right of Inheritance of Adopted Children in Colorado", see 23 Rocky Mt. L. Rev. 191 (1950). For note, "Adoption and Intestacy in Colorado", see 26 Rocky Mt. L. Rev. 65 (1953). For article, "The Adoption of Children in Colorado", see 37 Dicta 100 (1960).

Annotator's note. Since § 14-1-101 is similar to repealed § 4-1-13, CRS 53, a relevant case construing that provision has been included in the annotations to this section.

The primary purpose of this section is expressed in the first sentence: "Any person desiring to adopt a person over 21 years of age as heir-at-law ....". Martin v. Cuellar, 131 Colo. 117, 279 P.2d 843 (1955).

The name of the person adopted under this section need not be changed. Martin v. Cuellar, 131 Colo. 117, 279 P.2d 843 (1955).

No obligation whatsoever is placed upon the person adopted with respect to the adoptive parent, and he is granted no rights whatever, other than the acquisition of an heir-at-law, who may or may not even bear his name. Martin v. Cuellar, 131 Colo. 117, 279 P.2d 843 (1955).

This section is merely a means of giving effect to a personal transaction mutually agreeable between two adults. Martin v. Cuellar, 131 Colo. 117, 279 P.2d 843 (1955).

No rights of the natural parents of the person adopted are taken from them, or even mentioned, where the purpose of the adoption is to acquire an adult "heir-at-law". Martin v. Cuellar, 131 Colo. 117, 279 P.2d 843 (1955).

Certainly the rights of the natural parents of such person so adopted may not be lost in a proceeding of which they receive no notice, and there is no requirement of service of notice upon them. Martin v. Cuellar, 131 Colo. 117, 279 P.2d 843 (1955).

The effect of an adult adoption and a child adoption are different. A person adopts an adult to make such person his or her intestate heir. Matter of Trust created by Belgard, 829 P.2d 457 (Colo. App. 1991).

This section requires the trial court to grant an adult adoption when there is valid service and the adoptee consents to such adoption. There is no additional requirement that there be a minimum age differential between the adoptor and the adoptee nor is adoption precluded based upon the prior relationship of the parties. In re P.A.L. von R., 5 P.3d 390 (Colo. App. 2000).

It does not violate public policy of state to permit a person to adopt his or her own adult sibling. In re P.A.L. von R., 5 P.3d 390 (Colo. App. 2000).

Where one over the age of 21 years is adopted as an heir-at-law by another person, such adoptive parent is without legal status to maintain action under the wrongful death statute for the death of such adopted person. Martin v. Cuellar, 131 Colo. 117, 279 P.2d 843 (1955).

Considering the circumstances at the time the trust was executed and the settlor's reasonable expectations, the

phrase "persons legally adopted" was held to include adopted children only, not adults. The court held that the respondent was using the adult adoption statute to entitle his wife to a remainder of the trust estate, contrary to the settlor's intent as set forth in the instrument. Matter of Trust created by Belgard, 829 P.2d 457 (Colo. App. 1991).

The general assembly's desire to place adopted and natural children on par with one another does not extend to permit adult adoptions for the purpose of giving them an interest in property already specifically designated. Such an adoption decree did not have the power to affect the disposition of such interests, it only granted the right to inherit through intestacy. Matter of Trust created by Belgard, 829 P.2d 457 (Colo. App. 1991).

Adult adoption proceedings in juvenile court are confidential. In re W.D.A. v. City & County of Denver, 632 P.2d 582 (Colo. 1981).

Section 19-4-104 (1) (now § 19-5-215), relating to confidentiality of records, applies to adult adoption proceedings under this section. In re W.D.A. v. City & County of Denver, 632 P.2d 582 (Colo. 1981).

MARRIAGE AND RIGHTS OF MARRIED PERSONS

ARTICLE 2

Marriage and Rights of Married Persons

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UNIFORM MARRIAGE ACT

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PART 2
RIGHTS OF MARRIED PERSONS

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PART 1

UNIFORM MARRIAGE ACT

Editor's note: (1) This part 1 was numbered as article 1 of chapter 90, C.R.S. 1963. The provisions of this part 1 were repealed and reenacted in 1973, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 1973, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) In In re Hogsett, 2021 CO 1, 478 P.3d 713, the Colorado supreme court held that a common law marriage may be established by the mutual consent or agreement of the couple to

enter the legal and social institution of marriage, followed by conduct manifesting that mutual agreement.

Annotator's note: For the test for proving a common law marriage, see In re Hogsett, 2021 CO 1, 478 P.3d 713.

14-2-101. Short title.

This part 1 shall be known and may be cited as the "Uniform Marriage Act".

Source: L. 73: R&RE, p. 1016, § 1. **C.R.S. 1963:** § 90-1-1.

ANNOTATION

Law reviews. For article, "Ten Years of Domestic Relations in Colorado — 1940-1950", see 27 Dicta 399 (1950). For article, "One Year Review of Domestic Relations", see 34 Dicta 108 (1957). For comment, "Adoptive Sibling Marriage in Colorado: Israel v. Allen", see 51 U. Colo. L. Rev. 135 (1979). For article, "Effects of Reconciliation on Separation Agreements in Colorado", see 51 U. Colo. L. Rev. 399 (1980). For article, "Cohabitation Agreements in Colorado", see 15 Colo. Law. 979 (1986). For article, "Common Law Marriage in Colorado", see 16 Colo. Law. 252 (1987). For article, "Defending Against a Common Law Marriage Claim", see 34 Colo. Law. 69 (Mar. 2005).

14-2-102. Purposes - rules of construction.

(1) This part 1 shall be liberally construed and applied to promote its underlying purposes.

(2) Its underlying purposes are:

(a) To strengthen and preserve the integrity of marriage and to safeguard meaningful family relationships;

(b) To provide adequate procedures for the solemnization and registration of marriage.

Source: L. 73: R&RE, p. 1016, § 1. **C.R.S. 1963:** § 90-1-2.

ANNOTATION

Law reviews. For comment, "Adoptive Sibling Marriage in Colorado: Israel v. Allen", see 51 U. Colo. L. Rev. 135 (1979). For article, "Pre-2014 Same-Sex Common-Law Marriages: Should Federal Precedent Apply Retroactively?", see 47 Colo. Law. 42 (Dec. 2018).

There is no doubt that the public policy of Colorado favors marriage. Lewis v. Colo. Nat'l Bank, 652 P.2d 1106 (Colo. App. 1982).

But policy will not void a forfeiture-on-remarriage trust provision. A forfeiture-on-remarriage provision in a trust is not void on public policy grounds as a restraint on marriage. Lewis v. Colo. Nat'l Bank, 652 P.2d 1106 (Colo. App. 1982).

The policy of the law favoring marriage is without sufficient vigor to overcome the policy in support of effectuating a settlor's intention. Lewis v. Colo. Nat'l Bank, 652 P.2d 1106 (Colo. App. 1982).

Applied in Israel v. Allen, 195 Colo. 263, 577 P.2d 762 (1978).

14-2-103. Uniformity of application and construction.

This part 1 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this part 1 among those states which enact it.

Source: L. 73: R&RE, p. 1016, § 1. **C.R.S. 1963:** § 90-1-3.

14-2-104. Formalities.

(1) A marriage is valid in this state if it is licensed, solemnized, and registered as provided in this part 1.

(2) (Deleted by amendment, L. 2025).

(3) This section does not repeal or invalidate any otherwise valid common law marriage:

(a) Entered into prior to September 1, 2006; or

(b) Entered into on or after September 1, 2006, and that complies with section 14-2-109.5.

Source: L. 73: R&RE, p. 1016, § 1. **C.R.S. 1963:** § 90-1-4. **L. 2000:** Entire section amended, p. 1054, § 1, effective May 26. **L. 2006, 1st Ex. Sess.:** (3) amended, p. 9, § 1, effective July 18.

L. 2025: Entire section amended, (SB 25-014), ch. 51, p. 225, § 1, effective April 7. **L. 2026:** (3) RC&RE, (HB 26-1218), ch. 114, p. 457, § 1, effective May 5.

Cross references: For the validity or recognition of marriages in this state, see section 31 of article II of the state constitution; for cases construing constitutional and statutory provisions similar to section 31 of article II of the state constitution, see the editor's note under section 31 of article II.

ANNOTATION

Law reviews. For article, "Colorado Civil Union Act", see 42 Colo. Law. 91 (July 2013). For article, "Pre-2014 Same-Sex Common-Law Marriages: Should Federal Precedent Apply Retroactively?", see 47 Colo. Law. 42 (Dec. 2018). For article, "'I Do?': Common Law Marriage and a 'Refined' Look at People v. Lucero", see 50 Colo. Law. 50 (June 2021).

Common law, not the provisions of the Uniform Marriage Act, governs the existence of a common law marriage. In re J.M.H., 143 P.3d 1116 (Colo. App. 2006).

Refining the common law marriage test articulated in People v. Lucero, 747 P.2d 660 (Colo. 1987), common law marriage may be established by mutual consent or agreement of the couple to enter into the legal and social institution of marriage, followed by conduct manifesting mutual agreement. The core inquiry is whether the parties intended to enter into a marital relationship, agreeing to share a life together as spouses in a committed, intimate relationship of mutual support and obligation. In assessing whether common law marriage has been established, courts should accord weight to evidence reflecting a couple's express agreement to marry. In the absence of express evidence of agreement to marry, the agreement to enter into a marital relationship may be inferred from conduct. While the factors identified in Lucero may still be relevant, they must be addressed in context; the inferences to be drawn from the parties' conduct may vary depending on the circumstances. The manifestation of the parties' agreement to marry need not take a particular form. In re Hogsett, 2021 CO 1, 478 P.3d 713.

Same-sex partners may enter into common law marriage and state law restrictions on same-sex marriage deemed unconstitutional in Obergefell v. Hodges, 576 U.S. 664 (2015), cannot serve as an impediment to the recognition of a same-sex common marriage predating that decision. In re LaFleur, 2021 CO 3, 479 P.3d 869.

14-2-105. Marriage license and marriage certificate.

(1) The executive director of the department of public health and environment shall prescribe the form for an application for a marriage license, which must include the following information:

(a) Name, sex, address, last four digits of the social security number, and date and place of birth of each party to the proposed marriage, which proof of identity and date of birth may be by a birth certificate, a driver's license, a passport, or other comparable evidence;

(b) If either party has previously been married, such party's married name and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(b.5) If either party has previously been a partner in a civil union and, if so, the name of the other partner in the civil union, or the date, place, and court in which the civil union was dissolved or declared invalid, or the date and place of death of the former partner in the civil union;

(c) Name and address of the parents or guardian of each party;

(d) Whether the parties are related to each other and, if so, their relationship, or, if the parties are currently married to each other, a statement to that effect.

(2) The executive director of the department of public health and environment shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

Source: L. 73: R&RE, p. 1016, § 1. **C.R.S. 1963:** § 90-1-5. **L. 93:** (1)(b) and (1)(d) amended, p. 437, § 1, effective July 1. **L. 94:** IP(1) and (2) amended, p. 2731, § 347, effective July 1. **L. 2016:** IP(1) amended and (1)(b.5) added, (SB 16-150), ch. 263, p. 1080, § 2, effective June 8. **L. 2019:** (1)(a) amended, (HB 19-1316), ch. 380, p. 3421, § 5, effective August 2.

Cross references: For the legislative declaration contained in the 1994 act amending the introductory portion to subsection (1) and subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 16-150, see section 1 of chapter 263, Session Laws of Colorado 2016.

14-2-106. License to marry.

(1) (a) When a marriage license application has been completed and signed by both parties to a prospective marriage and at least one party has appeared, or both parties appeared if permitted pursuant to section 14-2-106.5, before the county clerk and recorder and has paid the marriage

license fee of seven dollars, a fee of twenty dollars to be transmitted by the county clerk and recorder to the state treasurer and credited by the treasurer to the Colorado domestic abuse program fund created in section 39-22-802 (1), and an additional amount established pursuant to section 25-2-121, such amount to be credited to the vital statistics records cash fund pursuant to section 25-2-121, the county clerk shall issue a license to marry and a marriage certificate form upon being furnished:

(I) Satisfactory proof that each party to the marriage will have attained the age of eighteen years at the time the marriage license becomes effective; or, if over the age of sixteen years but has not attained the age of eighteen years, has judicial approval, as provided in section 14-2-108; and

(II) Satisfactory proof that the marriage is not prohibited, as provided in section 14-2-110.

(b) Violation of subsection (1)(a)(I) of this section makes the marriage voidable.

(2) Repealed.

(3) (a) If, at any point following the issuance of a valid license to marry issued pursuant to this section, a party to the marriage presents the issuing county clerk and recorder with appropriate documentation of that party's name change and requests the issuance of a new license to marry, the county clerk shall issue a new license to marry that reflects the party's name change.

(b) A new license to marry issued pursuant to subsection (3)(a) of this section supersedes the original license to marry as the official public record and must not be marked as amended or indicate in any manner that the name on the license to marry has been changed.

Source: L. 73: R&RE, p. 1017, § 1. **C.R.S. 1963:** § 90-1-6. **L. 75:** (2)(a) amended, p. 583, § 1, effective April 10. **L. 79:** (2)(a), (2)(b), and (2)(d) R&RE, p. 635, § 1, effective July 1. **L. 84:** (1)(a)(III) amended, p. 1118, § 9, effective June 7; IP(1)(a) amended, p. 742, § 1, effective July 1. **L. 86:** (1)(a)(III) amended, p. 711, § 1, effective July 1; (2)(a), (2)(b), (2)(d), (2)(f), and (2)(g) amended and (2)(h) added, p. 711, § 1, effective July 1. **L. 89:** IP(1)(a) amended and (1)(c) added, p. 936, § 2, effective July 1. **L. 93:** (1)(c) amended, p. 927, § 4, effective May 28. **L. 98:** (1)(a)(I) amended, p. 1394, § 30, effective February 1, 1999. **L. 2000:** IP(1)(a) and (1)(c) amended, p. 1571, § 8, effective July 1. **L. 2009:** IP(1)(a) amended, (SB 09-068), ch. 264, p. 1211, § 5, effective July 1. **L. 2019:** Entire section amended, (HB 19-1316), ch. 380, p. 3419, § 1, effective August 2. **L. 2023:** IP(1)(a) amended, (HB 23-1278), ch. 291, p. 1757, § 1, effective August 7. **L. 2025:** (3) added, (HB 25-1312), ch. 205, p. 927, § 2, effective May 16.

Editor's note: Subsection (2)(h) provided for the repeal of subsection (2), effective July 1, 1989. (See L. 86, p. 711.)

Cross references: For the short title ("Kelly Loving Act") in HB 25-1312, see section 1 of chapter 205, Session Laws of Colorado 2025.

ANNOTATION

Law reviews. For article, "Common Law Marriage in Colorado", see 16 Colo. Law. 252 (1987).

A failure to obtain the blood test (now rubella immunity documentation) does not invalidate a marriage, since § 14-2-113 provides for penalties only in the event of violation. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961) (decided under repealed § 90-1-6, CRS 53).

14-2-106.5. License to marry without appearing in person.

(1) A county clerk and recorder may permit the parties to a prospective marriage to satisfy the requirement to appear before the county clerk and recorder by an interactive audiovisual communication technology or online functionality, for the following limited purposes:

(a) To verify application information;

(b) To present satisfactory proof that each party to the marriage will have attained the age of eighteen years at the time the marriage license becomes effective;

(c) To present satisfactory proof that the marriage is not prohibited; or

(d) To pay required fees.

(2) A county clerk and recorder shall not permit the procedure described in subsection (1) of this section if either of the parties are under eighteen years of age, or if the parties are using interactive audiovisual technology and are unable to appear together. Nothing in this section changes any requirement that must be satisfied in the state of Colorado.

(3) A county clerk and recorder who permits the parties to a prospective marriage to satisfy certain requirements without appearing in person and staff members who carry out duties on behalf of the county clerk and recorder pursuant to this section shall complete the training and curricula developed by the human trafficking council created in section 18-3-505 for persons who work in or who frequent places where human trafficking victims are likely to appear. The training and curricula must be completed prior to permitting parties to a prospective marriage to satisfy certain requirements without appearing in person pursuant to this section; except that if a

county clerk and recorder permits the parties to a prospective marriage to satisfy certain requirements without appearing in person on and before June 18, 2021, the training and curricula must be completed no later than thirty days after June 18, 2021. A county clerk and recorder who permits the parties to a prospective marriage to satisfy certain requirements without appearing in person shall maintain records demonstrating compliance with this subsection (3) and shall display a notice of compliance with this subsection (3) in a place that is accessible to the public in the county clerk and recorder's office and on its website. A county clerk and recorder and staff members who carry out duties of the county clerk and recorder shall complete the training and curricula requirements pursuant to this subsection (3) at least once every year for as long as the county clerk and recorder permits the parties to a prospective marriage to satisfy certain requirements without appearing in person pursuant to this section.

(4) Repealed.

Source: L. 2021: Entire section added, (HB 21-1287), ch. 264, p. 1537, § 1, effective June 18. **L. 2023:** IP(1) and (3) amended and (4) repealed, (HB 23-1278), ch. 291, p. 1757, § 2, effective August 7.

14-2-107. When licenses to marry issued - validity.

Licenses to marry must be issued by the county clerk and recorder only during the hours that the office of the county clerk and recorder is open as prescribed by law and at no other time, and such licenses must show the exact date and hour of their issue. New licenses to marry issued pursuant to section 14-2-106 (3)(a) must show the date and hour of issuance of the new license, but the effective date of the marriage is the date listed on the original license to marry. New licenses to marry issued pursuant to section 14-2-106 (3)(a) are valid. A license shall not be valid for use outside the state of Colorado. Within the state, such licenses shall not be valid for more than thirty-five days after the date of issue. If any license to marry is not used within thirty-five days, it is void and shall be returned to the county clerk and recorder for cancellation.

Source: L. 73: R&RE, p. 1018, § 1. **C.R.S. 1963:** § 90-1-7. **L. 75:** Entire section amended, p. 583, § 2, effective April 10. **L. 93:** Entire section amended, p. 437, § 2, effective July 1. **L. 2012:** Entire section amended, (SB 12-175), ch. 208, p. 829, § 22, effective July 1. **L. 2025:** Entire section amended, (HB 25-1312), ch. 205, p. 927, § 3, effective May 16.

Cross references: For the short title ("Kelly Loving Act") in HB 25-1312, see section 1 of chapter 205, Session Laws of Colorado 2025.

14-2-108. Judicial approval.

(1) The juvenile court, as defined in section 19-1-103, after a reasonable effort has been made to notify the parents or legal guardians of each underage party, may order the county clerk and recorder pursuant to subsection (2) of this section to issue a marriage license and a marriage certificate form to a person sixteen or seventeen years of age.

(2) (a) The court may order the county clerk and recorder to issue a marriage license under subsection (1) of this section only if the court finds, after reviewing the report of the guardian ad litem appointed pursuant to subsection (2)(b) of this section, that the underage party is capable of assuming the responsibilities of marriage and the marriage would serve the underage party's best interests. Pregnancy alone does not establish that the best interests of the party would be served.

(b) (I) Prior to ordering the issuance of a marriage license to an underage party, the court shall appoint a guardian ad litem for the underage party and direct the guardian ad litem to investigate the best interests of the underage party and to file a report with the court addressing the factors set forth in subsection (2)(b)(II) of this section and stating a position as to whether the issuance of a marriage license to the underage party is in the underage party's best interests.

(II) The court shall consider all relevant factors, including:

(A) The wishes of the underage party;

(B) The view of the parents or legal guardians of the underage party, if known;

(C) The ability of the underage party to assume the responsibilities of marriage;

(D) The circumstances surrounding the marriage; and

(E) The ability of the underage party to manage the underage party's financial, personal, social, educational, and nonfinancial affairs independent of the underage party's intended spouse both during the marriage or upon dissolution of the marriage.

(3) The district court or the juvenile court, as the case may be, shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization, being section 14-2-109.

Source: L. 73: R&RE, p. 1018, § 1. **C.R.S. 1963:** § 90-1-8. **L. 87:** IP(1) amended, p. 815, § 15, effective October 1. **L. 98:** (1)(b) amended, p. 1394, § 31, effective February 1, 1999. **L. 2019:** (1) and (2) amended, (HB 19-1316), ch. 380, p. 3420, § 2, effective August 2. **L. 2021:** (1) amended, (SB 21-059), ch. 136, p. 712, § 18, effective October 1.

ANNOTATION

Law reviews. For comment, "Adoptive Sibling Marriage in Colorado: Israel v. Allen", see 51 U. Colo. L. Rev. 135 (1979).

14-2-109. Solemnization and registration of marriages - proxy marriage.

(1) A marriage may be solemnized by a judge of a court, by a court magistrate, by a retired judge of a court, by a public official whose powers include solemnization of marriages, by the parties to the marriage, or in accordance with any mode of solemnization recognized by any religious denomination or Indian nation or tribe. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the county clerk and recorder within sixty-three days after the solemnization. Any person who fails to forward the marriage certificate to the county clerk and recorder as required by this section shall be required to pay a late fee in an amount of not less than twenty dollars. An additional five-dollar late fee may be assessed for each additional day of failure to comply with the forwarding requirements of this subsection (1) up to a maximum of fifty dollars. For purposes of determining whether a late fee shall be assessed pursuant to this subsection (1), the date of forwarding shall be deemed to be the date of postmark.

(2) (a) The requirements for applying for a marriage license for a proxy marriage are the following:

(I) One party to the proxy marriage is a resident of the state of Colorado;

(II) One party to the proxy marriage appears in person to apply for the marriage license and pays the fees required in section 14-2-106 (1);

(III) The signatures of both parties to the proxy marriage are required, and the party present shall sign the marriage license application, as prescribed in section 14-2-105 (2), and provide an absentee affidavit form, as prescribed by the state registrar, containing the notarized signature of the absent party, along with proper identification documents as specified in section 14-2-105 (1)(a) for the absent party; and

(IV) Both parties to the proxy marriage are eighteen years of age or older.

(b) If a party to a marriage is unable to be present at the solemnization, the absent party may authorize in writing a third person to act as the absent party's proxy for purposes of solemnization of the marriage, if the absent party is:

(I) A member of the armed forces of the United States who is stationed in another country or in another state in support of combat or another military operation; or

(II) An individual who is a government contractor, or an employee of a government contractor, working in support of the armed forces of the United States or in support of United States military operations in another country or in another state and who supplies proper identification of that status.

(c) If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, such person may solemnize the marriage by proxy. If such person is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the county clerk and recorder shall register the marriage.

Source: L. 73: R&RE, p. 1019, § 1. **C.R.S. 1963:** § 90-1-9. **L. 79:** (1) amended, p. 637, § 1, effective May 25. **L. 89:** (1) amended, p. 781, § 1, effective April 4. **L. 91:** (1) amended, p. 359, § 19, effective April 9. **L. 93:** Entire section amended, p. 438, § 3, effective July 1. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 829, § 23, effective July 1. **L. 2015:** (2) amended, (HB 15-1327), ch. 229, p. 851, § 1, effective May 27. **L. 2019:** (2)(a)(IV) amended, (HB 19-1316), ch. 380, p. 3421, § 3, effective August 2.

ANNOTATION

Law reviews. For article, "The Validity in Colorado of Marriages by Proxy", see 20 Dicta 283 (1943).

14-2-109.3. Rights of underage married persons.

(1) In addition to any rights established in law, a married person who has not attained eighteen years of age has the following rights:

(a) The right to establish a domicile separate from the married person's parents;

(b) The right to file motions and petitions with a court in the married person's name and on the married person's own behalf;

(c) The right to enter into enforceable contracts, including but not limited to leases for housing; and

(d) The right to consent to and make decisions concerning the married person's own medical care.

Source: L. 2019: Entire section added, (HB 19-1316), ch. 380, p. 3421, § 4, effective August 2.

14-2-109.5. Common law marriage - age restrictions.

(1) A common law marriage entered into on or after September 1, 2006, shall not be recognized as a valid marriage in this state unless, at the time the common law marriage is entered into:

(a) Each party is eighteen years of age or older; and

(b) The marriage is not prohibited, as provided in section 14-2-110.

(2) Notwithstanding the provisions of section 14-2-112, a common law marriage contracted within or outside this state on or after September 1, 2006, that does not satisfy the requirements specified in subsection (1) of this section shall not be recognized as valid in this state.

Source: L. 2006, 1st Ex. Sess.: Entire section added, p. 9, § 2, effective July 18.

14-2-110. Prohibited marriages.

(1) The following marriages are prohibited:

(a) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties, except a currently valid marriage between the parties;

(a.5) A marriage entered into prior to the dissolution of an earlier civil union of one of the parties, except a currently valid civil union between the same two parties;

(b) A marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood;

(c) A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures.

(2) Repealed.

Source: L. 73: R&RE, p. 1019, § 1. **C.R.S. 1963:** § 90-1-10. **L. 78:** (1)(b) amended, p. 262, § 47, effective May 23. **L. 93:** (1)(a) amended, p. 438, § 4, effective July 1. **L. 2016:** (1)(a.5)

added, (SB 16-150), ch. 263, p. 1080, § 3, effective June 8. **L. 2018:** (2) repealed, (SB 18-095), ch. 96, p. 753, § 5, effective August 8.

Cross references: (1) For criminal penalties for the offense of bigamy, see § 18-6-201; for criminal penalties for the offense of incest, see § 18-6-301.

(2) For the legislative declaration in SB 16-150, see section 1 of chapter 263, Session Laws of Colorado 2016. For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For note, "The Serbonian Bog of Miscegenation", see 21 Rocky Mt. L. Rev. 425 (1949). For article, "The Incestuous Marriage — Relic of the Past", see 36 U. Colo. L. Rev. 473 (1964). For comment, "Adoptive Sibling Marriage in Colorado: Israel v. Allen", see 51 U. Colo. L. Rev. 135 (1979). For article, "Same Sex Marriages: Should the CBA Take a Position," see 25 Colo. Law. 7 (Apr. 1996).

Putative spouse entitled to legal spouse's right to workmen's compensation. While it is true that a marriage entered into prior to dissolution of a previous marriage is prohibited in Colorado, an innocent party to such a marriage is not deprived of the rights conferred upon a legal spouse. As a putative spouse, upon the other person's death, she acquires the legal spouse's right to workmen's compensation. Williams v. Fireman's Fund Ins. Co., 670 P.2d 453 (Colo. App. 1983).

A common law marriage cannot be found where decedent knew that plaintiff was legally married to someone not the decedent at the time the decedent died despite anything decedent may have said regarding an intention to marry plaintiff and plaintiff's acquisition of a retroactive divorce after decedent died. The court will not speculate as to what the decedent might have intended regarding marriage had he been aware of the removal of the legal disability during his lifetime. Crandell v. Resley, 804 P.2d 272 (Colo. App. 1990).

Belief by parties that they had entered into a "religious" or "celestial" marriage does not establish putative spouse status if parties were aware that plaintiff was still legally married to someone else at the time of the "celestial" marriage. Combs v. Tibbitts, 148 P.3d 430 (Colo. App. 2006).

A party may not attain putative spouse status if a court determines that no common law marriage existed and no other impediment to a legal marriage existed. In re Parental Responsibilities of D.P.G., 2020 COA 115, 472 P.3d 567.

14-2-111. Putative spouse.

A person who has cohabited with another to whom he or she is not legally married in the good faith belief that he or she was married to that person is a putative spouse until knowledge of the fact that he or she is not legally married terminates his or her status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his or her status, whether or not the marriage is prohibited under section 14-2-110, declared invalid, or otherwise terminated by court action. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Source: L. 73: R&RE, p. 1019, § 1. **C.R.S. 1963:** § 90-1-11. **L. 2018:** Entire section amended, (SB 18-095), ch. 96, p. 753, § 6, effective August 8.

Cross references: For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

ANNOTATION

Knowledge that one is married to another person negates good faith belief required of putative spouse. People v. McGuire, 751 P.2d 1011 (Colo. App. 1987).

Putative spouse entitled to legal spouse's right to workmen's compensation. While it is true that a marriage entered into prior to dissolution of a previous marriage is prohibited in Colorado, an innocent party to such a marriage is not deprived of the rights conferred upon a legal spouse. As a putative spouse, upon the other person's death, she acquires the legal spouse's right to workmen's compensation. Williams v. Fireman's Fund Ins. Co., 670 P.2d 453 (Colo. App. 1983).

A common law marriage cannot be found where decedent knew that plaintiff was legally married to someone not the decedent at the time the decedent died despite anything decedent may have said regarding an intention to marry plaintiff and plaintiff's acquisition of a retroactive divorce after decedent died. The court will not speculate as to what the decedent might have intended regarding marriage had he been aware of the removal of the legal disability during his lifetime. Crandell v. Resley, 804 P.2d 272 (Colo. App. 1990).

Belief by parties that they had entered into a "religious" or "celestial" marriage does not establish putative spouse status if parties were aware that plaintiff was still

legally married to someone else at the time of the "celestial" marriage. Combs v. Tibbitts, 148 P.3d 430 (Colo. App. 2006).

A party may not attain putative spouse status if a court determines that no common law marriage existed and no other impediment to a legal marriage existed. In re Parental Responsibilities of D.P.G., 2020 COA 115, 472 P.3d 567.

14-2-112. Application.

All marriages contracted within this state prior to January 1, 1974, or outside this state that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

Source: L. 73: R&RE, p. 1020, § 1. **C.R.S. 1963:** § 90-1-12.

ANNOTATION

Law reviews. For note, "Some Marriages in Colorado Governed by Customs of Mexico", see 1 Rocky Mt. L. Rev. 151 (1929). For note, "Jurisdiction to Annul a Marriage Celebrated Without the Forum", see 26 Rocky Mt. L. Rev. 57 (1953).

A marriage contracted in another jurisdiction, and valid under its laws, is valid in Colorado. Payne v. Payne, 121 Colo. 212, 214 P.2d 495 (1950); Spencer v. People in Interest of Spencer, 133 Colo. 196, 292 P.2d 971 (1956) (decided under repealed § 90-1-5, CRS 53 and CSA, C. 107, § 4).

14-2-113. Violation - penalty.

Except as provided in section 14-2-109 (1), any person who knowingly violates any provision of this part 1 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

Source: L. 73: R&RE, p. 1020, § 1. **C.R.S. 1963:** § 90-1-13.

PART 2

RIGHTS OF MARRIED PERSONS

Cross references: For the legislative declaration in SB 18-090, see section 1 of chapter 72, Session Laws of Colorado 2018.

14-2-201. Property ownership.

The property, real and personal, that a person in this state owns at the time of his or her marriage, and the rents, issues, profits, and proceeds thereof, and any real, personal, or mixed property that comes to him or her by descent, devise, or bequest, or the gift of any person except his or her husband or wife, including presents or gifts from his or her husband or wife, such as jewelry, silver, tableware, watches, money, and apparel, remains his or her sole and separate property, notwithstanding his or her marriage, and is not subject to the disposal of his or her husband or wife or liable for his or her debts.

Source: R.S. p. 454, § 1. **G.L.** § 1747. **G.S.** § 2266. **R.S. 08:** § 4181. **C.L.** § 5576. **CSA:** C. 108, § 1. **CRS 53:** § 90-2-1. **C.R.S. 1963:** § 90-2-1. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 637, § 2, effective August 8.

ANNOTATION

I. General Consideration.

II. Rights of Married Women at Common Law.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Joint Tenancy in Colorado", see 26 Dicta 313 (1949). For article, "Ownership of Personal Property Accumulated During a Marriage", see 17 Colo. Law. 623 (1988).

This act is an enabling statute and must be liberally construed to effectuate the purposes of its enactment. Wells v. Caywood, 3 Colo. 487 (1877).

Under such construction, controversies respecting the status of married women have practically disappeared from our jurisprudence. Williams v. Williams, 20 Colo. 51, 37 P. 614 (1894).

The wife is placed upon precisely the same footing with a femme sole. Scott v. Mills, 7 Colo. App. 155, 42 P. 1021 (1895).

II. RIGHTS OF MARRIED WOMEN AT COMMON LAW.

Under the common law, the wife was absolutely under the control of her husband, and without his consent she could neither act or contract with reference to any

right of property. Daniels v. Benedict, 97 F. 367 (8th Cir. 1899).

During marriage the legal existence of the woman was suspended, or incorporated and consolidated with that of her husband. Daniels v. Benedict, 97 F. 367 (8th Cir. 1899).

Whatever property belonged to her while single, or came to her while covert, passed absolutely to her husband, or fell under his domain. Daniels v. Benedict, 97 F. 367 (8th Cir. 1899).

Moreover, she could possess nothing to her separate use, she could alienate nothing during her life, she could bequeath nothing at her death, she could make no contract, and she could bring no suit. Daniels v. Benedict. 97 F. 367 (8th Cir. 1899).

The wife's identity was completely merged in that of her husband. Schuler v. Henry, 42 Colo. 367, 94 P. 360 (1908).

With but few limitations, he had the control of her person, her property, her children, her labor. Schuler v. Henry, 42 Colo. 367, 94 P. 360 (1908).

Under the common law of England, from which estates by entireties sprang, husband and wife in legal contemplation constituted but one person, and they were merged by marriage into one legal entity or personality, and plurality of persons was not recognized. Whyman v. Johnston, 62 Colo. 461, 163 P. 76 (1917).

She could neither sue nor be sued. Whyman v. Johnston, 62 Colo. 461, 163 P. 76 (1917).

The common-law fiction that husband and wife are one does not exist in Colorado. Rains v. Rains, 97 Colo. 19, 46 P.2d 740 (1935).

Separateness of spouses is clearly established by Colorado's Equal Rights Amendment, § 29 of art. II, Colo. Const., and by this article. Commercial Union Ins. Co. v. State Farm Fire & Cas. Co., 546 F. Supp. 543 (D. Colo. 1982).

At common law, in the absence of evidence to show the separate ownership of the wife, the law presumed that the property was owned by the husband. Allen v. Eldridge, 1 Colo. 287 (1871).

III. STATUTORY RIGHTS OF MARRIED WOMEN.

A. In General.

B. Under This Section.

A. In General.

By sundry legislative acts, dating from an early period, the disabilities of coverture have been gradually removed. Williams v. Williams, 20 Colo. 51, 37 P. 614 (1894).

The wife in Colorado was emancipated from the condition of thraldom in which she was placed at common law. Wells v. Caywood, 3 Colo. 487 (1877).

The wife in Colorado is the wife under this act, and not the wife at common law, and by this act must her rights be determined, the common law affecting her rights having been swept away. Schuler v. Henry, 42 Colo. 367, 94 P. 360 (1908).

This act removed every disability which coverture had formerly imposed upon married women, so far as their separate property and earnings are concerned. Tuttle v. Shutts, 43 Colo. 534, 96 P. 260 (1908); Hedlund v. Hedlund, 87 Colo. 607, 290 P. 285 (1930).

This act places the married woman upon precisely the same footing with a femme sole, as to all matters relating to her separate property and earnings, and she may make contracts, perform labor and services on her own account, sue and be sued with reference to her separate property, business, and earnings, as if she were sole. Tuttle v. Shutts, 43 Colo. 534, 96 P. 260 (1908); Hedlund v. Hedlund, 87 Colo. 607, 290 P. 285 (1930).

Furthermore, an attempt to apply both the common law and the statutory law must end in failure. Stramann v. Scheeren, 7 Colo. App. 1, 42 P. 191 (1883).

Also, under this section when considered with the other sections of this part of article 2 of title 14, it has been uniformly held that contracts and conveyances between husband and wife are presumptively valid and effectual, without proof aliunde of their equity or justice. Wells v. Caywood, 3 Colo. 487 (1877); Coon v. Rigden, 4 Colo. 275 (1878); O'Connell v. Taney, 16 Colo. 353, 27 P. 888 (1891); Kellogg v. Kellogg, 21 Colo. 181, 40 P. 358 (1895); Daniels v. Benedict, 97 F. 367 (8th Cir. 1899).

Courts can only carefully scrutinize transactions between husband and wife to see that they are not collusive, and in fraud of the rights of others, and then apply to them the same rules and legal principles that control in dealing with others. Stramann v. Scheeren, 7 Colo. App. 1, 42 P. 191 (1895).

Husbands and wives are equal under the law in respect to the conjugal affection and society which each owes to the other. Williams v. Williams, 20 Colo. 51, 37 P. 614 (1894).

Gifts made by the husband, while sick, to the wife, were set aside at the suit of the executors of the husband's estate after his death, because of the undue influence exercised by the latter over the former in procuring the same. Meldrum v. Meldrum, 15 Colo. 478, 24 P. 1083 (1890).

It was held that a deed procured by the fraud of the wife to be made to a third party for her benefit would be set aside in equity Meldrum v. Meldrum, 15 Colo. 478, 24 P. 1083 (1890).

B. Under This Section.

Under this section the wife holds an absolute legal estate as free from the common-law rights of her husband as if she were unmarried. Palmer v. Hanna, 6 Colo. 55 (1881).

For the wife's separate estate when she has no husband, see Palmer v. Hanna, 6 Colo. 55 (1881).

Since this section confers upon the wife capacity to take and dispose of real property free from any restraint, the reason of the common-law rule has ceased to exist. Wells v. Caywood, 3 Colo. 487 (1877); Whyman v. Johnston, 62 Colo. 461, 163 P. 76 (1917).

This section provides that any gift of money from the husband shall be the sole and separate property of the wife, and not subject to the disposal of the husband or his creditors. Woodruff v. Clarke, 128 Colo. 387, 262 P.2d 737 (1953).

Where the husband owned city lots and the wife had money which she desired to invest, and under mutual agreement the lots were improved with her money, it was held that she had an equitable interest in the property which could be asserted against her husband. Stramann v. Scheeren, 7 Colo. App. 1, 42 P. 191 (1895).

Where the husband acquires and pays for real property, and causes his wife's name to be inserted in the deed as one of the grantees therein, there is a presumption that he intended it as a gift or advancement, and the burden of showing otherwise is upon him who asserts it. Woodruff v. Clarke, 128 Colo. 387, 262 P.2d 737 (1953).

There can be no doubt of the power of a husband to dispose absolutely of his property during his life, independently of the concurrence, and exonerated from the claim of his wife, provided the transaction is not merely colorable, and is unattended with circumstances indicative of fraud upon the rights of the wife. Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

If the disposition of the husband be bona fide, and no right is reserved to him, though made to defeat the right of the wife, it will be good against her. Goldberg v. Musim, 162 Colo. 461, 427 P.2d 698 (1967).

14-2-202. Married person may sue and be sued.

A person, while married, may sue and be sued, in all matters having relation to his or her property, person, or reputation, in the same manner as if he or she were unmarried.

Source: R.S. p. 455, § 3. **G.L.** § 1749. **G.S.** § 2268. **R.S. 08:** § 4182. **C.L.** § 5577. **CSA:** C. 108, § 2. **CRS 53:** § 90-2-2. **C.R.S. 1963:** § 90-2-2. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 638, § 2, effective August 8.

Cross references: For the rule of civil procedure authorizing married women to sue as if sole, see C.R.C.P. 17(b).

ANNOTATION

Law reviews. For article, "Damages Recoverable for Injuries to A Spouse in Colorado", see 28 Dicta 291 (1951).

Until 1874 married women were under disability and could not sue or be sued except in matters relating to their separate

estates. Schuler v. Henry, 42 Colo. 367, 94 P. 360, (1908).

The statute up to that time also provided that when judgment was rendered against the husband and wife for the tort of the wife, execution should first be levied on the lands of the wife, if she had any. Schuler v. Henry, 42 Colo. 367, 94 P. 360 (1908).

This section contains the provision which emancipates married women from many of the disabilities imposed by the common law, and the decisions of the courts lay emphasis on the wife's independence of her husband in that she is guaranteed a remedy against ill persons, including her husband, for every personal injury she may sustain. Giggey v. Gallagher Transp. Co., 101 Colo. 258, 72 P.2d 1100 (1937).

There is no exception as to the person the wife may sue. Rains v. Rains, 97 Colo. 19, 24, 46 P.2d 740 (1935).

In view of the broad, liberal provisions of the constitution and statutes of this state, and the liberal construction thereof adopted by the courts of this state, the supreme court of Colorado was unwilling to follow the decisions of courts that held that a wife had no right to sue her husband for a personal injury caused by him. Rains v. Rains, 97 Colo. 19, 46 P.2d 740 (1935).

This section admits a married woman to the courts upon the same terms as if she were sole, and for this reason, if for no other, she cannot claim indulgence on the ground of coverture. Mills v. Angela, 1 Colo. 334 (1871).

The married woman is not like an infant who is incapable of acting for himself, and is compelled to rely upon a guardian ad litem, who may be careless or unfaithful. Mills v. Angela, 1 Colo. 334 (1871).

The law clothes her with power to manage her own affairs, and she ought to accept the responsibility which attends upon free agency. Mills v. Angela, 1 Colo. 334 (1871).

She is under no disability in respect to the time or manner of putting in her defense to an action brought against her. Mills v. Angela, 1 Colo. 334 (1871).

To enable a wife to join with her husband in an action upon an undertaking, the engagement must have been with her distinctly and unquestionably. Allen v. Eldridge, 1 Colo. 287 (1871).

The wife may maintain an action for damages against one who wrongfully induces and procures her husband to abandon her or send her away. Williams v. Williams, 20 Colo. 51, 37 P. 614 (1894).

A husband has a right to maintain an action against his wife to recover property belonging to him. Hedlund v. Hedlund, 87 Colo. 607, 290 P. 285 (1930).

So diverse are the rights and interests, the duties, obligations, and disabilities of husband and wife now, that it would be most unreasonable to hold him still liable for the torts committed by her without his presence and without his consent or approbation. Schuler v. Henry, 42 Colo. 367, 94 P. 360 (1908).

The Uniform Marriage Act neither expressly nor impliedly creates a private cause of action. Weiszmann v. Kirkland and Ellis, 732 F. Supp. 1540 (D. Colo. 1990).

14-2-203. Rights in separate business.

A married person may carry on any trade or business and perform any labor or services on his or her sole and separate account, and the earnings of a married person from his or her trade, business, labor, or services is his or her sole and separate property and may be used and invested by him or her in his or her own name. Property acquired by trade, business, and services by the married person and the proceeds may be taken on any execution against the person.

Source: R.S. p. 455, § 6. **G.L.** § 1752. **G.S.** § 2271. **R.S. 08:** § 4183. **C.L.** § 5578. **CSA:** C. 108, § 3. **CRS 53:** § 90-2-3. **C.R.S. 1963:** § 90-2-3. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 638, § 2, effective August 8.

ANNOTATION

Modern legal theory and statute have placed women on an equal footing with men regarding their rights to hold and manage property. Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971).

The wife is still to perform the usual and ordinary household duties. Denver & R. G. R. R. v. Young, 30 Colo. 349, 70 P. 688 (1902).

For such household services, she is not entitled to any monetary compensation from her husband. Denver & R. G. R. R. v. Young, 30 Colo. 349, 70 P. 688 (1902).

In an action by a married woman, living at the time with her husband, for damages for personal injuries alleged to have been caused by the negligence of defendant, she is not entitled to recover damages to compensate her for her inability to perform ordinary household duties. Denver & R. G. R. R. v. Young, 30 Colo. 349, 70 P. 688 (1902).

A contract between the husband and wife, by which the wife reserves to herself the earnings of her labor performed for her husband, in matters apart from the domestic duties of the wife pertaining strictly to the household and the family, may be entered into by the wife as if she were sole, and for this reason such contract cannot be held to be against public policy. Tuttle v. Shutts, 43 Colo. 534, 96 P. 260 (1908).

Contracts between a husband and his wife are not presumptively void. Daniels v. Benedict, 97 F. 367 (8th Cir. 1899).

Since some contracts between parties in fiduciary relations to each other are valid, and some are voidable or void, and some contracts between strangers are valid, and some are void, no definite conclusion can be

drawn as to the validity or invalidity of a contract from the fact that the parties to it occupied a fiduciary relation to each other. Daniels v. Benedict, 97 F. 367 (8th Cir. 1899).

A promissory note given by a married woman and her husband, for property purchased by her as a sole trader, is valid in law, and the amount of such note may be recovered against the husband and wife in an action of assumpsit. Barnes v. De France, 2 Colo. 294 (1874).

Since under this section the rights of the wife to manage and control her individual property are well established, the relation of debtor and creditor may exist between husband and wife as fully as if both were sole, and the wife may deal with the husband as with a stranger, and in case of the insolvency of the husband, he may pay the wife to the exclusion of other creditors, but the existence of the individual property and the bona fides of the debt must, as in other cases, be fully established. Knapp v. Day, 4 Colo. App. 21, 34 P. 1008 (1893).

Under this section a husband is deprived of all interest in the labor of his wife rendered to third persons, and a married woman may maintain an action in her own name to recover her earnings. Allen v. Eldridge, 1 Colo. 287 (1871).

It may be contended that the words "on her sole and separate account", in the first clause of this section restrict the woman's right to cases in which she declares her intention to appropriate the proceeds of her labor to her own use. But there is little room for such construction, because it must be presumed that every one who labors for hire is seeking his own personal emolument, for men do not sow that others may reap, and the highest claim to the fruits of labor is vested in him who performs it, and none other need be asserted. Allen v. Eldridge, 1 Colo. 287 (1871).

14-2-204. Not to affect marriage settlements.

Nothing in sections 14-2-201 to 14-2-206 invalidates any marriage settlement or contract.

Source: R.S. p. 455, § 7. **G.L.** § 1753. **G.S.** § 2272. **R.S. 08:** § 4184. **C.L.** § 5579. **CSA:** C. 108, § 4. **CRS 53:** § 90-2-4. **C.R.S. 1963:** § 90-2-4. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 638, § 2, effective August 8.

14-2-205. Married person's land subject to judgment.

When a person against whom liability exists marries and has or acquires lands, judgment on such liability may be rendered against him or her and his or her husband or wife jointly, to be levied on such lands only.

Source: R.S. p. 455, § 10. **G.L.** § 1756. **G.S.** § 2275. **R.S. 08:** § 4187. **C.L.** § 5582. **CSA:** C. 108, § 7. **CRS 53:** § 90-2-7. **C.R.S. 1963:** § 90-2-7. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 638, § 2, effective August 8.

14-2-206. Spouse cannot convey other spouse's lands.

The separate deed of a spouse conveys no interest in the other spouse's lands.

Source: R.S. p. 455, § 12. **G.L.** § 1757. **G.S.** § 2276. **R.S. 08:** § 4188. **C.L.** § 5583. **CSA:** C. 108, § 8. **CRS 53:** § 90-2-8. **C.R.S. 1963:** § 90-2-8. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 638, § 2, effective August 8.

14-2-207. Spouse may convey lands as if unmarried.

A person, while married, may bargain, sell, and convey his or her real and personal property and enter into any contract in reference to the same as if he or she were unmarried.

Source: R.S. p. 455, § 2. **L. 1874:** p. 185, § 1. **G.L.** § 1759. **G.S.** § 2278. **R.S. 08:** § 4190. **C.L.** § 5585. **CSA:** C. 108, § 10. **CRS 53:** § 90-2-9. **C.R.S. 1963:** § 90-2-9. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 638, § 2, effective August 8.

ANNOTATION

At common law, a married woman could convey her estate only by fine and recovery. Keller v. Klopfer, 3 Colo. 132 (1876).

Under the early law, it was provided that to convey her lands a married woman should unite with her husband in making the conveyance, that she should acknowledge the same, separate and apart from her husband, that the officer hearing the acknowledgment should certify that the same was made upon examination separate, apart from, and out of the presence of her husband, and that the contents, meaning, and effect of such deed were by the officer fully explained to the wife. Keller v. Klopfer, 3 Colo. 132 (1876); Nippel v. Hammond, 4 Colo. 211 (1878); Knight v. Lawrence, 19 Colo. 425, 36 P. 242 (1894).

Under present law, the married woman is in law deemed capable of managing her own affairs, and she has the power as well as the right to convey her real estate without let or hindrance from any one, and she

requires no protection, and she suffers no restraints, in such matters. Knight v. Lawrence, 19 Colo. 425, 36 P. 242 (1894); Wells v. Caywood, 3 Colo. 487 (1877); Colo. Cent. R. R. v. Allen, 13 Colo. 229, 22 P. 605 (1889).

It was the intention to clothe her with all the rights of a femme sole. Scott v. Mills, 7 Colo. App. 155, 42 P. 1021 (1895).

The wife may make conveyance directly to her husband and the removal in respect to the wife of a disability that is mutual, and springing from the same source, removes it also as to the husband, and the husband may, acting in his own right, convey directly to the wife. Wells v. Caywood, 3 Colo. 487 (1877); O'Connell v. Taney, 16 Colo. 353, 27 P. 888 (1891); Rose v. Otis, 18 Colo. 59, 31 P. 493 (1892); Kellogg v. Kellogg, 21 Colo. 181, 40 P. 358 (1895); Scott v. Mills, 7 Colo. App. 155, 42 P. 1021 (1895); Stramann v. Scheeren, 7 Colo. App. 1, 42 P. 191 (1895); Tuttle v. Shutts, 43 Colo. 534, 96 P. 260 (1908).

In the nature of things and in the legislative mind, the husband and wife both possess the character of a householder and head of a family, at least to the extent to enable either of them owning the home they occupy to designate it as a homestead. McPhee v. O'Rourke, 10 Colo. 301, 15 P. 420 (1887).

14-2-208. Married person may contract.

A person, while married, may contract debts in his or her own name and upon his or her own credit, and may execute promissory notes, bonds, bills of exchange, and other instruments in writing, and may enter into any contract the same as if he or she were unmarried. In all cases where any suit or other legal proceedings are instituted against the married person and any judgment, decree, or order is rendered or pronounced against the married person, the same may be enforced by execution or other process against the married person as if he or she were unmarried.

Source: L. 1874: p. 185, § 3. **G.L.** § 1761. **G.S.** § 2280. **R.S. 08:** § 4191. **C.L.** § 5586. **CSA:** C. 108, § 11. **CRS 53:** § 90-2-10. **C.R.S. 1963:** § 90-2-10. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 638, § 2, effective August 8.

ANNOTATION

At common law a married woman, though living apart from her husband, could not make a binding contract except for necessaries or for the benefit of her separate estate. Ferrand v. Beshoar, 9 Colo. 291, 12 P. 196 (1886).

In equity, before the statutes of 1872 and 1874, the written contract of a

married woman, for the benefit of other persons, was not a charge upon her separate estate unless it contained an express provision to that effect. Ferrand v. Beshoar, 9 Colo. 291, 12 P. 196 (1886).

By the act of 1861, to protest the rights of married women, a wife could make contracts respecting her separate business and estate, but beyond these limits her contracts were governed by the common law and were therefore void, and she could not warrant her husband's title to realty, or covenant for his act or default in any respect whatever. Holladay v. Dailey, 1 Colo. 460 (1872).

In an action on contract against a married woman, a plea of coverture, without more, is not sufficient in law as a defense. Rose v. Otis, 18 Colo. 59, 31 P. 493 (1892).

Where the husband was joined as a codefendant with his wife in the district court, he not being a party to the contract sued upon, and no relief having been demanded against him in the complaint, it was held that upon default judgment should have been entered against the wife alone. Wilbur v. Maynard, 6 Colo. 483 (1883).

14-2-209. Loss of consortium.

In all actions for a tort by a married person, both spouses have an equal right to recover for loss of consortium of his or her spouse.

Source: L. 61: p. 560, § 1. **CRS 53:** § 90-2-11. **C.R.S. 1963:** § 90-2-11. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 638, § 2, effective August 8.

ANNOTATION

While it was true that because of the married women's acts, married women could successfully maintain actions for interference with their rights to consortium which arose from intentional, malicious, or direct action by an outsider, nevertheless, the prevailing opinion and great weight of authority denied such an action to a married woman for indirect, remote, or consequential loss, and thus, a married woman had no right to recover for the loss of consortium alone occasioned by the negligent acts of third persons. Giggey v. Gallagher Transp. Co., 101 Colo. 258, 72 P.2d 1100 (1937) (decided prior to earliest source of this section, L. 61, p. 560, § 1); Franzen v. Zimmerman, 127 Colo. 381, 256 P.2d 897 (1953).

With the enactment of this section the rule denying a wife the right to sue for loss of consortium resulting from injuries inflicted upon her husband changed. Crouch

v. West, 29 Colo. App. 72, 477 P.2d 805 (1970).

At the time of the enactment of this statute, the right of a husband to recover for loss of consortium due to injuries inflicted upon his wife had not been denied or restricted by any later or higher authority. Crouch v. West, 29 Colo. App. 72, 477 P.2d 805 (1970).

The general assembly intended to confer such right upon the wife, and to confer it upon her as a separate right similar to that held by married men. Crouch v. West, 29 Colo. App. 72, 477 P.2d 805 (1970).

There may in such situations have been but one wrong, but from it sprang two separate and distinct rights of action, one in the husband and the other in the wife. Crouch v. West, 29 Colo. App. 72, 477 P.2d 805 (1970).

Their actions are wholly distinct and separate from each other, and since there is no privity between them in the connection involved, and adjudication in one could not properly be res judicata in the other. Crouch v. West, 29 Colo. App. 72, 477 P.2d 805 (1970).

Since the claim of the wife is her own right and is a right which is separate from the claims of her husband, it could have been and was validly separated from the pretrial settlement of the husband's claim for his personal injuries. Crouch v. West, 29 Colo. App. 72, 477 P.2d 805 (1970).

Recovery for loss between tort and time of death. Plaintiff bringing an action individually, as widow of the decedent, may recover for "loss of consortium" between the time the tort occurred and the date of decedent's death. Hernandez v. United States, 383 F. Supp. 168 (D. Colo. 1974).

Loss not within former limits of wrongful death statute. Loss of consortium is an independent category, not to be included in those damages formerly limited under the wrongful death statute. Hernandez v. United States, 383 F. Supp. 168 (D. Colo. 1974).

14-2-210. Domicile.

The right of a person to become a resident domiciled in the state of Colorado must not be denied or abridged because of sex or marital status, and the common law rule that the domicile of a married person is that of his or her spouse is no longer in effect in this state.

Source: L. 69: p. 824, § 1. **C.R.S. 1963:** § 90-2-12. **L. 73:** p. 1022, § 1. **L. 2018:** Entire part amended, (SB 18-090), ch. 72, p. 638, § 2, effective August 8.

PART 3

UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

Editor's note: This part 3 was added in 1986. It was repealed and reenacted in 2013, effective July 1, 2014, resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this part 3 prior to 2013, consult the 2012 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Law reviews: For article, "Marital Agreements", see 18 Colo. Law. 31, (1989); for article, "Update on Ethics and Malpractice Avoidance in Family Law -- Parts I and II", see 19 Colo. Law. 465 and 647 (1990); for article, "An Historical Perspective on Marital Agreements", see 20 Colo. Law. 467 (1991); for article, "Prenuptial Agreements and the Dead Man's Statute", see 23 Colo. Law. 357 (1994); for article, "Beware of the Trap -- Marital Agreements and ERISA Benefits", see 23 Colo. Law. 577 (1994); for article, "Marital Agreements and the Colorado Marital Agreement Act", see 32 Colo. Law. 59 (Aug. 2003); for article, "Prenuptial Agreements and Retirement Plan Assets", see 33 Colo. Law. 43 (Feb. 2004); for article, "Marital Agreements in Colorado", see 36 Colo. Law. 53 (Feb. 2007); for article, "Benefits Issues Arise When Same-Sex Relationships End", see 42 Colo. Law. 77 (Aug. 2013); for article, "Colorado's New Uniform Premarital and Marital Agreements Act", see 43 Colo. Law. 57 (Mar. 2014); for article, "The Treatment of SLATs in the Event of a Dissolution of Marriage", see 53 Colo. Law. 42 (June 2024).

14-2-301. Short title.

This part 3 may be cited as the "Uniform Premarital and Marital Agreements Act".

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1159, § 1, effective July 1, 2014.

Editor's note: This section is similar to former § 14-2-301 as it existed prior to 2013.

14-2-302. Definitions.

In this part 3:

(1) "Amendment" means a modification or revocation of a premarital agreement or marital agreement.

(2) "Marital agreement" means an agreement between spouses who intend to remain married which affirms, modifies, or waives a marital right or obligation during the marriage or at legal separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed after the spouses marry, of a premarital agreement or marital agreement.

(3) "Marital dissolution" means the ending of a marriage by court decree. The term includes a divorce, dissolution, and annulment.

(4) "Marital right or obligation" means any of the following rights or obligations arising between spouses because of their marital status:

(a) Spousal maintenance;

(b) A right to property, including characterization, management, and ownership;

(c) Responsibility for a liability;

(d) A right to property and responsibility for liabilities at legal separation, marital dissolution, or death of a spouse; or

(e) An award and allocation of attorney's fees and costs.

(5) "Premarital agreement" means an agreement between individuals who intend to marry which affirms, modifies, or waives a marital right or obligation during the marriage or at legal separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term includes an amendment, signed before the individuals marry, of a premarital agreement.

(6) "Property" means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein, including income and earnings.

(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) "Sign" means with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1159, § 1, effective July 1, 2014.

Editor's note: This section is similar to former §§ 14-2-302 and 14-2-306 as they existed prior to 2013.

ANNOTATION

Annotator's note. Since § 14-2-302 is similar to § 14-2-302 as it existed prior to the 2013 repeal and reenactment of this part 3, relevant cases construing that provision have been included in the annotations to this section.

The requirement of subsection (1) that present spouses sign a marital agreement prior to the filing of a dissolution action is based on public policy considerations that seek to safeguard the interests of a spouse involved in the emotionally stressful circumstances of a dissolution action. In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

The more specific language of this act, requiring that marital agreements be in writing and signed by both parties, prevails over the general language in § 14-10-113. Although § 14-10-113 (2)(d) does not require a "valid agreement" to be in writing, in harmonizing the statutes, subsection (1) of this section must be given effect. Therefore, parties' oral agreement during marriage to exclude the parties' respective retirement accounts and inheritances from the marital estate was not a valid agreement. In re Zander, 2019 COA 149, 486 P.3d 352, aff'd, 2021 CO 12, 480 P.3d 676.

Further, parties' conduct after entering into oral agreement could not be treated as partial performance that satisfied the writing and signature requirements of the Colorado Marital Agreement Act in effect at the time. In re Zander, 2021 CO 12, 480 P.3d 676.

Interspousal transfer deed by husband to wife as her separate property did not create a new presumption excluding the home from marital property. Court erred in creating an exception to the four statutory presumptions in § 14-10-113 (2). On remand, trial court must consider whether the interspousal transfer deed was evidence of one of the statutory exceptions to the marital property presumption. In re Blaine, 2021 CO 13, 480 P.3d 691.

Agreement entered into between parties eight days prior to commencement of an action for dissolution in Sweden

constitutes a marital agreement. Matter of C.G.G., 946 P.2d 603 (Colo. App. 1997).

Where agreement was entered into two days prior to mailing Mexican divorce papers and two months before the filing of a Colorado petition for dissolution of marriage, but executed in contemplation of a dissolution of marriage, it must be considered a separation agreement. In re Bisque, 31 P.3d 175 (Colo. App. 2001).

Post-nuptial agreement not enforceable under the plain language of the act because it was signed by husband and wife during the pendency of the prior dissolution action. In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

Giving effect to a nunc pro tunc dismissal of a dissolution of marriage action would be contrary to the public policy of the Colorado Marital Agreement Act where not only did the parties sign a post-nuptial agreement while a dissolution action was pending, but counsel had admonished the parties not to sign the agreement until that action had actually been dismissed. By the time counsel signed the stipulation for dismissal, the parties' attempted reconciliation had failed. In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

14-2-303. Scope.

(1) This part 3 applies to a premarital agreement or marital agreement signed on or after July 1, 2014.

(2) This part 3 does not affect any right, obligation, or liability arising under a premarital agreement or marital agreement signed before July 1, 2014.

(3) This part 3 does not apply to:

(a) An agreement between spouses which affirms, modifies, or waives a marital right or obligation and requires court approval to become effective; or

(b) An agreement between spouses who intend to obtain a marital dissolution or court-decreed legal separation which resolves their marital rights or obligations and is signed when a proceeding for marital dissolution or court-decreed legal separation is anticipated or pending.

(4) This part 3 does not affect adversely the rights of a bona fide purchaser for value to the extent that this part 3 applies to a waiver of a marital right or obligation in a transfer or conveyance of property by a spouse to a third party.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1160, § 1, effective July 1, 2014.

14-2-303.5. Applicability of part and case law to agreements relating to civil unions.

Prospective parties to a civil union and present parties to a civil union may contract to make an agreement relating to the civil union that includes any of the rights and obligations that may be included in a premarital agreement or marital agreement pursuant to this part 3. The provisions of this part 3 and any case law construing this part 3 apply to any agreement made by prospective parties to a civil union or between present parties to a civil union.

Source: L. 2013: Entire section added with relocations, (HB 13-1204), ch. 239, p. 1164, § 2, effective July 1, 2014. **L. 2015:** Entire section amended, (SB 15-264), ch. 259, p. 950, § 34, effective August 5.

Editor's note: This section is similar to former § 14-2-307.5 as it existed prior to 2013.

14-2-304. Governing law.

(1) The validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement are determined:

(a) By the law of the jurisdiction designated in the agreement if the jurisdiction has a significant relationship to the agreement or either party at the time the agreement was signed and the designated law is not contrary to section 14-2-309 or to a fundamental public policy of this state; or

(b) Absent an effective designation described in paragraph (a) of this subsection (1), by the law of this state, including the choice-of-law rules of this state.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1161, § 1, effective July 1, 2014.

14-2-305. Principles of law and equity.

Unless displaced by a provision of this part 3, principles of law and equity supplement this part 3.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1161, § 1, effective July 1, 2014.

14-2-306. Formation requirements.

A premarital agreement or marital agreement must be in a record and signed by both parties. The agreement is enforceable without consideration.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1161, § 1, effective July 1, 2014.

Editor's note: This section is similar to former § 14-2-303 as it existed prior to 2013.

14-2-307. When agreement effective.

A premarital agreement is effective on marriage. A marital agreement is effective on signing by both parties.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1161, § 1, effective July 1, 2014.

Editor's note: This section is similar to former § 14-2-305 as it existed prior to 2013.

14-2-308. Void marriage.

If a marriage is determined to be void, a premarital agreement or marital agreement is enforceable to the extent necessary to avoid an inequitable result.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1161, § 1, effective July 1, 2014.

Editor's note: This section is similar to former § 14-2-308 as it existed prior to 2013.

14-2-309. Enforcement.

(1) A premarital agreement or marital agreement is unenforceable if a party against whom enforcement is sought proves:

(a) The party's consent to the agreement was involuntary or the result of duress;

(b) The party did not have access to independent legal representation under subsection (2) of this section;

(c) Unless the party had independent legal representation at the time the agreement was signed, the agreement did not include a notice of waiver of rights under subsection (3) of this section or an explanation in plain language of the marital rights or obligations being modified or waived by the agreement; or

(d) Before signing the agreement, the party did not receive adequate financial disclosure under subsection (4) of this section.

(2) A party has access to independent legal representation if:

(a) Before signing a premarital or marital agreement, the party has a reasonable time to:

(I) Decide whether to retain a lawyer to provide independent legal representation; and

(II) Locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided; and

(b) The other party is represented by a lawyer and the party has the financial ability to retain a lawyer or the other party agrees to pay the reasonable fees and expenses of independent legal representation.

(3) A notice of waiver of rights under this section requires language, conspicuously displayed, substantially similar to the following, as applicable to the premarital agreement or marital agreement:

If you sign this agreement, you may be:

Giving up your right to be supported by the person you are marrying or to whom you are married.

Giving up your right to ownership or control of money and property.

Agreeing to pay bills and debts of the person you are marrying or to whom you are married.

Giving up your right to money and property if your marriage ends or the person to whom you are married dies.

Giving up your right to have your legal fees paid.

(4) A party has adequate financial disclosure under this section if the party:

(a) Receives a reasonably accurate description and good-faith estimate of value of the property, liabilities, and income of the other party; or

(b) [Reserved]

(c) Has adequate knowledge or a reasonable basis for having adequate knowledge of the information described in paragraph (a) of this subsection (4).

(5) A premarital agreement or marital agreement or amendment thereto or revocation thereof that is otherwise enforceable after applying the provisions of subsections (1) to (4) of this section is nevertheless unenforceable insofar, but only insofar, as the provisions of such agreement, amendment, or revocation relate to the determination, modification, limitation, or elimination of spousal maintenance or the waiver or allocation of attorney fees, and such provisions are unconscionable at the time of enforcement of such provisions. The issue of unconscionability shall be decided by the court as a matter of law.

(6) [Reserved]

(7) [Reserved]

(8) A premarital or marital agreement, or an amendment of either, that is not in a record and signed by both parties is unenforceable.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1161, § 1, effective July 1, 2014. **L. 2015:** (5) amended, (SB 15-264), ch. 259, p. 950, § 35, effective August 5.

Editor's note: This section is similar to former § 14-2-307 as it existed prior to 2013.

ANNOTATION

Law reviews. For article, "Omitted Spouse: Avoiding Questions of Intent After Death", see 52 Colo. Law. 46 (Jan.-Feb. 2023).

Annotator's note. Since § 14-2-309 is similar to § 14-2-307 as it existed prior to the 2013 repeal and reenactment of this part 3, relevant cases construing that provision have been included in the annotations for this section. For cases dealing with the validity of marital agreements prior to 1986, see the annotations to §§ 14-10-112 and 14-10-113.

A trial court must find that the maintenance provisions of an otherwise valid antenuptial agreement are unconscionable at the time a divorce decree is entered in order to award maintenance to a party. In re Dechant, 867 P.2d 193 (Colo. App. 1993) (decided under law in effect prior to amendment effective July 1, 1986).

In determining unconscionability, the terms "appropriate employment" and "reasonable needs" are not to be interpreted so narrowly as to require a spouse to establish that he or she lacks the minimum resources to sustain life. In re Dechant, 867 P.2d 193 (Colo. App. 1993) (decided under law in effect prior to amendment effective July 1, 1986).

Trial court may review a waiver of attorney fees in a marital agreement for unconscionability at the time of dissolution, because an unconscionable waiver violates the public policy interest behind protecting spouses and thus is not a valid contract term under § 14-2-304. In re Ikeler, 161 P.3d 663 (Colo. 2007).

Standards for determining unconscionability. Generally, an agreement under this section is unconscionable if it is not fair, reasonable, and just. In re Christen, 899 P.2d 339 (Colo. App. 1995).

Speculation about possible future events, such as unemployment, disability, and remarriage, do not indicate that the agreement is at present unconscionable. In re Christen, 899 P.2d 339 (Colo. App. 1995).

When the parties enter into an agreement that provides for maintenance to be paid year-to-year in an amount calculated in accordance with a formula agreed upon by the parties and accepted as not unconscionable by the court, the trial court acts within its discretion in not setting forth an exact amount of maintenance in its decree of dissolution and permanent orders. In re Christen, 899 P.2d 339 (Colo. App. 1995).

In order for agreement for binding Rabbinical arbitration to be enforceable, it must be conscionable and must be entered into by the parties voluntarily after full disclosure. In re Popack, 998 P.2d 464 (Colo. App. 2000).

Waiver of attorney fee provision in an antenuptial agreement is voidable on the grounds of unconscionability. In re Dechant, 867 P.2d 193 (Colo. App. 1993) (decided under law in effect prior to amendment effective July 1, 1986).

Marital agreement need not be approved by the court nor a complete agreement as to the disposition of all of the parties' property to be enforceable. In re Goldin, 923 P.2d 376 (Colo. App. 1996).

But marital agreement must contain a fair and reasonable disclosure of property

and financial obligations of the party seeking to enforce it, and prenuptial agreement that was blank at the time wife signed it was unenforceable by husband. In re Seewald, 22 P.3d 580 (Colo. App. 2001).

Agreement entered into just prior to marriage and a subsequent agreement entered into just prior to filing petition for dissolution were correctly considered not to be enforceable agreements under the Colorado Marital Agreement Act. Trial court correctly determined that the premarital agreement was not an enforceable premarital agreement because the parties were not contemplating marriage when they entered into it. Similarly, the later agreement was not an enforceable marital agreement because it was signed after wife petitioned for dissolution of marriage and because the parties were not on an equal emotional or economic footing. In re Green, 169 P.3d 202 (Colo. App. 2007).

14-2-310. Unenforceable terms.

(1) In this section, "custodial responsibility" means parental rights and responsibilities, parenting time, access, visitation, or other custodial right or duty with respect to a child.

(2) A term in a premarital agreement or marital agreement is not enforceable to the extent that it:

(a) Adversely affects a child's right to support;

(b) Limits or restricts a remedy available to a victim of domestic violence under law of this state other than this part 3;

(c) Purports to modify the grounds for a court-decreed legal separation or marital dissolution available under law of this state other than this part 3;

(d) Penalizes a party for initiating a legal proceeding leading to a court-decreed legal separation or marital dissolution; or

(e) Violates public policy.

(3) A term in a premarital agreement or marital agreement which defines the rights or duties of the parties regarding custodial responsibility is not binding on the court.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1163, § 1, effective July 1, 2014.

14-2-311. Limitation of action.

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement or marital agreement is tolled during the marriage of the parties to the agreement, but equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1163, § 1, effective July 1, 2014.

Editor's note: This section is similar to former § 14-2-309 as it existed prior to 2013.

14-2-312. Uniformity of application and construction.

In applying and construing this uniform act, consideration may be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1164, § 1, effective July 1, 2014.

14-2-313. Relation to electronic signatures in global and national commerce act.

This part 3 modifies, limits, or supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

Source: L. 2013: Entire part R&RE, (HB 13-1204), ch. 239, p. 1164, § 1, effective July 1, 2014.

DOMESTIC ABUSE

ARTICLE 4

Domestic Abuse

14-4-101. Definitions. (Repealed)

14-4-102. Restraining orders to prevent domestic abuse. (Repealed)

14-4-103. Emergency protection orders. (Repealed)

14-4-104. Duties of peace officers - enforcement of emergency protection orders. (Repealed)

14-4-105. Violations of orders.

14-4-106. Venue. (Repealed)

14-4-107. Family violence justice fund - creation - grants from fund - definitions.

14-4-101. Definitions. (Repealed)

Source: L. 82: Entire article added, p. 299, § 1, effective April 23. **L. 89:** (2) amended, p. 783, § 1, effective April 19. **L. 95:** (2) amended, p. 513, § 1, effective July 1. **L. 2004:** Entire section repealed, p. 554, § 5, effective July 1.

14-4-102. Restraining orders to prevent domestic abuse. (Repealed)

Source: L. 82: Entire article added, p. 299, § 1, effective April 23. **L. 89:** Entire section R&RE, p. 783, § 2, effective April 19. **L. 91:** (1) and (5) amended, p. 743, § 5, effective April 4; (7.5) added, p. 420, § 4, effective May 31. **L. 93:** (2)(d)(II) and (7.5) amended, pp. 576, 1725, §§ 3, 2, effective July 1. **L. 94:** (2), (6), (7.5)(b), and (8) amended, p. 933, § 1, effective July 1; (2)(d)(II), (4), and (7) amended and (7.5)(c), (13), and (14) added, p. 2031, §§ 8, 9, effective July 1; (5), (9), and (10) amended and (15) added, p. 2007, § 2, effective January 1, 1995. **L. 95:** (14) amended, pp. 513, 568, §§ 2, 5, effective July 1. **L. 96:** (14) amended, p. 1688, § 17, effective January 1, 1997. **L. 98:** (1) and (5) amended, p. 244, § 3, effective April 13. **L. 99:** Entire section repealed, p. 501, § 6, effective July 1.

14-4-103. Emergency protection orders. (Repealed)

Source: L. 82: Entire article added, p. 300, § 1, effective April 23. **L. 83:** (3)(a) amended, p. 640, § 1, effective April 29. **L. 89:** (3)(a) and (4) amended, p. 785, § 3, effective April 19. **L. 91:** (4) amended, p. 239, § 1, effective July 1. **L. 96:** (5) amended, p. 1840, § 1, effective July 1. **L.**

99: (4) amended, p. 501, § 7, effective July 1. **L. 2003:** (4) amended, p. 1010, § 12, effective July 1. **L. 2004:** Entire section repealed, p. 554, § 5, effective July 1.

14-4-104. Duties of peace officers - enforcement of emergency protection orders. (Repealed)

Source: L. 82: Entire article added, p. 301, § 1, effective April 23. **L. 85:** Entire section R&RE, p. 585, § 1, effective March 10. **L. 89:** Entire section amended, p. 785, § 4, effective April 19. **L. 91:** (1) amended, p. 420, § 5, effective May 31. **L. 92:** Entire section amended, p. 293, § 3, effective April 23; entire section amended, p. 175, § 1, effective July 1. **L. 94:** Entire section amended, p. 2033, § 10, effective July 1; entire section amended, p. 2007, § 3, effective January 1, 1995. **L. 99:** Entire section amended, p. 502, § 8, effective July 1. **L. 2004:** Entire section repealed, p. 554, § 5, effective July 1.

14-4-105. Violations of orders.

A person failing to comply with any order of the court issued pursuant to this article shall be found in contempt of court and, in addition, may be punished as provided in section 18-6-803.5, C.R.S.

Source: L. 82: Entire article added, p. 301, § 1, effective April 23. **L. 91:** Entire section amended, p. 419, § 2, effective May 31.

ANNOTATION

Law reviews. For article, "Legislative Activities in Family Law", see 11 Colo. Law. 1560 (1982).

14-4-106. Venue. (Repealed)

Source: L. 95: Entire section added, p. 569, § 7, effective July 1. **L. 2010:** Entire section repealed, (HB 10-1422), ch. 419, p. 2069, § 24, effective August 11.

14-4-107. Family violence justice fund - creation - grants from fund - definitions.

(1) There is hereby established in the state treasury the family violence justice fund, hereafter referred to as the "fund". Pursuant to subsection (3) of this section, the state court administrator is authorized to make grants from the fund directly to qualifying organizations providing civil legal services to indigent residents of the state of Colorado.

(2) Grants from the fund shall be used to fund qualifying organizations to provide legal advice, representation, and advocacy for and on behalf of indigent clients who are victims of family violence. Moneys from the fund may be provided for services that include, but are not limited to:

(a) The provision of direct legal representation to victims of family violence in resolving their civil legal matters and removing impediments to the elimination of family violence. Such representation may include, but need not be limited to, representation in any protection order proceeding; action for dissolution of marriage, legal separation, or declaration of invalidity of marriage; action for dissolution of a civil union, legal separation, or declaration of invalidity of a civil union; paternity action; child custody action; proceeding to establish or enforce child support; administrative hearings; or any other judicial actions in which family violence is an issue or in which legal representation is necessary to protect the interests of a victim of family violence.

(b) The provision of clinics designed to educate and assist indigent victims of family violence in the proceedings set forth in paragraph (a) of this subsection (2);

(c) The provision of legal information and advice to victims of family violence, referrals to appropriate persons or agencies, and the provision of emergency assistance in appropriate cases by telephone, electronic communication, or other appropriate means.

(3) A qualifying organization seeking to receive a grant from the fund shall submit an application each year to the state court administrator on a form provided by such administrator. The application form shall request any information which the administrator may need in determining the qualifications of the organization for receipt of a grant. Commencing July 1, 1999, and quarterly thereafter, the state court administrator shall distribute grants from the fund, subject to available appropriations, to a qualifying organization for each county or city and county based upon the following formula:

(a) The total moneys shall be disbursed in proportion to the number of persons living below the poverty line in each county or city and county as determined by the most recent census published by the bureau of the census of the United States department of commerce.

(b) If there is more than one qualifying organization within a county or city and county, the proportionate share of the fund for such county or city and county disbursed to each such

qualifying organization shall be allocated in proportion to the number of indigent family violence clients served by each qualifying organization or its predecessor in the preceding year.

(4) (a) In addition to any appropriation from the general fund, the state court administrator is authorized to accept on behalf of the state any funds, grants, gifts, or donations from any private or public source for the purpose of implementing this section. All private and public funds received through grants, gifts, or donations shall be transmitted to the state treasurer who shall credit the same to the family violence justice fund.

(b) The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the administration of this section. The state court administrator of the judicial department, subject to annual appropriation by the general assembly, is authorized to expend moneys appropriated to the department from the fund to qualifying organizations for the purposes described in this section; except that the amount expended for indirect costs associated with the administration of this section shall not exceed three percent of the moneys appropriated to the fund in any fiscal year. All investment earnings derived from the deposit and investment of the moneys in the fund shall be credited to the fund. Any moneys not appropriated shall remain in the fund and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(c) (I) In addition to the money paid into the fund pursuant to this subsection (4) and subsection (4.5) of this section, the general assembly shall appropriate money from the economic recovery and relief cash fund, created in section 24-75-228, as enacted by Senate Bill 21-291, enacted in 2021, to the office of the state court administrator to be used for the programs and purposes described in subsection (2) of this section.

(II) Money appropriated pursuant to subsection (4)(c)(I) of this section from the economic recovery and relief cash fund, created in section 24-75-228, as enacted by Senate Bill 21-291, enacted in 2021, must only fund programs and purposes that also conform with the allowable purposes set forth in the federal "American Rescue Plan Act of 2021", Pub.L. 117-2, as the act may be subsequently amended. The office of the state court administrator may use up to ten percent of any money appropriated pursuant to subsection (4)(c)(I) of this section for development and administrative costs incurred pursuant to this section in the provision of programs and services allowed pursuant to the federal "American Rescue Plan Act of 2021", Pub.L. 117-2, as the act may be subsequently amended.

(4.5) Notwithstanding any other provision of this section, the state court administrator shall apply the moneys generated from fees collected pursuant to section 13-32-101 (1)(a), (1)(a.5), (1)(b), and (1)(b.5), C.R.S., and transferred pursuant to section 13-32-101 (5)(a)(X) and (5)(b)(II), C.R.S., to grants to qualifying organizations that provide services described in subsection (2) of this section for or on behalf of indigent persons or their families, which persons are married, separated, or divorced or parties to a civil union or an invalidated, legally separated, or dissolved civil union.

(5) For purposes of this section:

(a) "Administrator" means the state court administrator in the state judicial department.

(b) "Family violence" has the same meaning as "domestic abuse" as set forth in section 13-14-101 (2), C.R.S.

(c) "Fund" means the family violence justice fund.

(d) "Indigent" means a person whose income does not exceed one hundred twenty-five percent of the current federal poverty guidelines determined annually by the United States department of health and human services.

(e) "Protection order" has the same meaning as set forth in section 18-6-803.7 (1)(b.5), C.R.S.

(f) "Qualifying organization" means an organization that:

(I) Provides full service civil legal services to indigent clients;

(II) Is based in Colorado;

(III) Is exempt from taxation pursuant to section 501 (c)(3) of the internal revenue code; and

(IV) Obtains more than thirty-three percent of its funding from sources other than grants from the fund.

Source: L. 99: Entire section added, p. 1178, § 5, effective June 2. **L. 2003:** (2)(a) and (5)(e) amended, p. 1010, § 13, effective July 1. **L. 2004:** (5)(b) amended, p. 554, § 9, effective July 1. **L. 2009:** (4.5) added, (SB 09-068), ch. 264, p. 1211, § 6, effective July 1. **L. 2010:** (3)(a) amended, (HB 10-1422), ch. 419, p. 2069, § 25, effective August 11. **L. 2011:** (4.5) amended, (HB 11-1303), ch. 264, p. 1153, § 22, effective August 10. **L. 2013:** (2)(a) and (4.5) amended, (SB 13-011), ch. 49, p. 162, § 12, effective May 1. **L. 2014:** (5)(e) amended, (HB 14-1363), ch. 302, p. 1263, § 10, effective May 31. **L. 2021:** (4)(c) added, (SB 21-292), ch. 291, p. 1721, § 2, effective June 22.

Editor's note: In 2003, subsection (5)(e), as enacted in 1999, was relettered on revision as (5)(f), and subsection (5)(f), as enacted in 1999 and as amended by House Bill 03-1117, was relettered on revision as (5)(e) to put the defined terms in alphabetical order. (For House Bill 03-1117, see L. 2003, p. 1010.)

Cross references: (1) For the internal revenue code, see the federal "Internal Revenue Code of 1986", title 26 of the United States Code.

(2) For the legislative declaration in SB 21-292, see section 1 of chapter 291, Session Laws of Colorado 2021.

DESERTION AND NONSUPPORT

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Uniform Interstate Family Support Act

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PREFATORY NOTE

I. History of Uniform Family Support Acts

A. URESA and RURESA

In 1950 the National Conference of Commissioners on Uniform State Laws (NCCUSL), now more commonly referred to as the Uniform Law Commission (ULC), began a series of uniform acts dealing with cases involving establishment, enforcement, and modification of orders for "any duty of support" across state lines. This evolving process started with a revolutionary idea entitled the Uniform Reciprocal Enforcement of Support Act (URESA), promulgated in 1950, and amended in 1952 and 1958. Further amendments in 1968 were so significant that the act was renamed the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). Ultimately, all the states enacted one or more versions of the reciprocal support enforcement acts. A comprehensive history of the creation process from 1950 through 1968 is provided by William J. Brockelbank &Felix Infausto, Interstate Enforcement of Family Support (Bobbs-Merrill Co., 2d ed. 1971). As with most revolutions, without it subsequent development would not have been possible.

B. UIFSA (1992) (1996)

By 1988, however, problems had arisen regarding the application of RURESA in practice. After four iterations that lasted over four decades, revisiting the subject was deemed necessary. A drafting committee began to prepare amendments for RURESA, but the task proved more formidable than expected. The result was the promulgation of the Uniform Interstate Family Support Act, UIFSA (1992), which was designed to serve as a complete replacement for URESA and RURESA. In 1993 Arkansas and Texas were the first to enact the new act, and within three years thirty-five states had adopted it.

The year 1996 was an eventful one for UIFSA. First, a drafting committee was convened in spring 1996 in response to requests from representatives of employer groups for specific statutory directions regarding interstate child-support income withholding orders. Second, the child-support community (especially the state programs funded under title IV-D of the Social Security Act) requested a substantive and procedural review. As a result, the NCCUSL at its annual conference in July adopted significant amendments and promulgated UIFSA (1996). Less than one month later, the U.S. Congress assured that nationwide acceptance of the amended Act was virtually certain. In the "welfare reform" legislation passed in August 1996, officially known as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the enactment of UIFSA, as amended, was mandated as a condition of state eligibility for the federal funding of child support enforcement and even under exigent circumstances to continued receipt of subsidies for TANF (Temporary Assistance for Needy Families), as follows:

Sec. 321. Adoption of Uniform State Laws (42 U.S.C. § 666) is amended by adding at the end the following new subsection:

(f) Uniform Interstate Family Support Act. In order to satisfy (42 U.S.C. § 654(20)(A)), on and after January 1, 1998, each state must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998, by the National Conference of Commissioners on Uniform State Laws.

Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub. L. 104-193, 110 Stat. 2105 (1996), as amended by the Welfare Reform Technical Corrections Act of 1997.

In accordance with this "federal mandate," all states enacted UIFSA (1996).

C. UIFSA (2001)

In 2000 the child-support community again requested that the act be reviewed and amended as appropriate in the light of the years of experience with the 1992 and 1996 versions. Further, beginning in 1993 there had been an extraordinary amount of comprehensive training on the act by the child-support enforcement agencies throughout the nation and associated agencies and organizations of those agencies, e.g., U.S. Department of Health and Human Services (HHS), Office of Child Support Enforcement (OCSE); National Child Support Enforcement Association (NCSEA); Eastern Regional Interstate Child Support Association (ERICSA); and Western Interstate Child Support Enforcement Council (WICSEC). A significant consequence of this attention was that the provisions of UIFSA were far more familiar to those who administered it than ever was true of its predecessor acts, URESA and RURESA.

The drafting committee meeting in 2001 led to several substantive and procedural amendments, which clarified and extended the act without making any fundamental

change in the earlier policies and procedures. The widespread acceptance of UIFSA has been due primarily to the fact that representatives of the child support enforcement community mentioned above participated actively in the drafting of every version of the act, including UIFSA (2008).

When Congress mandated that UIFSA (1996) must be in place in all states by 1998, most interested parties viewed that action as an unalloyed benefit for the promulgation of the uniform act. Although all states promptly adopted UIFSA (1996), in retrospect, the federal action became a mixed blessing when it partially froze further development of the act. Through the development of consecutively promulgated versions of the act, *i.e.*, UIFSA (2001) and UIFSA (2008), UIFSA (1996) was withdrawn by NCCUSL as being no longer appropriate for enactment. The federal mandate, however, remains and as of January 1, 2015, UIFSA (1996) was in force in twenty five (25) states. The federal Office of Child Support Enforcement (OCSE) routinely granted waivers to any state requesting authority to enact UIFSA (2001), or, with a deferred effective date, UIFSA (2008). Using the waiver authority, as of January 1, 2015, seventeen states had enacted UIFSA (2001), and twelve states had approved UIFSA (2008), contingent upon the United States' ratification of the 2007 Convention. The current expectation is that all states, or at least a substantial majority of the remaining states will enact this version, UIFSA (2008), by the end of 2015.

For comprehensive discussions of many of the events described above, *see* Uniform Interstate Family Support Act, 9 Part IB U.L.A. 159, 291, 471 (2005); Symposium on International Enforcement of Child Support, 43 Fam. L.Q. No. 1, Spring 2009 (1-160 pp., John J. Sampson issue editor); John J. Sampson and Barry J. Brooks, Uniform Interstate Family Support Act (2001) with Prefatory Note and Comments (with Still More Unofficial Annotations), 36 Fam. L.Q. 329 (2002); John J. Sampson, Uniform Interstate Family Support Act (1996), Statutory Text, Prefatory Note, and Commissioners Comments (with More Unofficial Annotations), 32 Fam. L.Q. 385 (1998); John J. Sampson, Uniform Interstate Family Support Act with Unofficial Annotations, 27 Fam. L.Q. 91 (1993).

Case law developments are found in Kurtis D. Kemper, Construction and Application of Uniform Interstate Family Support Act, 18 A.L.R. 6th 97 (originally published in 2001); Kurtis D. Kemper, Validity, Construction, and Application of Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C.A. § 1738B State Cases, 18 A.L.R. 6th 97 (originally published in 2006).

In sum, the original act, UIFSA (1992), was followed by two sets of amendments in 1996, and 2001. Throughout, the basic principles have remained constant, while the details have been refined by experience in the field. This version is the third set of significant amendments to the act, referred to in these comments as UIFSA (2008).

II. International Maintenance Orders

A. URESA and RURESA; Minimal Attention to International Orders

URESA (1950, 1952, and 1958) did not take into account enforcement of child-support or spousal-support orders that involved a foreign country. "State" was defined as one of the fifty states, the District of Columbia, or Puerto Rico. The 1958 amendments to URESA expanded the definition to "any state, territory or possession of the United States and the District of Columbia in which this or a substantially reciprocal law has been enacted."

RURESA (1968) made a significant change to the complete absence of attention to international support orders by expanding the definition of "state" to "any foreign jurisdiction in which this or substantially similar reciprocal law is in effect." Contemporaneous commentary indicated that the beneficiary of this amendment would be Canada, or at least certain Canadian provinces. The thought was expressed that the United States Department of State might negotiate a treaty with Canada, or that under a redefinition of the term "state" several Canadian provinces would be included as jurisdictions that would reciprocally enforce U.S. support orders.

B. UIFSA (1992) (1996); Minor Changes in Treatment of International Orders

The basic approach of UIFSA (1992) was to maintain the RURESA provision quoted above with the following minor modification: "State . . . includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this [Act]." UIFSA (1996) continued the basic provisions by adding that the foreign jurisdiction might have enacted a law that was also "substantially similar" to URESA or RURESA. Further, an amendment to Section 304 recognized that courts in Canadian provinces entered provisional orders for support to accompany their outgoing requests for establishment and enforcement, and required a provisional order from a state of the United States in order to establish a support order in Canada.

C. UIFSA (2001); Bilateral Agreements Recognized

In August 1996 PRWORA was enacted just three weeks after the promulgation of UIFSA (1996), which continued the approach of RURESA and UIFSA (1992), i.e., define "state" as including a foreign country with a "substantially similar" law to UIFSA. Indeed, this approach remains the law on the statute books of those U.S. jurisdictions that continue UIFSA (1996) in effect. UIFSA (2001) deleted the reference to a foreign country having a "substantially similar law" to URESA or RURESA. Although the revised act did specifically recognize the existence of bilateral agreements between the United States and foreign countries or their political subdivisions, UIFSA (2008) is specifically designed to accommodate U.S. domestic law to international family support orders, especially those resulting under the new Hague Convention of November 23, 2007.

In short, the attention paid in the uniform support acts to issues involving foreign support orders initially was relatively limited until the advent of UIFSA (2001). Previously, in 1996 PRWORA tied the

significant federal subsidy for child-support enforcement to the universal enactment of UIFSA (1996), and also laid the groundwork for greatly increased federal activity for reaching bilateral agreements on child support enforcement with foreign countries. The federal act authorized the Secretary of State, with the concurrence of the Secretary of Health and Human Services, to enter into international agreements with foreign reciprocating countries with support enforcement procedures substantially in conformity with such procedures in the United States. Individual U.S. states were also encouraged to enter into reciprocal arrangements with the foreign jurisdictions with which they had the greatest number of international cases.

In response, the U.S. State Department formed teams of negotiators to provide for bilateral agreements with a variety of foreign countries. Between 1998 and 2008, the United States entered into bilateral agreements with thirteen nations and eleven Canadian provinces (the federal government in Canada lacks jurisdiction over child-support orders). *See* http://www.acf.hhs.gov/programs/cse/international/index.html.

To accommodate the new world of bilateral orders on the federal level, UIFSA (2001) redefined "state" to encompass foreign countries with bilateral agreements with the United States. Despite repeated requests to Congress to mandate adoption of that version in order to facilitate increased international activity in child-support enforcement, no congressional action was taken through the end of 2008; *see* Section 102(26), *infra*, for the text of UIFSA (2001) and the entirely new approach in UIFSA (2008).

D. The New Hague Maintenance Convention

As of June 1, 2003, there were several child support enforcement agreements among countries. One widely accepted agreement, which is largely hortatory and without practical effect, was sponsored by the United Nations in 1956 and referred to as the New York Convention. In addition, there are four agreements promulgated by The Hague Conference on Private International Law (HccH), two covering enforcement of child-support orders in 1958 and maintenance orders in 1973, and two dealing with applicable law in 1956 and 1973 (a civil law concept). These conventions operate primarily between European nations, and came to be viewed by HccH as out-of-date and relatively ineffective. In addition, there are a welter of regional agreements regarding enforcement of family maintenance orders. The United States is not a party to any of these multilateral agreements.

Beginning in June 2003, and continuing through November 2007, more than 70 countries met in The Hague, Netherlands, in five separate negotiating sessions to forge a new Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

The United States delegation, headed by the U.S. State Department and including members from OCSE and other experts, was a crucial participant throughout the term of

negotiations. It was clearly a goal of all the parties engaging in the negotiations that the United States be an active party and ultimately adopt the Convention.

As a first step, the Convention was signed by the United States at The Hague, Netherlands, on November 23, 2007. In context, this initial signature represents a commitment by the executive branch of the federal government to make a good faith effort to bring the Convention into force. The Senate has given its advice and consent to the Convention. When it is signed by the President, and the appropriate documents are filed in The Hague, the federal preemption of the issue via the treaty clause will be sufficient to make the Convention "the law of the land." *See* U.S. Const. art. VI. cl. 2. However, because this multilateral treaty is not self-executing, additional federal or state statutory enactments are necessary to enable the treaty and make it readily accessible to bench and bar. Because establishment, enforcement, and modification of family support are basically matters of state law, from the perspective of the Uniform Law Commission the vehicle for the acceptance into force of the new Convention is a revision of UIFSA (2001), hereafter called UIFSA (2008). In time, it is anticipated the new Hague Maintenance Convention will achieve a high level of integration with many other countries.

III. Drafting Principles for UIFSA (2008)

The basic principles underlying the drafting of UIFSA (2008) anticipated a strictly limited revision of the act in order to integrate the appropriate provisions of the new Convention into state law. Because UIFSA (2001) had such a wide influence on the text of the new Convention, in very many instances the principles, and sometimes almost the exact text, of the Convention were already contained in UIFSA (2001). The clear drafting goal was to integrate the Convention into state law, and not to revise UIFSA (2001) in a substantive manner. Most frequently the amendment to the existing text was merely to add "or a foreign country" to the directives about how a "tribunal of this state" should deal with an order or another action of a "state." Correspondingly, the definition of "state" no longer contains the legal fiction that a foreign country is a state of the United States.

Similarly, a significant portion of the language of the Convention need not be included in state law because that text speaks to the "Contracting States," that is, to the countries in which the Convention will come into force. A substantial percentage of the articles in the Convention are directed to the agreement between nation states or their political subdivisions, which do not implicate state tribunals. A majority of the provisions, however, do speak to the "competent authorities," which means to those tribunals charged with the obligation of applying the Convention to actual support orders. In sum, with relatively minimal amendments, the text of UIFSA (2008) combines the principles of UIFSA and the Convention with the required actions of a state tribunal to put the Convention into effect.

There are some instances in which the text of UIFSA (2008) and the Convention

differ in a manner that cannot be reconciled by fiat. On these occasions it is necessary to accommodate the Convention language to state law in order to avoid conflict between the Convention and the uniform state law. A choice had to be made; either substantially amend the text of UIFSA (2001), or create an independent set of rules to accommodate the differences between UIFSA and the Convention. The latter was the preferred decision. An all-new Article 7 constitutes a stand-alone portion of the act designed to direct a "tribunal of this state" on limited special practices and handling deemed to be necessary for establishing or enforcing a Convention support order. This decision was based on the conclusion that a limited number of specialized rules for Convention orders would result in a simpler, smoother transition than attempting to integrate new rules into the millions of existing child-support orders.

UIFSA (2008) also may supply answers to some of the questions that the Convention leaves unresolved. This is particularly apt with regard to modification of existing orders when parties have moved from the issuing state or foreign country, or other factual circumstances have changed significantly. Regarding modification of orders, the Convention has only limited application, while UIFSA makes modification the subject of significant statutory effect. *See* §§ 609-16.

In sum, UIFSA (2008) constitutes a limited, rather than comprehensive, revision of the act. It is designed to integrate the Convention into state law, and not to amend UIFSA (2001) in any significant manner. The drafting principles are relatively simple:

(1) integrate the requirements of the Convention into the current text of UIFSA articles 1 through 6 by adding "or a foreign country" when the desired actions and goals of both acts are congruent;

(2) adapt the language of the Convention to the current text of UIFSA articles 1 through 6 in order to make that language more comprehensible to the American bench and bar;

(3) draft a stand-alone article in UIFSA to direct a "tribunal of this state" on do's and don'ts unique to the Convention support orders containing issues only applicable under the Convention; and,

(4) omit the Convention text that need not be included in state law because it speaks only to "Contracting States," i.e., the United States and the other Convention countries.

The function of the comments to the act is not to serve as an annotated version of UIFSA (2008), but rather to provide the history and process involved in the drafting of the four iterations of a uniform act, one of which is in force in every jurisdiction of the United States. Other than key constitutional cases, most of the citations found in previous comments to earlier iterations of the act have been omitted.

IV. Federal Action Implicating UIFSA (2008)

The usual course for treaties entered into by the United States pursuant to the treaty power, U.S. Const. art. II, § 2, cl. 2, and which are not "self-executing," is for the

treaty to be implemented through federal legislation. The states are, of course, required to comply with the treaty and the federal legislation, but, as noted above, the establishment, enforcement, and modification of family support orders are basically matters of state law. As UIFSA is the familiar and widely used tool for support determinations in cross-border situations, the Uniform Law Commission (ULC), in close consultation with the Department of State and the Department of Health and Human Service's Office of Child Support Enforcement (OCSE), incorporated applicable provisions of the Hague Maintenance Convention of November 23, 2007 into state law through amendments to UIFSA, now UIFSA (2008). In fact, the United States' negotiations team at The Hague included ULC representatives, and the 2007 treaty, in many important respects, parallels the UIFSA model of inter-jurisdictional cooperation.

While it includes specific new features for international case processing, UIFSA (2008) incorporates substantial provisions of state law which will already be familiar to attorneys, courts, support enforcement agencies, and litigants. Congress, which funds state child support programs through title IV-D of the Social Security Act has, since 1996, deemed it appropriate to require all states to adopt UIFSA as a condition for the continued receipt of federal funds. Adoption of UIFSA (2008) by the states, will ensure uniformity in implementation of the treaty throughout the country and will enable the United States to be in compliance with the Convention.

Obviously, federal action is also required, both to ratify the treaty and bring it into force. With respect to the Convention, federal legislation was necessary to implement parts of the Convention which do not directly implicate state tribunals, such as the provisions of Convention Chs. II and III dealing with Central Authorities, use of the Federal Parent Locator Service, and collection of past- due support in international cases by offset of federal tax refunds.

The United States signed the treaty on November 23, 2007, signifying its intention to make good faith efforts to have the treaty adopted and implemented in this country. On September 29, 2010 the United States Senate gave its advice and consent to ratification of the treaty. Federal legislation which included provisions pertaining to the treaty was passed by both the House and Senate and was signed by the President on September 29, 2014, as Public Law 113-183. This legislation requires all states to adopt UIFSA (2008). The law further requires that UIFSA (2008) be in effect in each state no later "than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act." If a state has a 2-year legislative session, "each year of the session shall be deemed to be a separate regular session of the State legislature." All states have regular legislative sessions during 2015 and, thus, all states must enact UIFSA (2008) in 2015.

Immediately following enactment of P.L. 113-183, the Commissioner of OCSE signed a policy Action Transmittal directed to all

State Agencies Administering Child Support Plans under Title IV-D of the Social Security Act. This transmittal reiterates the legislative requirement that each state must have in effect the Uniform Interstate Family Support Act, "including any amendments adopted as of September 30, 2008." The transmittal is set forth in full below.

Adoption of UIFSA(2008) by the states is not only essential to the continued federal funding of state child support programs but is key to the United States' showing of good faith implementation of the Convention and the entry into force of the Convention in this country. That implementation will help assure that American support orders are fully and expeditiously accepted and enforced in other countries. At the beginning of 2015, thirty-two countries had already ratified, acceded to the Convention, or were bound by a Regional Economic Integration Organization mandate (i.e. the European Union's means of implementation of the Convention).

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF CHILD SUPPORT ENFORCEMENT

ACTION TRANSMITTAL

AT-14-11

DATE: October 9, 2014

TO: State Agencies Administering Child Support Plans under Title IV-D of the Social Security Act and Other Interested Individuals

SUBJECT: P.L. 113-183 UIFSA 2008 Enactment

On September 29, 2014 President Obama signed Public Law (P.L.) 113-183, the Preventing Sex Trafficking and Strengthening Families Act. This law amends section 466(f) of the Social Security Act, requiring all states to enact any amendments to the Uniform Interstate Family Support Act "officially adopted as of September 30, 2008 by the National Conference of Commissioners on Uniform State Laws" (referred to as UIFSA 2008). Among other changes, the UIFSA 2008 amendments integrate the appropriate provisions of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, which was adopted at the Hague Conference on Private International Law on November 23, 2007, referred to as the 2007 Family Maintenance Convention.

Section 301(f)(3)(A) of P.L. 113-183 requires that UIFSA 2008 must be in effect in every state "no later than the effective date of laws enacted by the legislature of the State implementing such paragraph, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act." If a state has a 2-year legislative session, "each year of the session shall be deemed to be a separate regular session of the State legislature."

In 2008, after the National Conference of Commissioners on Uniform State Laws adopted the UIFSA 2008 amendments, several states asked OCSE if their state

legislatures could enact UIFSA 2008. At that time, section 466(f) of the Social Security Act required states to adopt UIFSA 1996, a previous version to UIFSA 2008. OCSE issued DCL-08-41, which permitted states to enact UIFSA 2008 verbatim with a provision that the effective date of its enactment be delayed until the 2007 Family Maintenance Convention is ratified and the United States deposits its instrument of ratification. States that chose to follow this process did not need to request an exemption from OCSE. Eight states passed UIFSA 2008 using the effective date language described in DCL-08-41.

Due to the specific requirement in P.L. 113-183 that states enact UIFSA 2008 in their next state legislative session, OCSE rescinds DCL-08-41. The eight states that enacted UIFSA 2008 with a delayed implementation date must take the necessary legislative or administrative steps for UIFSA 2008 to be effective as directed in P.L. 113-183.

Now that the President has signed P.L. 113-183, the following steps must occur before the 2007 Family Maintenance convention can enter into force for the United States.

• All states must enact UIFSA 2008 verbatim by the effective date noted in P.L. 113-183. Where UIFSA 2008 has bracketed language, states may use terminology appropriate under state law. In addition, P.L. 113-183 requires states to make minor revisions to the state plan which OCSE will address in forthcoming guidance.

• The President must sign the instrument of ratification.

• Once these activities are completed, the United States will be able to deposit its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which is the depositary for the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

It is important to note that, once UIFSA 2008 is in effect in your state, international cases will not be processed under Article 7 of UIFSA 2008 until the 2007 Family Maintenance Convention enters into force for the United States. Once this occurs, Article 7 of UIFSA 2008 will be in effect for all cases transmitted and received under the 2007 Family Maintenance Convention.

OCSE expresses our sincere thanks to the entire child support community for the collaborative and monumental effort taken to reach this important milestone. We look forward to working together to enact UIFSA 2008 in all states, and to implement the 2007 Family Maintenance Convention in the United States.

Vicki Turetsky

Commissioner, Office of Child Support Enforcement

PART 1

GENERAL PROVISIONS

Editor's note: (1) This article was repealed and reenacted in 1993, and this part 1 was subsequently amended with relocations in 2003, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 1 prior to 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading. Former C.R.S. section numbers prior to 2003 are shown in editor's notes following those sections that were relocated.

(2) In 1961, this article was enacted as the Uniform Reciprocal Enforcement of Support Act. It was replaced by the Revised Uniform Reciprocal Enforcement of Support Act in 1971, which repealed and reenacted the act and was in effect until 1993 when it was repealed and reenacted into the Uniform Interstate Family Support Act as it existed until 2003 when the article was amended. For the Uniform Reciprocal Enforcement of Support Act, see article 2 of chapter 43, C.R.S. 1963 (L. 61, p. 356). For the Revised Uniform Reciprocal Enforcement of Support Act, see article 2 of chapter 43, C.R.S. 1963 or article 5 of title 14, C.R.S. 1973 (L. 71, p. 515).

14-5-101. Short title.

This article shall be known and may be cited as the "Uniform Interstate Family Support Act".

Source: L. 2003: Entire part amended with relocations, p. 1241, § 2, effective July 1, 2004.

Editor's note: In 2003, the former § 14-5-101 was relocated to § 14-5-102.

14-5-102. Definitions.

In this article:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

(2.5) "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(3.3) "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(A) Which has been declared under the law of the United States to be a foreign reciprocating country;

(B) Which has established a reciprocal arrangement for child support with this state as provided in section 14-5-308;

(C) Which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this article; or

(D) In which the convention is in force with respect to the United States.

(3.4) "Foreign support order" means a support order of a foreign tribunal.

(3.5) "Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

(4) "Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by the income-withholding law of this state, to withhold support from the income of the obligor.

(7) Repealed.

(8) "Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(8.5) "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(9) "Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

(10) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

(A) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(B) A foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(C) An individual seeking a judgment determining parentage of the individual's child; or

(D) A person that is a creditor in a proceeding under part 7 of this article.

(13) "Obligor" means an individual, or the estate of a decedent that:

(A) Owes or is alleged to owe a duty of support;

(B) Is alleged but has not been adjudicated to be a parent of a child;

(C) Is liable under a support order; or

(D) Is a debtor in a proceeding under part 7 of this article.

(13.5) "Outside this state" means a location in another state or a country other than the United States, whether or not the country is a foreign country.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) "Register" means to file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country.

(17) "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

(18) "Responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

(19) "Responding tribunal" means the authorized tribunal in a responding state or foreign country.

(20) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(21) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.

(22) "Support enforcement agency" means a public official, governmental entity, or private agency authorized to:

(A) Seek enforcement of support orders or laws relating to the duty of support;

(B) Seek establishment or modification of child support;

(C) Request determination of parentage of a child;

(D) Attempt to locate obligors or their assets; or

(E) Request determination of the controlling child support order.

(23) "Support order" means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.

Source: L. 2003: Entire part amended with relocations, p. 1241, § 2, effective July 1, 2004. **L. 2015:** (2), (4), (8), (9), (10), (12), (13), (14), (16) to (19), and (21) to (24) amended, (2.5), (3.3) to (3.5), (8.5), and (13.5) added, and (7) repealed, (HB 15-1198), ch. 173, p. 543, § 1, effective July 1.

Editor's note: In 2003, this section was formerly numbered as § 14-5-101, and the former § 14-5-102 was relocated to § 14-5-103.

COMMENT

The terms defined in UIFSA receive a major makeover in the now-realized expectation that the Convention will enter into force in the United States at a future time. Six definitions of terms are completely new, sixteen existing definitions are amended to a greater or lesser degree, seven definitions remain basically untouched albeit six of these are renumbered, and one term is deleted because it no longer appears in the act.

Many crucial definitions continue to be left to local law. For example, the definitions provided by subsections (1) "child," and (2) "child-support order," refer to "the age of majority" without further elaboration. The exact age at which a child becomes an adult for different purposes is a matter for the law of each state or foreign country as is the age at which a parent's duty to furnish child support terminates. Similarly, a wide variety of other terms of art are implicitly left to state law. The new Convention provides a more explicit definition of "child" that is entirely consistent with the laws of all states.

There is a divergence of opinion among the several states regarding the appropriate age for termination of child support. The overwhelming number of states set ages 18 (legal adulthood for most purposes), or 19, or one of those two ages and high-school graduation, whichever comes later. Relatively few states have retained the formerly popular age of 21. And, some states extend the support obligation past age 21 if the person to be supported is engaged in higher education. Allegedly some support enforcement agencies and some tribunals have been reluctant to enforce an ongoing child support obligation past age 21, but under UIFSA it is the law of the issuing state or foreign country that makes the determination of the appropriate age for termination of support from an obligor. Because the order has been established with personal jurisdiction over the parties, it is fully enforceable under the terms of the act.

Under the terms of the Convention, the standard obligation of a responding tribunal to enforce a child-support order is for a person "under the age of 21 years." *See* Convention art. 2. Scope. However, a contracting nation may make a reservation to limit enforcement of a child- support order to "persons who have not attained the age of 18 years." Id. This possibility will not affect this act domestically because the United States does not intend to make such a reservation. Currently states will enforce another jurisdiction's order even if such an order could not have been obtained in the responding state because the child was over 18. There is no requirement to establish an order for a child over the age of 18 if that cannot be done under the local jurisdiction's law.

Subsection (3) "Convention," identifies the Hague Maintenance Convention, the basis on which UIFSA (2008) was drafted. The text of the Convention may be accessed on the website of the Hague Convention on Private International Law,

www.hcch.net/index. As noted above, the Convention was the result of negotiations involving more than 70 foreign nations or, in some instances political subdivisions of a foreign nation, conducted in a series of meetings from May 2003 to November 2007.

Subsection (4) "Duty of support," means the legal obligation to provide support, whether or not that duty has been the subject of an order by a tribunal. This broad definition includes both prospective and retrospective obligations to the extent they are imposed by the relevant state law.

The definitions in subsections (5) "foreign country," (6) "foreign support order," and (7) "foreign tribunal," are all new to UIFSA, and must be read in conjunction with the prior and the new definition of "state," now in subsection (26). Formerly, under certain circumstances a foreign country or political subdivision was declared to be a "state." Defining a foreign country or a political subdivision thereof, e.g., a Canadian province, as a "state" may be traced back to 1968, where this approach first appeared in the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). That fiction created confusion because a foreign support order is not entitled to full faith and credit. Indeed, such orders of the sister states of the United States were only relatively recently accorded that treatment after congressional action in 1994 with the advent of the Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28. U.S.C. § 1738 B. Thus, constitutional analysis is not required for enforcement of foreign support orders; only state statutory issues are involved.

The term "foreign judgment" is used only once in UIFSA (1996) and (2001) in a context that clearly intends to mean "from a sister state." If an international construction is intended, the text in UIFSA (2001) is uniformly "foreign country or political subdivision." The new definitions in UIFSA (2008) are fine-tuned to avoid ambiguity in order to ensure that "foreign" is used strictly to identify international proceedings and orders.

Subsection (5) requires additional careful reading; under the act "foreign country" by no means includes all foreign nations. *See* Section 102(5)(A)-(D). Countries identified by three of the four subdivisions are reasonably ascertainable. The list of reciprocating countries that have negotiated an executive agreement with the United States as described in subdivision (5)(A), known as bilateral agreements, is found on the website of the federal Office of Child Support Enforcement (OCSE) at http://www.
acf.hhs.gov/programs/cse/international/index.html.

The countries described in Section 102(5)(B) have entered into an agreement with the forum state, which presumptively is known to officials of that state. A combined list of all such agreements of all states is not readily available.

Countries subject to Section 102(5)(C) theoretically could require individualized determinations on a case-by-case basis. An alternative might be for each state to create

an efficient method for identifying foreign countries whose laws are "substantially similar" to UIFSA. On the other hand, the "substantially similar" test to measure the laws of foreign nations has been around since 1968 without eliciting much controversy.

In the future, assuming that there will be a number of countries with the Convention in force with the United States under Section 102(5)(D), the list of those countries will be well publicized.

Finally, there are very many foreign nations that do not, and will not, fit any of the definitions of "foreign country" established in the act. At present, there are 192 member states in the United Nations. Recognition and enforcement of support orders from nations that do not meet the definition of "foreign country" may be enforceable under the doctrine of comity. *See* Section 104.

Subsections (6) "foreign support order," (7) "foreign tribunal," and (12) "issuing foreign country" set down parallel tracks for a foreign support order, foreign tribunal, and foreign issuing country throughout the act.

Subsection (17) "obligor," and subsection (16) "obligee," are denominated in the Convention as "debtor" and "creditor." The terms inherently contain the legal obligation to pay or receive support, and implicitly refer to the individuals with a duty to support a child. "Obligor" includes an individual who is alleged to owe a duty of support as well as a person whose obligation has previously been determined. The one-order system of UIFSA can succeed only if the respective obligations of support are adjusted as the physical possession of a child changes between parents or involves a third-party caretaker. This must be accomplished in the context of modification, and not by the creation of multiple orders attempting to reflect each changing custody scenario. Obviously this issue is of concern not only to interstate and international child-support orders, but applies to intrastate orders as well.

Subsection (18) "outside this state," requires careful reading. This phrase is used in the act when the application of the provision is to be as broad as possible. Rather than limit the application of certain provisions of the act to other states, foreign countries as defined in subsection (5), or even countries whose orders are entitled to comity under Section 104, all nations and political subdivisions are truly "outside this state." For example, that term is found in Sections 316 through 18, which allow a tribunal of this state to accept information or assistance from everywhere in the world (in the court's discretion as to its effect).

The definitions in subsections (23) "responding state," and (24) "responding tribunal," accommodate the direct filing of a petition under UIFSA without the intervention of an initiating tribunal. Both definitions acknowledge the possibility that there may be a responding state and a responding tribunal in a situation where there is no initiating tribunal. Under current practice, the initial application for services most often will be generated by a support enforcement agency or a central authority of a foreign country and sent to the appropriate

support enforcement agency in the responding state.

As discussed above in connection with subsections (5) through (7), the amended definition in subsection (26) "state," eliminates the legal fiction that a foreign country can be a state of the United States, and clarifies and implements the purpose of the act to enforce an international support order under state law. In UIFSA (2008), the term clearly is intended to refer only to a state of the United States or to other designated political entities subject to federal law.

The vast bulk of child support establishment, enforcement, and modification in the United States is performed by the state Title IV-D agencies. *See* Part IV-D, Social Security Act, 42 U.S.C. § 651 et seq. Subsection (27) "support enforcement agency," includes not only those entities, but also any other state or local governmental entities, or private agencies acting under contract with such agencies, charged with establishing or enforcing child support. A private agency falls within the definition of a support enforcement agency only as an outsource of a Title IV-D agency or specifically identified as such under Section 103.

Subsection (28) "support order" is another definition that requires more careful reading than might be immediately clear. Virtually every financial aspect of a support order regarding child support or spousal support is covered. Throughout the act "support order" means both "child support" and "spousal support." "Child support" is used when the provision applies only to support for a child. The single provision applicable solely to spousal support is Section 211. Other forms of support that might be classified as "family support," are not dealt with by UIFSA.

Subsection (29) "tribunal," takes into account that a number of states have delegated various aspects of child-support establishment and enforcement to quasi-judicial bodies and administrative agencies. The term accounts for the breadth of state variations in dealing with support orders. This usage is standard in the child-support enforcement community; private practitioners who, only rarely, are involved in such cases may still find the term unfamiliar.

ANNOTATION

Annotator's note. Since § 14-5-102 is similar to § 14-5-101 as it existed prior to the 2003 amendment to part 2 of article 5 of title 14, which resulted in the relocation of provisions, relevant cases construing that provision have been included in the annotations to this section.

Applied in Gruber v. Wallner, 198 Colo. 235, 598 P.2d 135 (1979); People ex rel. Meveren v. District Court, 638 P.2d 1371 (Colo. 1982); Dewar v. LeNard, 653 P.2d 82 (Colo. App. 1982).

14-5-103. State tribunals and support enforcement agency.

(a) The court and the administrative agency are the tribunals of this state.

(b) The county and state child support services agencies are the support enforcement agencies of this state.

Source: L. 2003: Entire part amended with relocations, p. 1243, § 2, effective July 1, 2004. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 546, § 2, effective July 1.

Editor's note: In 2003, this section was formerly numbered as § 14-5-102, and the former § 14-5-103 was relocated to § 14-5-104.

COMMENT

Subsection (a) provides for the identification of the tribunal or tribunals to be charged with the application of this act.

Subsection (b) performs the same function for the support enforcement agency or agencies. By its terms it indicates the legislature may designate more than one entity as authorized to enforce a support order, including a private agency. To clarify, federal law and regulations require that each state designate a "single and separate organizational unit" as the state agency that is charged with administration of the state plan and is authorized, and funded under Title IV-D of the Social Security Act. Known throughout the United States as the as the "IV-D agency," it may delegate any of its functions to another state or local agency or may purchase services from any person or private agency. The IV-D agency, however, retains responsibility for ensuring compliance with the Title IV- D state plan. Moreover, by virtue of the receipt of a federal subsidy, the agency is subject to federal regulations. The legislature may also decide to provide services unrelated to, or not funded by the Title IV-D system. For example, the state legislature could identify (and fund) a private agency authorized to enforce a spousal-support order not involving child support, or could fund a public defender system to provide counsel for indigent defendants in IV-D cases.

14-5-104. Remedies cumulative.

(a) Remedies provided by this article are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

(b) This article does not:

(1) Provide the exclusive method of establishing or enforcing a support order under the laws of this state; or

(2) Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this article.

Source: L. 2003: Entire part amended with relocations, p. 1243, § 2, effective July 1, 2004. **L. 2015:** (a) amended, (HB 15-1198), ch. 173, p. 546, § 3, effective July 1.

Editor's note: In 2003, this section was formerly numbered as § 14-5-103.

COMMENT

The existence of procedures for interstate establishment, enforcement, or modification of support or a determination of parentage in UIFSA does not preclude the application of the general law of the forum. Even if the parents live in different states, for example, a petitioner may decide to file an original proceeding for child support (and most likely for other relief as well) directly in the state of residence of the respondent and proceed under that forum's generally applicable support law. In so doing, the out-of-state petitioner submits to the personal jurisdiction of the forum and, for the most part, is unaffected by UIFSA. Once a child-support order has been issued, this option is no longer available to interstate parties. Under UIFSA, a state may not permit a party to proceed to obtain a second support order; rather, in further litigation the tribunal must apply the act's provisions for enforcement of an existing order and limit modification to the strict standards of UIFSA.

This section facilitates the recognition and enforcement of a support order from a nation state that is entitled to have its orders recognized by comity, but is not a "foreign country" under Section 102(5). The insertion of the term "foreign support order" to replace "support order of a foreign country or political subdivision" in subsection (a) helps clarify application of "comity" for support enforcement cases. In UIFSA, four types of nation states are defined as "foreign countries": (1) Convention countries; (2) countries with bilateral agreements with the federal government; (3) countries with bilateral agreements with particular states; and (4) countries with similar support laws. However, orders of countries that do not fall within this definition may nevertheless be enforced under "comity". Applying comity to enforce a support order of a tribunal of another nation state intends courtesy and good will, and extends due regard for the legislative, executive, and judicial acts of another nation which is not a "foreign country" as defined in Section 102.

Although the determination by the United States Department of State that a foreign nation is a reciprocating country is binding on all states, recognition of a support order through comity is dependent on the law of each state. The reference to "remedies under other law" is intended to recognize the principle of comity as developed in the forum state by statutory or common law, rather than to create a substantive right independent of that law.

Subsection (b)(1) gives notice that UIFSA is not the only means for establishing or enforcing a support order with an interstate aspect. A potential child-support obligee may voluntarily submit to the jurisdiction of another state to seek the full range of desired relief under the law of that state using intrastate procedures, rather than resorting to the interstate procedure provided by UIFSA. A nonresident married parent may choose to file a proceeding in the forum state for dissolution of the marriage, including property division and spousal support, and in conjunction seek an order regarding child custody and visitation and child support. A parent may submit to the jurisdiction of another state for a determination of parentage and child support. A support order resulting from each of these scenarios implicates UIFSA. Invariably the issuing tribunal will have continuing, exclusive jurisdiction over its controlling child support or spousal-support order as provided by Sections 205, 207, and 211, *infra*, with all of the attendant application of the act to those orders. Likewise, the order or judgment of another state can be enforced without the necessity of registration under UIFSA by resort to other post-judgment enforcement remedies, such as lien, levy, execution, and filing claims in probate or bankruptcy actions.

On the other hand, subsection (b)(2) makes clear that jurisdiction to establish child custody and visitation orders is distinct from jurisdiction for child-support orders. For the former, jurisdiction generally rests on the child's connection with the state rather than personal jurisdiction over the respondent. *See* UCCJEA § 201; May v. Anderson, 345 U.S. 528 (1953) (Frankfurter, J., concurring). Under the Supreme Court's case law, jurisdiction to establish a child-support order requires personal jurisdiction over the respondent. *See* Kulko v. Superior Court, 436 U.S. 84 (1978). If the child-support order is sought under the authority of UIFSA, the most important aspect of this rule is that a child-support obligee utilizing the provisions of UIFSA to establish child support across state lines submits to jurisdiction for child support only, and does not submit to the jurisdiction of the responding state with regard to child custody or visitation.

ANNOTATION

Annotator's note. Since § 14-5-104 is similar to § 14-5-103 as it existed prior to the 2003 amendment to part 2 of article 5 of title 14, which resulted in the relocation of provisions, to § 14-5-104 as it existed prior to the 1993 repeal and reenactment of this

article, and to repealed 43-2-3, C.R.S. 1963, and 43-2-3, CRS 53, relevant cases construing those provisions have been included in the annotations to this section.

Since the enactment of the uniform act in Colorado, there are now two distinct courses of action which a demanding state may take with respect to one who does not carry out his obligations of support to his family, namely: (1) Extradition on a criminal charge of nonsupport, and (2) the initiation of civil proceedings under the uniform act. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

Either or both courses may be pursued, and the election lies wholly within the demanding state and the obligee. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

The time to raise a defense is when there is an attempt to punish under both the criminal and the civil proceedings. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

If a trial court in its discretion believes that proper support can be assured without applying the statute, it is free to do so. Jackson v. Jackson, 157 Colo. 564, 404 P.2d 281 (1965).

The jurisdiction of the district court of Adams county, which arose from the filing and disposition of the divorce action did not preclude the district court of the city and county of Denver from proceeding pursuant to the uniform act when the mother and children had moved to Nevada. The question of support of minor children is a question which can be litigated separate and apart from divorce proceedings. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

Equitable doctrine of unclean hands will not relieve father of his duty to support his child under this article. Kansas State Dept. of Soc. & Rehabilitation Servs. v. Henderson, 620 P.2d 60 (Colo. App. 1980).

Rights and duties under marriage dissolution decree unaffected by court's support order. A support order by a Colorado court, as the responding court in a proceeding under this article, does not affect the parties' rights and duties under a dissolution of marriage decree. Kansas State Dept. of Soc. & Rehabilitation Servs. v. Henderson, 620 P.2d 60 (Colo. App. 1980); In re Enewold, 709 P.2d 1385 (Colo. App. 1985).

In a proceeding for the dissolution of marriage in which no personal service in the state of Colorado had been made upon the husband, the trial court could not issue an award of child support and order that it should supersede any award for child support which the wife had obtained through this article. Offerman v. Alexander, 185 Colo. 383, 524 P.2d 1082 (1974).

Fact that post-dissolution matter was filed under the Uniform Dissolution of Marriage Act did not give the court a proper basis for exercising jurisdiction as to child support where wife's only contact with Colorado was her granting of consent for the child to reside in this state with his father. In re Zinke, 967 P.2d 210 (Colo. App. 1998).

Mother is free to pursue remedies for child support collection available pursuant to §§ 19-6-101 and 26-13-105. Father's argument that support must be established pursuant to this act because the mother and children are nonresidents of Colorado is invalid. People ex rel. A.K., 72 P.3d 402 (Colo. App. 2003).

Applied in County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979); Rohrer v. Kane, 198 Colo. App. 231, 609 P.2d 1121 (1980).

14-5-105. Application of article to resident of foreign country and foreign support proceeding.

(a) A tribunal of this state shall apply parts 1 through 6 of this article and, as applicable, part 7 of this article, to a support proceeding involving:

(1) A foreign support order;

(2) A foreign tribunal; or

(3) An obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of parts 1 through 6.

(c) Part 7 of this article applies only to a support proceeding under the Convention. In such a proceeding, if a provision of part 7 of this article is inconsistent with parts 1 through 6 of this article, part 7 of this article controls.

Source: L. 2015: Entire section added, (HB 15-1198), ch. 173, p. 546, § 4, effective July 1.

COMMENT

Four distinct entities are defined as a "foreign country" with tribunals that enter a "foreign support order." *See* Section 102(5). With regard to the three types of proceedings identified in subsection (a), all of the provisions in this act in Articles 1 through 6 apply. Note, however, that under subsection (c), only one of these, a country "in which the Convention is in force with respect to the United States," *see* Section 102 (5)(D), will be subject to Article 7 as well as Articles 1 through 6. Thus, a support order from one of these countries may require special attention. After the Convention comes into force in the United States, a body of case law may develop if it becomes necessary to resolve unanticipated differences between this act and the Convention. As this extensive commentary and the many cross reference to provisions

of the Convention indicate, significant efforts have been made to avoid any such conflicts.

Under subsection (b) a tribunal of this state may apply principles of comity if appropriate to recognize a support order from a foreign nation state that does not fit the definition of a "foreign country," *see* Section 102(5)(A)-(D), *supra*.

Subsection (c) resolves that if terms of the Convention and the terms of this act, including Article 7, are in conflict, the provision of the Convention controls. With regard to the other three statutory definitions of a "foreign country," all the terms, this act in articles 1 through 6 control. After the Convention comes into force in the United States, a body of case law may develop to resolve unanticipated differences between this act and the Convention.

PART 2

JURISDICTION

14-5-201. Bases for jurisdiction over nonresident.

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) The individual is personally served with a summons within this state;

(2) The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in this state;

(4) The individual resided in this state and provided prenatal expenses or support for the child;

(5) The child resides in this state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(7) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of section 14-5-611 are

met, or in the case of a foreign support order, unless the requirements of section 14-5-615 are met.

Source: L. 93: Entire article R&RE, p. 1584, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1244, § 3, effective July 1, 2004. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 547, § 5, effective July 1.

COMMENT

General Jurisdictional Principle: Sections 201 and 202 contain what is commonly described as long-arm jurisdiction over a nonresident respondent for purposes of establishing a support order or determining parentage. Read together, subsections (a) and (b) provide the basic jurisdictional rules established by the act for interstate application of a support order, and are designed to be as broad as is constitutionally permissible. To sustain enforceability of a family support order in the United States the tribunal must be able to assert personal jurisdiction over the parties. *See* Estin v. Estin, 334 U.S. 541, 68 S. Ct. 1213, 92 L. Ed. 1561 (1948), and Vanderbilt v. Vanderbilt, 354 U.S. 416, 77 S. Ct. 1360, 1 L. Ed. 2d 1456 (1957) (spousal support); Kulko v. Superior Court, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978) (child support).

Long-arm Provisions: Inclusion of this long-arm provision in this interstate act is justified because residents of two separate states are involved in the litigation, both of whom must be subject to the personal jurisdiction of the forum. Thus, the case has a clear interstate aspect, despite the fact that the substantive and procedural law of the forum state is applicable to a lawsuit in what is a one-state case. This rationale is sufficient to invoke additional UIFSA provisions in an otherwise intrastate proceeding. *See* Sections 202, 316, and 318, as pertaining to special rules of evidence and discovery for UIFSA cases. The intent is to ensure that every enacting state has a long-arm statute that is as broad as constitutionally permitted.

In situations in which the long-arm statute can be satisfied, the petitioner (either the obligor or the obligee) has two options: (1) utilize the long-arm statute to obtain personal jurisdiction over the respondent, or, (2) initiate a two-state proceeding under the succeeding provisions of UIFSA seeking to establish a support order in the respondent's state of residence. Of course, a third option is also available that does not implicate UIFSA; a petitioner may initiate a proceeding in the respondent's state of residence by filing a proceeding to settle all issues between the parties in a single proceeding.

Under RURESA, multiple support orders affecting the same parties were commonplace. UIFSA created a structure designed to provide for only one support

order at a time. The new one-order regime is facilitated and combined with a broad assertion of personal jurisdiction under this long- arm provision. The frequency of a two-state procedure involving the participation of tribunals in both states has been substantially reduced by the introduction of this long-arm statute.

Subsection by subsection analyses: Subsections (1) through (8) are derived from a variety of sources, including the Uniform Parentage Act (1973) § 8, Texas Family Code § 102.011, and New York Family Court Act § 154.

Subsection (1) codifies the holding of Burnham v. Superior Court, 495 U.S. 604 (1990), which reaffirms the constitutional validity of asserting personal jurisdiction based on personal service within a state.

Subsection (2) expresses the principle that a nonresident party concedes personal jurisdiction by seeking affirmative relief or by submitting to the jurisdiction by answering or entering an appearance. However, the power to assert jurisdiction over an issue involving child support under the act does not necessarily extend the tribunal's jurisdiction to other matters. As noted above, family law is rife with instances of bifurcated jurisdiction. For example, a tribunal may have jurisdiction to establish a child-support order based on personal jurisdiction over the obligor under Section 201, but lack jurisdiction over child custody, which is a matter of status adjudication usually based on the home state of the child.

Subsections (3) through (6) identify specific fact situations justifying the assertion of long-arm jurisdiction over a nonresident. Each provides an appropriate affiliating nexus for such an assertion, when judged on a case-by-case basis with an eye on procedural and substantive due process. Further, each subsection does contain a possibility that an overly literal construction of the terms of the statute will overreach due process. For example, subsection (3) provides that long-arm jurisdiction to establish a support order may be asserted if "the individual resided with the child in this state." The typical scenario contemplated by the statute is that the parties lived as a family unit in the forum state, separated, and one of the parents subsequently moved to another state while the other parent and the child continued to reside in the forum. No time frame is stated for filing a proceeding; this is based on the fact that the absent parent has a support obligation that extends for at least the minority of the child (and longer in some states).

On the other hand, suppose that the two parents and their child lived in State A for many years and then decided to move the family to State B to seek better employment opportunities. Those opportunities did not materialize and, after several weeks or a few months of frustration with the situation, one of the parents returned with the child to State A. Under these facts, a tribunal of State A may conclude it has long-arm jurisdiction to establish the support obligation of the absent parent. But, suppose that the family's sojourn in State B lasted for many years, and then one parent unilaterally decides to return to State A. It is reasonable to expect that a

tribunal will conclude that assertion of personal jurisdiction over the absent parent immediately after the return based on subsection (3) would offend due process. Note the provisions of UIFSA are available to the returning parent to establish child support in State B, and that state will have long-arm jurisdiction to establish support binding on the moving parent under Section 201. *See* also Section 204 for the resolution of simultaneous proceedings provided by the act.

The factual situations catalogued in the first seven subsections are appropriate and constitutionally acceptable grounds upon which to exercise personal jurisdiction over an individual. Subsection (7) is bracketed because not all states maintain putative father registries.

Finally, subsection (8) tracks the broad, catch-all provisions found in many state statutes, including Cal. Civ. Proc. Code § 410.10 (1973), and Tex. Family Code § 102.011. Note, however, that the California provision, standing alone, was found to be inadequate to sustain a child-support order under the facts presented in Kulko v. Superior Court, 436 U.S. 84 (1978).

Limit on Asserting Long-arm Jurisdiction to Modify Child-Support Order: Subsection (b) elaborates on the principle by providing that modification of an existing child-support order goes beyond the usual rules of personal jurisdiction over the parties. Amended in UIFSA (2001), subsection (b) makes clear long-arm personal jurisdiction over a respondent, standing alone, is not sufficient to grant subject matter jurisdiction to a responding tribunal of the state of residence of the petitioner for that tribunal to modify an existing child-support order. *See* the extended commentaries to Sections 609 through 616. The limitations on modification of a child-support order provided by Section 611 must be observed irrespective of the existence of personal jurisdiction over the parties.

For tribunals of the United States, these sections integrate the concepts of personal jurisdiction and its progeny, continuing jurisdiction, and controlling orders. Note that the long-arm provisions of UIFSA (1992) were originally written with only domestic cases in mind. If the tribunal of a state has personal jurisdiction over an individual residing in another state (or, by implication, a foreign country), the application of local law is entitled to recognition and enforcement. *See* Full Faith and Credit for Child Support Orders Act, a.k.a. FFCCSOA, 28 U.S.C. § 1738B. Integrating this federal law based on the Constitution with the statutory rule of subject matter jurisdiction for modification of an existing child-support order is a major accomplishment of UIFSA. Obviously, the federal act is applicable to a child-support order issued by a state tribunal, but is not applicable to a foreign support order. Nor does FFCCSOA in any way affect a foreign country, which will apply its local law of recognition, enforcement, and modification to a child-support order originating from a state of the United States. When the Convention enters into force, the integration of UIFSA and the law of some foreign countries will be international in scope. At that time the jurisdictional rules of all concerned become significantly more

complex. *See* Section 708. Nonetheless, it seems likely the complexity will be more theoretical than actually troublesome.

Applicability of Long-Arm Jurisdiction to Spousal Support: Although this long-arm statute applies to a spousal-support order, almost all of the specific provisions of this section relate to a child-support order or a determination of parentage. This derives from the fact that the focus of UIFSA is primarily on child support. Only subsections (1), (2), and (8) are applicable to an action for spousal support asserting long-arm jurisdiction over a nonresident. The first two subsections are wholly noncontroversial insofar as an assertion of personal jurisdiction is concerned. Moreover, as a practical matter, an assertion of personal jurisdiction under UIFSA will almost always also yield jurisdiction over all matters to be decided between the spouses, including division of property on divorce. Thus, the most obvious possible basis for asserting long-arm jurisdiction over spousal support, i.e., "last matrimonial domicile," is not included in Section 201 to avoid the potential problem of another instance of bifurcated jurisdiction. This restraint avoids a situation in which UIFSA would arguably grant long-arm jurisdiction for a spousal-support order when the forum state has no correlative statute for property division in divorce.

Potential Application of Long-arm Jurisdiction to Foreign Support Order: If the facts of a case warrant, whether in an interstate or an international context, a state tribunal shall apply long-arm jurisdiction to establish a support order without regard to the physical location or residence of a party outside the United States. Interestingly, under certain fact situations involving a request to recognize and enforce or modify a foreign support order, a state tribunal may be called upon to determine the applicability of long-arm jurisdiction under UIFSA to the facts of the case in order to decide the enforceability of the foreign support order.

For example, a challenge to a request for enforcement of a foreign support order may be made by a respondent based on an allegation that the foreign issuing tribunal lacked personal jurisdiction over the respondent. A respondent may acknowledge that the obligee or the child resides in France, and that a French tribunal issued a support order. But, in the *Kulko* decision the Court accepted the respondent's allegation that under the state law then available there was no nexus between himself and California and therefore no personal jurisdiction over him as required by the opinion. From the perspective of the French tribunal under the facts above, an asserted lack of personal jurisdiction is of no consequence. Under the law of France, like the law of virtually all other foreign nations, the child-based jurisdiction stemming from the residence of the obligee or child is sufficient to sustain a child-support order against the noncustodial parent. But, meshing the world-wide system of child-based jurisdiction with the U.S. requirement of *in personam* jurisdiction presented an easily resolved challenge to the drafters of the new Hague Maintenance Convention.

Thus, under the Convention, a state tribunal may be called upon to determine

whether the facts underlying the support order would have provided the issuing foreign tribunal with personal jurisdiction over the respondent under the standards of this section. In effect, the question is whether the foreign tribunal would have been able to exercise jurisdiction in accordance with Section 201. The foregoing fact situation illustrates that it is for the state tribunal to determine if the order of the French tribunal would have complied with UIFSA Section 201 on the facts of the case. If so, the foreign support order is entitled to recognition and enforcement. For example, the facts of the case may show that the father lived with the child in France, supported the mother or child in France, or perhaps was responsible for, or agreed to the movement of the child to France.

On the other hand, if the issuing French tribunal would have lacked personal jurisdiction over the respondent if Section 201 had been applicable, the support order cannot be enforced because there was no nexus between France and the respondent. The United States will make a reservation to Convention article 20, declining to recognize or enforce a foreign support order on child-based jurisdiction founded solely on the location or residence of the obligee or the child in the foreign country.

Interestingly, if the responding state tribunal finds the French tribunal lacked personal jurisdiction over the respondent, additional action may be taken. In a Convention case, the responding state tribunal may establish a child-support order if it has personal jurisdiction over the respondent without requesting a separate application for establishment of a new order.

Related to Convention: art. 2. Scope; art. 19. Scope of the chapter; art. 20. Bases for recognition and enforcement; art. 32. Enforcement under internal law; art. 62. Reservations.

ANNOTATION

This section was adopted to extend long-arm jurisdiction as far as constitutionally permissible, but without establishing "child-state jurisdiction" under which the support duty and child's location, alone, would provide the jurisdictional nexus for a support order. In re Malwitz, 81 P.3d 1076 (Colo. App. 2003), rev'd on other grounds, 99 P.3d 56 (Colo. 2004).

Nonresident father's out-of-state abuse and harassment satisfies subsection (5). Father's domestic abuse against mother in Texas and awareness that mother's family ties were in Colorado and mother might move to Colorado with child to escape the abuse were sufficient to constitute "acts or directives" within the meaning of subsection (5). In re Malwitz, 99 P.3d 56 (Colo. 2004).

Trial court's exercise of personal jurisdiction over nonresident father whose abuse and harassment of mother in Texas caused mother and child to flee to Colorado and seek public assistance was consistent with due process. In re Malwitz, 99 P.3d 56 (Colo. 2004).

Colorado court enforcing foreign judgment against Colorado resident must consider not only whether the foreign court had personal jurisdiction under its laws, but also whether the exercise of jurisdiction by the foreign state is consistent with the constitution and laws of the United States. The district court is required to adjudicate whether husband had sufficient minimum contacts with England to render constitutional under United States law the assertion of jurisdiction over him by the English court. In re Lohman, 2015 COA 134, 361 P.3d 1110.

Applied in In re Haddad, 93 P.3d 617 (Colo. App. 2004).

14-5-202. Duration of personal jurisdiction.

Personal jurisdiction acquired by a tribunal of this state in a proceeding under this article or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by sections 14-5-205, 14-5-206, and 14-5-211.

Source: L. 93: Entire article R&RE, p. 1584, § 1, effective January 1, 1995. **L. 97:** Entire section amended, p. 534, § 2, effective July 1. **L. 2003:** Entire section amended, p. 1244, § 4, effective July 1, 2004.

COMMENT

It is a useful legal truism after a tribunal of a state issues a support order binding on the parties, which must be based on personal jurisdiction by virtue of *Kulko v. Superior Court*, 436 U.S. 84 (1978) and *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957), jurisdiction in personam continues for the duration of the support obligation absent the statutorily specified reasons to terminate the order. The rule established by UIFSA is that the personal jurisdiction necessary to sustain enforcement or modification of an order of child support or spousal support persists as long as the order is in force and effect, even as to arrears, *see* Sections 205-207, 211, *infra*. This is true irrespective of the context in which the support order arose, e.g., divorce, UIFSA support establishment, parentage establishment, modification of prior controlling order, etc. Insofar as a child-support order is concerned, depending on specific factual circumstances a distinction is made between retaining continuing, exclusive jurisdiction to modify an order and having continuing jurisdiction to enforce an order, *see* Sections 205 and 206, *infra*. Authority to modify a spousal-support order is permanently reserved to the issuing tribunal, Section 211, *infra*.

14-5-203. Initiating and responding tribunals of this state.

Under this article, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state, and as a responding tribunal for proceedings initiated in another state or a foreign country.

Source: L. 93: Entire article R&RE, p. 1585, § 1, effective January 1, 1995. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 548, § 6, effective July 1.

COMMENT

This section identifies the two roles a tribunal of the forum may serve: acting as either an initiating or a responding tribunal. *See* Sections 304 and 305 for the duties and powers of the tribunal in each of these capacities. Under UIFSA, a tribunal may serve as a responding tribunal even when there is no initiating tribunal. This accommodates the direct filing of a proceeding in a responding tribunal by a nonresident of the forum, whether residing in a state or anywhere else in the world. Note, however, that the section does not deal with whether an initiating tribunal of a state may forward a proceeding to a tribunal in a foreign country, which may be left to the individual support enforcement agency.

Related to Convention: art. 2. Scope; art. 37. Direct requests to competent authorities.

14-5-204. Simultaneous proceedings.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

(1) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(3) If relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) The contesting party timely challenges the exercise of jurisdiction in this state; and

(3) If relevant, the other state or foreign country is the home state of the child.

Source: L. 93: Entire article R&RE, p. 1585, § 1, effective January 1, 1995. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 548, § 7, effective July 1.

COMMENT

Under the one-order system established by UIFSA, it was necessary to provide a procedure to eliminate the multiple orders so common under RURESA and URESA. This requires cooperation between, and deference by, state tribunals in order to avoid issuance of competing support orders. To this end, tribunals are expected to take an active role in seeking out information about support proceedings in another state or foreign country concerning the same child. Depending on the circumstances, one of the two tribunals considering the same support obligation should decide to defer to the other. The inclusion of a foreign country in this investigation facilitates the goal of a "one-order world" for a support obligation.

UIFSA (1992) took a significant departure from the approach adopted by the UCCJA (1986) ("first filing"), by choosing the "home state of the child" as the primary factual basis for resolving competing jurisdictional disputes. Not coincidentally, this had previously been the choice for resolving jurisdiction conflicts of the federal Parental Kidnapping Prevention Act, 28 U.S.C. Section 1738A (1980). Given the pre-emptive nature of the PKPA, and the possibility that custody and support will both be involved in some cases, the PKPA/UIFSA choice for resolving disputes between competing jurisdictional assertions was followed in 1997 by the decision of NCCUSL to replace the UCCJA with the UCCJEA. If the child has no home state, however, "first filing" will control.

14-5-205. Continuing, exclusive jurisdiction to modify child support order.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

(1) At the time of the filing of a request for modification, this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

(c) If a tribunal of another state has issued a child support order pursuant to the "Uniform Interstate Family Support Act", or a law substantially similar to that act, which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) (Deleted by amendment, L. 2003, p. 1245, § 5, effective July 1, 2004.)

Source: L. 93: Entire article R&RE, p. 1585, § 1, effective January 1, 1995. **L. 97:** (a)(2), (b), IP(c), and (d) amended, p. 534, § 3, effective July 1. **L. 2003:** Entire section amended, p. 1245, § 5, effective July 1, 2004.

COMMENT

This section is perhaps the most crucial provision in UIFSA. Consistent with the precedent of the federal PARENTAL KIDNAPPING PREVENTION ACT, 28 U.S.C. § 1738A, except in very narrowly defined circumstances the issuing tribunal retains continuing, exclusive jurisdiction over a child-support order, commonly known as CEJ. First introduced by UIFSA in 1992, this principle is in force and widely accepted in all states. Indeed CEJ is

fundamental to the principle of one-child-support-order-at-a-time.

As long as one of the individual parties or the child continues to reside in the issuing state, and as long as the parties do not agree to the contrary, the issuing tribunal has continuing, exclusive jurisdiction over its child-support order which in practical terms means that it may modify its order. The statute takes an even-handed approach. The identity of the party remaining in the issuing state obligor or obligee does not matter. Indeed, if the individual parties have left the issuing state but the child remains behind, CEJ remains with the issuing tribunal. Even if the parties and the child no longer reside in the issuing state, the support order continues in existence and is fully enforceable unless and until a modification takes place in accordance with the requirements of Article 6, *infra*. Note, however, that the CEJ of the issuing tribunal over a spousal-support order is permanent, *see* Section 211, *infra*.

Subsection (a)(1) states the basic rule, and subsection (a)(2) states an exception to that rule. First, the time to measure whether the issuing tribunal has continuing, exclusive jurisdiction to modify its order, or whether the parties and the child have left the state, is explicitly stated to be at the time of filing a proceeding to modify the child-support order. Second, the term in subsection (a)(1) "is the residence" makes clear that any interruption of residence of a party between the date of the issuance of the order and the date of filing the request for modification does not affect jurisdiction to modify. Thus, if there is but one order, it is the controlling order in effect and enforceable throughout the United States, notwithstanding the fact that everyone at one time had left the issuing state. If the order is not modified during this time of mutual absence, a return to reside in the issuing state by a party or child immediately identifies the proper forum at the time of filing a proceeding for modification. Although the statute does not speak explicitly to the issue, temporary absence should be treated in a similar fashion. Temporary employment in another state may not forfeit a claim of residence in the issuing state. Of course, residence is a fact question for the trial court, keeping in mind that the question is residence, not domicile.

From the beginning of the implementation of the CEJ principle, questions have been raised about why a tribunal may not modify its own order if the parties agree that it should do so even after the parties have left the state. The move of the parties and the child from the state may have been of a very short distance and, although the parties no longer reside in the issuing state, they may prefer to continue to have the child-support order be governed by the same issuing tribunal because they continue to have a strong affiliation with it. For example, the child-support order may have been issued by a tribunal of Washington, D.C. Subsequently the obligee and child have moved to Virginia, the obligor now resides in Maryland, and perhaps one or both parties continue to be employed in Washington. Subsection (a)(2) authorizes retention of CEJ by the issuing state when the parties reasonably may prefer to continue to deal with the issuing tribunal even though the

state is "not the residence" of the parties or child as an exception to the general rules of CEJ for modifications of a support order.

The other side of the coin follows logically. Just as subsection (a) defines the retention of continuing, exclusive jurisdiction, by clear implication the subsection also identifies how jurisdiction to modify may be lost. That is, if all the relevant persons the obligor, the individual obligee, and the child have permanently left the issuing state, absent an agreement the issuing tribunal no longer has an appropriate nexus with the parties or child to justify the exercise of jurisdiction to modify its child-support order. Further, the issuing tribunal will have no current evidence readily available to it about the factual circumstances of anyone involved, and the taxpayers of that state will have no reason to expend public funds on the process. Note, however, that the original order of the issuing tribunal remains valid and enforceable. That order is in effect not only in the issuing state, but also in those states in which the order has been registered. The order also may be registered and enforced in additional states even after the issuing tribunal has lost its power to modify its order, see Sections 601-604, *infra*. In sum, the original order remains in effect until it is properly modified in accordance with the narrow terms of Sections 609-612, *infra*.

Subsection (b)(1) explicitly provides that the parties may agree in a record that the issuing tribunal should relinquish its continuing, exclusive jurisdiction to modify so that a tribunal in another state may assume CEJ to modify the child-support order. It is believed that such consent seldom occurs because of the almost universal desire of each party to prefer his or her local tribunal. The principle that the parties should be allowed to agree upon an alternate forum if they so choose also extends to a situation in which all the parties and the child have left the issuing state and are in agreement that a tribunal of the state in which only the movant resides shall assume modification jurisdiction, *see* Section 611.

Although subsections (a) and (b) identify the methods for the retention and the loss of continuing, exclusive jurisdiction by the issuing tribunal, this section does not confer jurisdiction to modify on another tribunal. Modification requires that a tribunal have personal jurisdiction over the parties and meet other criteria as provided in Sections 609 through 615, *infra*.

Related to Convention: art. 18. Limit on proceedings.

14-5-206. Continuing jurisdiction to enforce child support order.

(a) A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the "Uniform Interstate Family Support Act"; or

(2) A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

(c) (Deleted by amendment, L. 2003, p. 1246, § 6, effective July 1, 2004.)

Source: L. 93: Entire article R&RE, p. 1586, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1246, § 6, effective July 1, 2004. **L. 2015:** (a)(2) amended, (HB 15-1198), ch. 173, p. 548, § 8, effective July 1.

OFFICIAL COMMENT

This section is the correlative of the continuing, exclusive jurisdiction described in the preceding section. It makes the relatively subtle distinction between the CEJ "to modify a support order" established in Section 205 and the "continuing jurisdiction to enforce" established in this section. A keystone of UIFSA is that the power to enforce the order of the issuing tribunal is not "exclusive" with that tribunal. Rather, on request one or more responding tribunals may also exercise authority to enforce the order of the issuing tribunal. Secondly, under the one-order-at-a-time system, the validity and enforceability of the controlling order continues unabated until it is fully complied with, unless it is replaced by a modified order issued in accordance with the standards established by Sections 609-616. That is, even if the individual parties and the child no longer reside in the issuing state, the controlling order remains in effect and may be enforced by the issuing tribunal or any responding tribunal without regard to the fact that the potential for its modification and replacement exists.

Subsection (a) authorizes the issuing tribunal to initiate a request for enforcement of its order by a tribunal of another state if its order is controlling, *see* Section 207, or to request reconciliation of the arrears and interest due on its order if another order is controlling.

Subsection (b) reiterates that the issuing tribunal has jurisdiction to serve as a responding tribunal to enforce its own order at the request of another tribunal.

Related to Convention: art. 19. Scope of the Chapter.

14-5-207. Determination of controlling child support order.

(a) If a proceeding is brought under this article and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized.

(b) If a proceeding is brought under this article, and two or more child support orders have been issued by tribunals of this state, another state, or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this article, the order of that tribunal controls.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this article:

(A) An order issued by a tribunal in the current home state of the child controls; or

(B) If an order has not been issued in the current home state of the child, the order most recently issued controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this article, the tribunal of this state shall issue a child support order, which controls.

(c) If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (b) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to part 6 of this article, or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order shall be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section has continuing jurisdiction to the extent provided in section 14-5-205 or 14-5-206.

(f) A tribunal of this state that determines by order which is the controlling order under subsection (b)(1), (b)(2), or (c) of this section, or that issues a new controlling order under subsection (b)(3) of this section, shall state in that order:

(1) The basis upon which the tribunal made its determination;

(2) The amount of prospective support, if any; and

(3) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by section 14-5-209.

(g) Within thirty days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or

registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section shall be recognized in proceedings under this article.

Source: L. 93: Entire article R&RE, p. 1587, § 1, effective January 1, 1995. **L. 97:** Entire section amended, p. 535, § 4, effective July 1. **L. 2003:** Entire section amended, p. 1246, § 7, effective July 1, 2004. **L. 2015:** (a), (b), and (c) amended, (HB 15-1198), ch. 173, p. 548, § 9, effective July 1.

COMMENT

In addition to the introduction of the concepts of one-order and continuing, exclusive jurisdiction in Section 205, another dramatic founding principle of UIFSA was to establish a system whereby the multiple orders created by URESA and RURESA could be reconciled in the transition from a world with multiple child-support orders to a one-order-at-a-time world. This principle introduced by Section 207 was subsequently incorporated into the requirements of 28 USC 1738B, Full Faith and Credit for Child Support Orders, a.k.a. FFCCSOA.

The combination of FFCCSOA becoming effective on October 20, 1994 and the adoption of UIFSA (1996) being mandated for all states by January 1, 1998, has made this section almost never used. The existence of multiple, valid orders for ongoing support have all but disappeared.

Sections 209-210, and especially Section 207, are designed to span the gulf between the one-order system created by UIFSA and the multiple-order system previously in place under RURESA and URESA. These transitional procedures necessarily must provide for the eventual elimination of existing multiple support orders in an expeditious and efficient manner. Although FFCCSOA was effective October 20, 1994 and all U.S. jurisdictions enacted UIFSA by 1998, considerable time is required to pass before its one-order system could be completely in place. For example, multiple 21-year child-support orders issued for an infant in 1996 and 1997 would, by their terms, not end the conflict until the first expires 2017 absent resolution of the conflict by a tribunal under this section. Nonetheless, at least on the appellate level, the problem of multiple orders is fast disappearing. This section provides a relatively simple procedure to identify a

single viable order that will be entitled to prospective enforcement in every state.

Subsection (a) declares that if only one child-support order exists, it is to be denominated the controlling order, irrespective of when and where it was issued and whether any of the individual parties or the child continue to reside in the issuing state.

Subsection (b) establishes the priority scheme for recognition and prospective enforcement of a single order among existing multiple orders regarding the same obligor, obligee, and child. A tribunal requested to sort out the multiple orders and determine which one will be prospectively controlling of future payments must have personal jurisdiction over the litigants in order to ensure that its decision is binding on all concerned. For UIFSA to function, one order must be denominated as the controlling order, and its issuing tribunal must be recognized as having continuing, exclusive jurisdiction. In choosing among existing multiple orders, none of which can be distinguished as being in conflict with the principles of UIFSA, subsection (b)(1) gives first priority to an order issued by the only tribunal that is entitled to continuing, exclusive jurisdiction under the terms of UIFSA, i.e., an individual party or the child continues to reside in that state and no other state meets this criterion. If two or more tribunals would have continuing, exclusive jurisdiction under the act, subsection (b)(2) first looks to the tribunal of the child's current home state. If that tribunal has not issued a support order, subsection (b)(2) looks next to the order most recently issued. Finally, subsection (b)(3) provides that if none of the existing multiple orders are entitled to be denominated as the controlling order because none of the preceding priorities apply, the forum tribunal is directed to issue a new order, given that it has personal jurisdiction over the obligor and obligee. The new order becomes the controlling order, establishes the continuing, exclusive jurisdiction of the tribunal, and fixes the support obligation and its nonmodifiable aspects, primarily duration of support, *see* Sections 604 and 611(c), *infra*. The rationale for creating a new order to replace existing multiple orders is that there is no valid reason to prefer the terms of any one of the multiple orders over another in the absence of a fact situation described in subsections (b)(1) or (b)(2).

As originally promulgated, UIFSA did not come to grips with whether existing multiple orders issued by different states might be entitled to full faith and credit without regard to the determination of the controlling order under the act. The drafters took the position that state law, however uniform, could not interfere with the ultimate interpretation of a constitutional directive. Fortunately, this question has almost certainly been mooted by the 1996 amendment to 28 U.S.C. § 1738B, Full Faith and Credit for Child Support Orders. Congress incorporated the multiple order recognition provisions of Section 207 of UIFSA into FFCCSOA virtually word for word in the PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996. Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2221.

It is not altogether clear whether the terms of UIFSA apply to a strictly intrastate case; that is, a situation in which multiple child-support orders have been issued by multiple tribunals of a single state and the parties and the child continue to reside in that state. This is not an uncommon situation, often traceable to the intrastate applicability of RURESA. A literal reading of the statutory language suggests the section applies. Further, FFCCSOA does not make a distinction regarding the tribunals that issued multiple orders. If multiple orders have been issued by different tribunals in the home state of the child, most likely the most recent will be recognized as the controlling order, notwithstanding the fact that UIFSA Section 207 (b)(2)(B), and FFCCSOA 42 U.S.C. § 1738B(f)(3), literally do not apply. At the very least, this section, together with FFCCSOA, provide a template for resolving such conflicts.

Subsection (c) clarifies that any party or a support enforcement agency may request a tribunal of the forum state to identify the controlling order. That party is directed to fully inform the tribunal of all existing child-support orders.

Subsection (d) seeks to assure the tribunal is furnished with all the information needed to make a proper determination of the controlling order, as well as the information needed to make a calculation of the consolidated arrears. The party or support enforcement agency requesting the determination of controlling order and determination of consolidated arrears is also required to notify all other parties and entities who may have an interest in either of those determinations. Those with such an interest most likely are support agencies and the obligee.

Subsection (e) provides that the determination of the controlling order under this section has the effect of establishing the tribunal with continuing, exclusive jurisdiction; only the order of that tribunal is entitled to prospective enforcement by a sister state.

Subsection (f) directs the forum tribunal to identify the details upon which it makes its determination of the controlling order. In addition, the tribunal is also directed to state specifically the amount of the prospective support, and to reconcile and consolidate the arrears and interest due on all of the multiple orders to the extent possible.

The party obtaining the determination is directed by subsection (g) to notify all interested tribunals of the decision after the fact. Although tribunals need not be given original notice of the proceeding, all tribunals that have contributed an order to the determination must be informed regarding which order was determined to be controlling, and should also be informed of the consolidated arrears and interest so that the extent of possible subsequent enforcement will be known with regard to each of the orders. The act does not deal with the resolution of potential conflicting claims regarding arrears; this is left to case-by-case decisions or to federal regulation.

Section 207 presumes that the parties are accorded notice and opportunity to be heard by the tribunal. It also presumes that the tribunal will be fully informed about all

existing orders when it is requested to determine which one of the existing multiple child-support orders is to be accorded prospective enforcement. If this does not occur and one or more existing orders is not considered by the tribunal, the finality of its decision is likely to turn on principles of estoppel on a case-by-case basis.

Finally, subsection (h), affirms the concept that when a fully informed tribunal makes a determination of the controlling order for prospective enforcement, or renders a judgment for the amount of the consolidated arrears, the decision is entitled to full faith and credit.

ANNOTATION

A court of this state must recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to law substantially similar to the Uniform Interstate Family Support Act. In re Zinke, 967 P.2d 210 (Colo. App. 1998).

The issuing tribunal retains continuing, exclusive jurisdiction over its order as long as one of the individual parties or the child continues to reside in the issuing state. In re Zinke, 967 P.2d 210 (Colo. App. 1998); In re Hillstrom, 126 P.3d 315 (Colo. App. 2005).

The issuing tribunal has continuing, exclusive jurisdiction over its order unless each party consents in writing to a court of another state assuming continuing, exclusive jurisdiction to modify the order. In re Hillstrom, 126 P.3d 315 (Colo. App. 2005).

14-5-208. Child support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

Source: L. 93: Entire article R&RE, p. 1587, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1248, § 8, effective July 1, 2004. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 549, § 10, effective July 1.

COMMENT

This section is concerned with those multiple orders that involve two or more families of the same obligor. Although all such orders are entitled to enforcement,

practical difficulties frequently exist. For example, full enforcement of each of the multiple orders may exceed the maximum allowed for income withholding. The federal statute, 42 U.S.C. § 666(b)(1), requires that to be eligible for the federal funding for enforcement, states must provide a ceiling for child-support withholding expressed in a percentage that may not exceed the federal law limitations on wage garnishment, Consumer Credit Protection Act of 1968, 15 U.S.C. § 1673(b). In order to allocate resources between competing families, UIFSA refers to state law. The basic principle is that one or more support orders for an out-of-state family of the obligor, and one or more orders for an in-state family, are of equal dignity. In allocating payments to different obligees, every child-support order should be treated as if it had been issued by a tribunal of the forum state, that is, preferential treatment for a local family over an out-of-state family is prohibited by local law. The addition of a foreign support order to the formula supplied by this section should assure that all children will have equal ability to obtain their share of child support.

14-5-209. Credit for payment.

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this state, another state, or a foreign country.

Source: L. 93: Entire article R&RE, p. 1588, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1248, § 9, effective July 1, 2004. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 549, § 11, effective July 1.

COMMENT

The issuing tribunal is ultimately responsible for the overall control of the enforcement methods employed and for accounting for the payments made on its order from multiple sources. Until that scheme is fully in place, however, it will be necessary to continue to mandate pro tanto credit for actual payments made against all existing orders. The addition to include a foreign support order in the calculation should assure all payments of support are properly credited. This section does not attempt to impact the way support paid in an individual case is apportioned or distributed between the obligee and one or more states asserting a claim to the monies.

14-5-210. Application of article to nonresident subject to personal jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this article, under other law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to section 14-5-316, communicate with a tribunal outside this state pursuant to section 14-5-317, and obtain discovery through a tribunal outside this state pursuant to section 14-5-318. In all other respects, parts 3 to 6 of this article do not apply, and the tribunal shall apply the procedural and substantive law of this state.

Source: L. 2003: Entire section added, p. 1248, § 10, effective July 1, 2004. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 550, § 12, effective July 1.

COMMENT

Assertion of long-arm jurisdiction over a nonresident results in a one-state proceeding without regard to the fact that one of the parties resides in a different state or in a foreign country. On obtaining personal jurisdiction the tribunal must apply the law of the forum. Once personal jurisdiction has been asserted over a nonresident, the issuing tribunal retains continuing, exclusive jurisdiction (CEJ) to modify, and continuing jurisdiction to enforce a support order in accordance with the provisions of the act. Of course, it is far more common for a support order to be issued in conjunction with a divorce or determination of parentage in which both the obligor and obligee are residents of the forum than to be issued as a result of an assertion of long-arm jurisdiction. Note that either the petitioner or the respondent may be the nonresident party (either of whom may be the obligor or the obligee). Also note that absent this provision, the ordinary intrastate substantive and procedural law of the forum would apply to either fact situation without reference to the fact that one of the parties is a nonresident. Thus, CEJ applies whether the matter at hand involves establishment of an original support order or enforcement or modification of an existing order. In any event, if one of the parties resides outside the forum state, the nonresident may avail himself or herself of the special evidentiary and discovery provisions provided by UIFSA.

This section makes clear that the special rules of evidence and procedure identified in Sections 316, 317, and 318 are applicable in a case involving a nonresident of the forum state. Section 316 facilitates decision-making when a party or a child resides "outside this state" by providing special rules to recognize the impediments to presenting evidence caused by nonresident status. Note the terminology has the broadest possible application, i.e., worldwide. The improved interstate and international exchange of information

enables the nonresident to participate as fully as possible in the proceedings without the necessity of personally appearing in the forum state. The same considerations account for authorizing interstate and international communications between tribunals as per Section 317. Finally, the discovery procedures of Section 318 are made applicable in a one- state proceeding when another tribunal may assist in that process. Of course, "may assist" is entirely at the discretion of the other tribunal. Note, a foreign tribunal may be completely unfamiliar with discovery procedures as known in the United States.

Generally, however, the ordinary substantive and procedural law of the forum state applies in a one- state proceeding. In sum, the parties and the tribunal in a one-state case may utilize those procedures that contribute to economy, efficiency, and fair play.

Related to Convention: art. 20. Bases for recognition and enforcement.

14-5-211. Continuing, exclusive jurisdiction to modify spousal-support order.

(a) A tribunal of this state issuing a spousal-support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.

(b) A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(1) An initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in this state; or

(2) A responding tribunal to enforce or modify its own spousal-support order.

Source: L. 2003: Entire section added, p. 1248, § 10, effective July 1, 2004. **L. 2015:** (b) amended, (HB 15-1198), ch. 173, p. 550, § 13, effective July 1.

OFFICIAL COMMENT

The amendment to subsection (b) ensures that the restriction on modification of an out-of-state spousal-support order extends to a foreign order. At the same time, subsection (b) provides that the question of continuing, exclusive jurisdiction be resolved under the law of the issuing tribunal. Thus, if a foreign spousal- support order were subject to

modification in another country by the law of the issuing tribunal, this section would permit modification in a tribunal of this state.

Related to Convention: art. 2. Scope.

PART 3

CIVIL PROVISIONS OF GENERAL APPLICATION

INTRODUCTORY COMMENT

This article adds a wide variety of procedural provisions to existing statutory and procedural rules for civil cases. If there is a conflict between those provisions found for other litigation and UIFSA rules set forth in this article, obviously UIFSA rules prevail. For example, it is unlikely that a state will have a provision for testimony by telephone or audiovisual means in a final hearing. Section 316 of this act creates such a right for an out-of-state individual. Revisions in this article shift the perspective slightly to accommodate the inclusion of a foreign support order in the equation. Many, but not all, of the provisions in this article are based upon the fact that a party does not "reside in this state." Application of these provisions is not solely based on whether the absent party resides in "another state," as formerly was the case. Rather, three distinct formulations are employed depending on the intended application of the provisions: "residing in a state;" "residing in . . . a foreign country;" or "residing outside this state." The third alternative is intentionally the broadest because it includes persons residing anywhere and is not limited to persons residing in a "foreign country" as defined in Section 102.

14-5-301. Proceedings under article.

(a) Except as otherwise provided in this article, this part 3 applies to all proceedings under this article.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this article by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or foreign country which has or can obtain personal jurisdiction over the respondent.

(c) (Deleted by amendment, L. 2003, p. 1249, § 11, effective July 1, 2004.)

Source: L. 93: Entire article R&RE, p. 1588, § 1, effective January 1, 1995. **L. 94:** (b)(1) amended, p. 1547, § 26, effective January 1, 1995. **L. 96:** (b)(1) amended, p. 593, § 4, effective July 1. **L. 97:** (b)(1) amended, p. 536, § 5, effective July 1. **L. 2003:** Entire section amended, p. 1249, § 11, effective July 1, 2004. **L. 2015:** (b) amended, (HB 15-1198), ch. 173, p. 550, § 14, effective July 1.

COMMENT

Subsection (a) mandates application of the general provisions of this article to all UIFSA proceedings, including those affecting a foreign support order.

The statement in subsection (b) is axiomatic that the tribunal in which a petition is filed for establishment or enforcement of a support order, or for modification of a child-support order, must be able to assert personal jurisdiction over the respondent. It is also axiomatic that an individual petitioner requesting affirmative relief under this act submits to the personal jurisdiction of the tribunal. Subsection (b) also continues reference to the basic two-state procedure long employed by the former reciprocal acts to establish a support order in the interstate context, but expands it to recognize foreign countries. Direct filing of a petition in a state tribunal by an individual or a support enforcement agency without reference to an initiating tribunal in another state was introduced by UIFSA (1992). UIFSA (2008) extends the direct filing capability to foreign countries as well.

Although the filing of a petition in an initiating tribunal to be forwarded to a responding tribunal is still recognized as an available procedure, the direct filing procedure has proven to be one of the most significant improvements in efficient interstate case management. The promulgation and use of the federally mandated, or substantially conforming, forms, Section 311(b), further serves to eliminate any role for the initiating tribunal. Incidentally, the Convention contains approved forms for use in Convention cases processed through a Central Authority.

Related to Convention: art. 2. Scope; art. 10. Available applications; art. 19. Scope of the chapter; art. 20. Bases for recognition and enforcement; art. 32. Enforcement under internal law; art. 33. Non-discrimination; art. 34. Enforcement measures; art.37. Direct requests to competent authorities; Annex 1. Transmittal form under Article 12(2); Annex 2. Acknowledgement form under Article 12(3).

14-5-302. Proceeding by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

Source: L. 93: Entire article R&RE, p. 1588, § 1, effective January 1, 1995.

Editor's note: This section is similar to former § 14-5-114 as it existed prior to 1993.

COMMENT

A minor parent may maintain a proceeding under UIFSA without the appointment of a guardian ad litem, even if the law of the forum jurisdiction requires a guardian for an in-state case. If a guardian or legal representative has been appointed, he or she may act on behalf of the minor's child in seeking support.

14-5-303. Application of law of this state.

Except as otherwise provided in this article, a responding tribunal of this state shall:

(1) Apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

Source: L. 93: Entire article R&RE, p. 1589, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1250, § 12, effective July 1, 2004.

COMMENT

Historically states have insisted that forum law be applied to support cases whenever possible. This continues to be a key principle of UIFSA. In general, a responding tribunal has the same powers in a proceeding involving parties in a case with interstate or international effect as it has in an intrastate case. This inevitably means that the act is not self-contained; rather, it is supplemented by the forum's statutes and procedures governing support orders. To insure the efficient processing of the huge number of interstate support cases, it is vital that decision makers apply familiar rules of law to the maximum degree possible. This must be accomplished in a manner consistent with the overriding principle of UIFSA that enforcement is of the issuing tribunal's order, and that the responding state does not make the order its own as a condition of enforcing it.

14-5-304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this article, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

Source: L. 93: Entire article R&RE, p. 1589, § 1, effective January 1, 1995. **L. 97:** Entire section amended, p. 537, § 6, effective July 1. **L. 2003:** Entire section amended, p. 1250, § 13, effective July 1, 2004. **L. 2015:** (b) amended, (HB 15-1198), ch. 173, p. 550, § 15, effective July 1.

Editor's note: This section is similar to former § 14-5-115 as it existed prior to 1993.

COMMENT

Subsection (a) was designed primarily to facilitate interstate enforcement between UIFSA states and URESA and RURESA states, with some applicability to cases involving foreign jurisdictions. Since 1998, by which time UIFSA had been enacted nationwide, the procedure described has gradually become an anachronism. Note, however, that the last RURESA child-support order may not expire until 2017 or 2018. *See* Prefatory Note.

Subsection (b), however, retains its utility with regard to a support order of a foreign nation. Supplying documentation required by a foreign jurisdiction, which is not otherwise required by UIFSA procedure, is appropriate in the international context. For example, a venerable process in British Commonwealth countries is known as

provisional and confirming orders. A "provisional order" is a statement of the nonbinding amount of support being requested by a Canadian tribunal for establishment of a support order by a state responding tribunal. A state responding tribunal will receive information about the amount of support provisionally calculated by a tribunal in Canada. It needs to be borne in mind that a request to establish support from a Canadian tribunal will be accomplished in accordance with the law of the responding state. Thus, the Canadian provisional order is informative, but not binding on the responding tribunal. An order issued by the responding tribunal, whether for the amount suggested in the provisional order or another amount based on the local law of the responding tribunal, is known as a confirming order. Similarly, the initiating state's tribunal, knowing that a provisional order will be required by the Canadian tribunal, is directed to cooperate and provide a statement of the amount of support being provisionally requested.

The initiating tribunal of this state also has a duty to identify the amount of foreign currency equivalent to its request to the Canadian tribunal and a corresponding duty for a responding tribunal to convert the foreign currency into dollars if the foreign initiating tribunal has not done so, Section 305(f). The reference to "the applicable official or market exchange rate" takes into account the present practices of international money markets. A few countries continue to maintain an official exchange rate for their currency. The vast majority of countries recognize the fact that the value of their currency is subject to daily market fluctuations that are reported on the financial pages of many daily newspapers. Thus, in the example described above, a request for a specific amount of support in U.S. dollars, which is to be translated into Canadian dollars on a specific date, will inevitably have a variable value as the foreign currency rises or falls against the U.S. dollar.

Related to Convention: art. 31. Decisions produced by the combined effect of provisional and confirmation orders.

14-5-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 14-5-301 (b), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) Establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage of a child;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrearages, and specify a method of payment;

(5) Enforce orders by civil or criminal contempt, or both;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor's property;

(8) Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic-mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorney's fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this article, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this article upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this article, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

Source: L. 93: Entire article R&RE, p. 1589, § 1, effective January 1, 1995. **L. 97:** (a) and (e) amended, p. 537, § 7, effective July 1. **L. 2003:** (a), IP(b), and (b)(1) amended and (f) added, p. 1251, § 14, effective July 1, 2004. **L. 2015:** (b)(1) and (b)(8) amended, (HB 15-1198), ch. 173, p. 550, § 16, effective July 1.

Editor's note: This section is similar to former §§ 14-5-119, 14-5-120, and 14-5-127 as they existed prior to 1993.

COMMENT

This section establishes a wide variety of duties for a responding tribunal. It contains: ministerial functions, subsection (a); judicial functions, subsection (b); and, substantive rules applicable to interstate cases, subsections (c)-(e). Because a responding tribunal may be an administrative agency rather than a court, the act explicitly states that a tribunal is not granted powers that it does not otherwise possess under state law. For example, authority to enforce a support order by contempt generally is limited to courts.

Subsection (a) directs the filing of the documents received without regard to whether an initiating tribunal in another state was involved in forwarding the documentation. It also directs that the individual or entity requesting the filing be notified, but leaves the means of that notification to local law. The advent of a variety of swifter, and perhaps even more reliable, forms of notice in the modern era justifies the deletion of a particular form of notice. For example, many states now authorize notice by telephone facsimile (FAX), or by an express delivery service, and many legal documents are transmitted by electronic mail (email).

Subsection (b) lists duties that, if possessed under state law in connection with intrastate cases, are extended to the responding tribunal in UIFSA cases. Thus, each subdivision purposefully avoids mention of substantive rules. For example, subsection (b)(7) does not identify the type, nature, or priority of liens that may be issued under UIFSA. As is generally true under the act, those details will be determined by applicable state law concerning support enforcement remedies of local orders.

Subsection (c) clarifies that the details of calculating the child-support order are to be included along with the order. Local law generally requires that variation from the child support guidelines must be explained, *see* 42 U.S.C. § 667; this requirement is extended to interstate cases.

Subsection (d) states that an interstate support order may not be conditioned on compliance with a visitation order. While this may be at variance with state law governing intrastate cases, under a UIFSA proceeding the petitioner generally is not present before the tribunal. This distinction justifies prohibiting visitation issues from being litigated in the context of a support proceeding. All states have enacted some version of either the UCCJA or the UCCJEA providing for resolution of visitation issues in interstate cases.

Subsection (e) introduces the policy determination that the petitioner, the respondent, and the initiating tribunal, if any, shall be kept informed about actions taken by the responding tribunal.

Subsection (f) is designed to facilitate enforcement of a foreign support order. Note that the language directing a conversion to a monetary equivalence in dollars is intended to make clear the equivalence is not a modification of the original order to an absolute dollar figure; rather, satisfaction of the obligation is to be determined by the order-issuing tribunal based on the present dollar value of the currency in which the order is denominated.

Related to Convention: art. 19. Scope of the Chapter; art. 34. Enforcement measures; art. 35. Transfer of funds; art. 43. Recovery of costs.

ANNOTATION

Reference to the Uniform Parentage Act in the Colorado Uniform Interstate Family Support Act simply establishes a method to determine parentage. Therefore the trial court erred in concluding that it had jurisdiction to enter orders granting parenting time. In Interest of R.L.H., 942 P.2d 1386 (Colo. App. 1997).

An order requiring one party to repay or reimburse the other party for overpaid child support qualifies as a "reimbursement", thus district court had subject matter jurisdiction to issue an order regarding overpayments. In re Haddad, 93 P.3d 617 (Colo. App. 2004).

14-5-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the petitioner where and when the pleading was sent.

Source: L. 93: Entire article R&RE, p. 1590, § 1, effective January 1, 1995. **L. 97:** Entire section amended, p. 537, § 8, effective July 1. **L. 2003:** Entire section amended, p. 1251, § 15, effective July 1, 2004. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 551, § 17, effective July 1.

COMMENT

If a [petition] or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the [petitioner] where and when the pleading was sent. A tribunal receiving UIFSA documents in error is to forward the original documents to their proper destination without undue delay. This section was originally intended to apply both to initiating and responding tribunals

receiving such documents, but the practical elimination of the role of initiating tribunals under modern practice now limits the notice requirement to the petitioner, i.e., the individual party or support enforcement agency, that filed (or misfiled) the document directly. For example, if a tribunal is inappropriately designated as the responding tribunal, it shall forward the petition to the appropriate responding tribunal wherever located, if known, and notify the petitioner of its action. Such a procedure is much to be preferred to returning the documents to the petitioner to begin the process anew.

Cooperation of this sort will facilitate the ultimate goals of the act. Although by its terms this section applies only to a tribunal of this state, it can be anticipated that the support enforcement agency will also assist in transferring documents to the appropriate tribunal. Note the section does not contemplate that a state tribunal will forward documents to a tribunal in a foreign country.

14-5-307. Duties of support enforcement agency.

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this article.

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

(1) Take all steps necessary to enable an appropriate tribunal of this state, another state, or a foreign country to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

(1) To ensure that the order to be registered is the controlling order; or

(2) If two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to section 14-5-319.

(f) This article does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Source: L. 93: Entire article R&RE, p. 1590, § 1, effective January 1, 1995. **L. 97:** (b)(4) and (b)(5) amended, p. 537, § 9, effective July 1. **L. 2003:** Entire section amended, p. 1251, § 16, effective July 1, 2004. **L. 2015:** (b)(1), (b)(4), (b)(5), and (e) amended, (HB 15-1198), ch. 173, p. 551, § 18, effective July 1.

COMMENT

Federal legislation signed on Sept. 29, 2014 (P.L. 113-183) authorizes states to enact Alternative A or Alternative B of subsection (a). The focus of subsection (a) is on providing services to a petitioner. Either the obligee or the obligor may request services, and that request may be in the context of the establishment of an initial child-support order, enforcement or review and adjustment of an existing child-support order, or a modification of that order (upward or downward). Note that the section does not distinguish between child support and spousal support for purposes of providing services. Note also, the services available may differ significantly; for example, modification of spousal support is limited to the issuing tribunal. *See* Section 205(f).

Alternative A continues the longstanding rule that this state's support enforcement agency shall provide services upon request to a petitioner seeking relief under this act. Under Alternative B, the support agency may exercise discretion to provide or not provide assistance to an applicant: (1) from a reciprocating country or Convention country who does not apply through the Central Authority of his or her own country, but rather applies directly to the support

enforcement agency; and (2) residing overseas in a country other than a reciprocating country or Convention country. The lack of services, of course, may impact the means by which an individual is able to obtain assistance in pursuing an action in the appropriate tribunal.

Subsection (b) responds to the past complaints of many petitioners that they were not properly kept informed about the progress of their requests for services.

Subsection (c) is a procedural clarification reflecting actual practice of the support agencies developed after years of experience with the act. It imposes a duty on all support enforcement agencies to facilitate the UIFSA one-order world by actively searching for cases with multiple orders and obtaining a determination of the controlling order as expeditiously as possible. This agency duty correlates to new Subsection 602(d) regarding the registration process and cases with multiple orders.

Subsection (d) imposes a duty of currency conversion on a support enforcement agency similar to that imposed on an initiating tribunal in Section 304(b).

Read in conjunction with Section 319, subsection (e) requires the state support enforcement agency to facilitate redirection of the stream of child support in order that payments be more efficiently received by the obligee.

Subsection (f) explicitly states that UIFSA neither creates nor rejects the establishment of an attorney-client or fiduciary relationship between the support enforcement agency and a petitioner receiving services from that agency. This once-highly controversial issue is left to otherwise applicable state law, which generally has concluded that attorneys employed by a state support enforcement agency do not form an attorney-client relationship with either the parties or the child as the ultimate obligee.

Related to Convention: art. 35. Transfer of funds.

14-5-308. Duty of attorney general.

(a) If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this article or may provide those services directly to the individual.

(b) The attorney general may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

Source: L. 93: Entire article R&RE, p. 1591, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1252, § 17, effective July 1, 2004. **L. 2015:** (b) amended, (HB 15-1198), ch. 173, p. 551, § 19, effective July 1.

Editor's note: This section is similar to former § 14-5-113 as it existed prior to 1993.

COMMENT

Subsection (b) makes clear that a state has a variety of options in determining the international scope of its IV-D support enforcement program. Of course, a federal declaration that a foreign jurisdiction is a reciprocating country or political subdivision is controlling. *See* Section 102(5)(A). However, each state may designate an official with authority to make a statewide, binding determination recognizing a foreign country, foreign nation state, or political subdivision as having a reciprocal arrangement with that state. *See* Section 102(5)(B).

14-5-309. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this article.

Source: L. 93: Entire article R&RE, p. 1591, § 1, effective January 1, 1995.

COMMENT

The right of a party to retain private counsel in a proceeding brought under UIFSA is explicitly recognized. The failure to clearly recognize that power under the prior uniform acts led to confusion and inconsistent decisions. The Convention implicitly recognizes that the right to employ an attorney is to be available in every Convention country, but does not explicitly mention retaining private counsel. A "competent authority" in Convention terminology is equivalent to a tribunal.

Related to Convention: art. 37. Direct requests to competent authorities.

14-5-310. Duties of state information agency.

(a) The state department of human services is the state information agency under this article.

(b) The state information agency shall:

(1) Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this article and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this article received from another state or a foreign country; and

(4) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

Source: L. 93: Entire article R&RE, p. 1591, § 1, effective January 1, 1995. **L. 94:** (a) amended, p. 2644, § 102, effective July 1. **L. 2003:** (b)(2) and (b)(3) amended, p. 1252, § 18, effective July 1, 2004. **L. 2015:** (b)(3) amended, (HB 15-1198), ch. 173, p. 551, § 20, effective July 1.

Editor's note: This section is similar to former § 14-5-118 as it existed prior to 1993.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (a), see section 1 of chapter 345, Session Laws of Colorado 1994.

COMMENT

Subsection (a) identifies the state information agency.

Subsection (b) details the duties of that agency insofar as interstate proceedings are concerned. Subsection (b)(4) does not provide independent access to the information sources or to the governmental documents listed. Because states have different requirements and limitations concerning such access based on differing views of the privacy interests of individual

citizens, the agency is directed to use all lawful means under the relevant state law to obtain and disseminate information.

14-5-311. Pleadings and accompanying documents.

(a) In a proceeding under this article, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under section 14-5-312, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

Source: L. 93: Entire article R&RE, p. 1592, § 1, effective January 1, 1995. **L. 97:** (a) amended, p. 538, § 10, effective July 1. **L. 2003:** (a) amended, p. 1253, § 19, effective July 1, 2004. **L. 2015:** (a) amended, (HB 15-1198), ch. 173, p. 552, § 21, effective July 1.

Editor's note: This section is similar to former § 14-5-112 as it existed prior to 1993.

COMMENT

This section establishes the basic requirements for drafting and filing interstate pleadings. Subsection (a) should be read in conjunction with Section 312, which provides for the confidentiality of certain information if disclosure is likely to result in harm to a party or a child. The goal of this section is to improve efficiency of the process by attaching all known support orders to the petition, coupled with the elimination of the requirement that such copies be certified. If a dispute arises over the authenticity of a purported order, the tribunal must, of necessity, sort out conflicting claims at that time. Another improvement is the deletion of the requirement for verified pleadings originated in URESA and carried forward in the original version of UIFSA. Note, however, that a request for registration of a foreign

support order for which the Convention is in force is subject to Section 706. This is due to the fact that the list of documents comprising the required record in subsection (a) differs in a measurable degree with Convention articles 11 and 25.

Subsection (b) provides authorization for the use of the federally authorized forms to be used in interstate cases in connection with the IV-D child-support enforcement program and mandates substantial compliance with those forms. Although the use of other forms is not prohibited, standardized documents have resulted in substantial improvement in the efficient processing of UIFSA proceedings. The Convention also contains annexed forms for international use.

Related to Convention: art. 10. Available applications; art. 11. Application contents; art. 12. Transmission, receipt and processing of applications and cases through Central Authorities; art. 25. Documents; Annex 1. Transmittal form under Article 12(2); Annex 2. Acknowledgement form under Article 12(3).

14-5-312. Nondisclosure of information in exceptional circumstances.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information shall be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

Source: L. 93: Entire article R&RE, p. 1592, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1253, § 20, effective July 1, 2004.

COMMENT

UIFSA (1992) recognized that enforcement of child support across state lines might have an unintended consequence of putting a party or child at risk if domestic violence was involved in the past. This section is a substantial revision of the statutory formulation originally developed in UIFSA (1992). It conforms to the comparable provision in the Uniform Child Custody Jurisdiction and Enforcement Act Section 209. Public awareness of and sensitivity to the dangers of domestic violence has significantly increased since interstate enforcement of support originated. This section authorizes confidentiality in instances where there is a risk of domestic violence or child abduction. Section 712, *infra*, incorporates language from the Convention to restrict dissemination of

personal jurisdiction to protect victims of domestic violence.

Although local law generally governs the conduct of the forum tribunal, state law may not provide for maintaining secrecy about the exact whereabouts of a litigant or other information ordinarily required to be disclosed under state law, i.e., Social Security number of the parties or the child. If so, this section creates a confidentiality provision that is particularly appropriate in light of the intractable problems associated with interstate parental kidnapping, *see* the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A.

Related to Convention: art. 38. Protection of personal data; art. 39. Confidentiality; art. 40. Non-disclosure of information.

14-5-313. Costs and fees.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under part 6 of this article, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

Source: L. 93: Entire article R&RE, p. 1592, § 1, effective January 1, 1995. **L. 2003:** (c) amended, p. 1253, § 21, effective July 1, 2004. **L. 2015:** (b) amended, (HB 15-1198), ch. 173, p. 552, § 22, effective July 1.

Editor's note: This section is similar to former § 14-5-116 as it existed prior to 1993.

COMMENT

Subsection (a) permits either party, i.e., as petitioner, to file without payment of a filing

fee or other costs. This provision dates back to UIFSA (1992) when the term "unfunded mandate" was basically unknown.

Subsection (b), however, provides that only the support obligor may be assessed the authorized costs and fees by a tribunal. Federal law permits a state support enforcement agency to charge limited fees and to recover administrative costs from applicants for Title IV-D services, but many states have opted not to do so, or only to seek recovery from the obligor.

Subsection (c) provides a sanction to deal with a frivolous contest regarding compliance with an interstate withholding order, registration of a support order, or comparable delaying tactics regarding an appropriate enforcement remedy.

Related to Convention: art. 14. Effective access to procedures; art. 43. Recovery of costs.

14-5-314. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding under this article before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this article.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this article committed by a party while physically present in this state to participate in the proceeding.

Source: L. 93: Entire article R&RE, p. 1593, § 1, effective January 1, 1995. **L. 2003:** (a) and (c) amended, p. 1254, § 22, effective July 1, 2004.

COMMENT

Under subsection (a), direct or indirect participation in a UIFSA proceeding does not subject a petitioner to an assertion of personal jurisdiction over the petitioner by the forum state in other litigation between the parties. The primary object of this prohibition is to preclude joining disputes over child custody and visitation with the establishment, enforcement, or modification of child support. This prohibition strengthens the ban on visitation litigation established in Section 305(d). A petition for affirmative relief under UIFSA limits the jurisdiction of the tribunal to the boundaries

of the support proceeding. In sum, proceedings under UIFSA are not suitable vehicles for the relitigation of all of the issues arising out of a foreign divorce or custody case. Only enforcement or modification of the support portion of such decrees or orders are relevant. Other issues, such as custody and visitation, or matters relating to other aspect of the divorce decree, are collateral and have no place in a UIFSA proceeding.

Subsection (b) grants a litigant a variety of limited immunity from service of process during the time that party is physically present in a state for a UIFSA proceeding. The immunity provided is in no way comparable to diplomatic immunity, however, which should be clear from reading subsection (c) in conjunction with the other subsections.

Subsection (c) does not extend immunity to civil litigation unrelated to the support proceeding which stems from contemporaneous acts committed by a party while present in the state for the support litigation. For example, a petitioner involved in an automobile accident or a contract dispute over the cost of lodging while present in the state does not have immunity from a civil suit on those issues.

ANNOTATION

While a petition for relief under UIFSA limits the jurisdiction of the tribunal to the boundaries of the support proceeding, a claim of overpayment of child support is still within the boundaries of the proceeding. In re Haddad, 93 P.3d 617 (Colo. App. 2004).

Section 14-5-607 (b) conferred personal jurisdiction over another state's child support enforcement agency that continued to collect withholdings from plaintiff's wages under the Uniform Interstate Family Support Act (UIFSA), contrary to a previous Colorado court order vacating the other state's judgment upon which the wage assignment was based. Vogan v. County of San Diego, 193 P.3d 336 (Colo. App. 2008).

While this section protects a petitioner participating in a UIFSA proceeding before a responding tribunal from being subject to personal jurisdiction in another proceeding, the statute does not prevent the Colorado court from the continued exercise of subject matter and personal jurisdiction to enforce its prior order. There are no due process concerns where another state availed itself of the provisions of UIFSA to reach plaintiff's earnings in Colorado. Section 14-5-607 (b) allows a court to enter "other appropriate orders", including orders related to plaintiff's claims for injunctive relief and restitution based upon defendant's continued collection of child support under the voided order. Vogan v. County of San Diego, 193 P.3d 336 (Colo. App. 2008).

Although this section does not confer personal jurisdiction over plaintiff's civil theft claim with respect to defendant's collection of child support despite the voided wage assignment, the Colorado long-arm statute confers jurisdiction where

plaintiff was harmed by defendant's tortious acts within this state and where the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice. Vogan v. County of San Diego, 193 P.3d 336 (Colo. App. 2008).

14-5-315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this article.

Source: L. 93: Entire article R&RE, p. 1593, § 1, effective January 1, 1995.

Editor's note: This section is similar to former § 14-5-128 as it existed prior to 1993.

COMMENT

Arguably this section does no more than restate the basic principle of res judicata. However, there is a great variety of state law regarding presumptions of parentage and available defenses after a prior determination of parentage. As long as a proceeding is brought in an appropriate forum, this section is intended neither to discourage nor encourage collateral attacks in situations in which the law of another jurisdiction is at significant odds with local law. If a collateral attack on a parentage decree is permissible under the law of the issuing jurisdiction, such a proceeding must be pursued in that forum and not in a UIFSA proceeding.

This section mandates that a parentage decree rendered by another tribunal "pursuant to law" is not subject to collateral attack in a UIFSA proceeding. Of course, an attack on an alleged final order based on a fundamental constitutional defect in the parentage decree is permissible in the forum state. For example, a responding tribunal may find that another tribunal acted unconstitutionally by denying a party due process due to a failure of notice and opportunity to be heard or a lack of personal jurisdiction over a party who did not answer or appear. Insofar as the latter ground is concerned, the universal enactment of the long-arm statute asserting personal jurisdiction over a respondent if the child "may have been conceived" in the forum state may greatly reduce successful attacks on a parentage determination. *See* Section 201(a)(6).

Similarly, the law of the issuing state or foreign country may provide for a determination of parentage based on certain specific acts of the obligor, such as voluntarily acknowledging parentage as a substitute for a decree. UIFSA also is neutral regarding a collateral attack on such a

parentage determination filed in the issuing tribunal. In the meantime, however, the responding tribunal must give effect to such an act of acknowledgment of parentage if it is recognized as determinative in the issuing state or foreign country. The consistent theme is that a collateral attack on a parentage determination cannot be made in a UIFSA proceeding other than on fundamental due-process grounds.

ANNOTATION

Annotator's note. Since § 14-5-315 is similar to § 14-5-128 as it existed prior to the 1993 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Determination of paternity in divorce or annulment action. The parentage of a child is not an issue necessarily decided in a divorce or annulment action. However, where, as a part of a divorce action, the court hears evidence, makes a child support order, and by necessary implication has determined the paternity of the child, this determination is res judicata at least between the spouses. McNeece v. McNeece, 39 Colo. App. 160, 562 P.2d 767 (1977).

Applicability of doctrine of res judicata. Failure to raise the defense of nonpaternity during dissolution proceedings bars a presumed father from collaterally attacking the determination of paternity implicitly supporting award of child support incident to such dissolution proceedings brought under URESA. State ex rel. Daniels v. Daniels, 817 P.2d 632 (Colo. App. 1991).

14-5-316. Special rules of evidence and procedure.

(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this article, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this article.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this article.

(j) A voluntary acknowledgment of parentage, certified as a true copy, is admissible to establish parentage of the child.

Source: L. 93: Entire article R&RE, p. 1593, § 1, effective January 1, 1995. **L. 2003:** (a), (b), (e), and (f) amended and (j) added, p. 1254, § 23, effective July 1, 2004. **L. 2015:** (a), (b), (d), (e), and (f) amended, (HB 15-1198), ch. 173, p. 552, § 23, effective July 1. **L. 2022:** (j) amended (HB 22-1153), ch. 210, p. 1394, § 6, effective August 10.

Editor's note: This section is similar to former §§ 14-5-121 and 14-5-124 as they existed prior to 1993.

Cross references: For privileged evidence of husband and wife generally, see §§ 13-90-107 and 13-90-108.

COMMENT

Note that the special rules of evidence and procedure are applicable to a party or witness "residing outside this state," substituting for "residing in another state." This is the broadest application possible because the utility of these special rules is

not limited to parties in other states, or in foreign countries, as defined in the act, but extends to an individual residing anywhere. This extremely broad application of the special rules is to facilitate the processing of a support order in this state or elsewhere. This section combines many time-tested procedures with innovative methods for gathering evidence in interstate cases.

Subsection (a) ensures that a nonresident petitioner or a nonresident respondent may fully participate in a proceeding under the act without being required to appear personally. Subsection (b) recognizes the pervasive effect of the federal forms promulgated by the Office of Child Support Enforcement, which replace the necessity of swearing to a document "under oath" with the simpler requirement that the document be provided "under penalty of perjury," as has long been required by federal income tax Form 1040.

Subsections (b) through (f) provide special rules of evidence designed to take into account the virtually unique nature of the interstate proceedings under this act. These subsections provide exceptions to the otherwise guiding principle of UIFSA, i.e., local procedural and substantive law should apply. Because the out-of-state party, and that party's witnesses, necessarily do not ordinarily appear in person at the hearing, deviation from the ordinary rules of evidence is justified in order to assure that the tribunal will have available to it the maximum amount of information on which to base its decision. The intent throughout these subsections is to eliminate by statute as many potential hearsay problems as possible in interstate litigation, with the goal of providing each party with the means to present evidence, even if not physically present.

Subsection (d) provides a simplified means for proving health-care expenses related to the birth of a child. Because ordinarily the amount of these charges is not in dispute, this is designed to obviate the cost of having health-care providers appear in person or of obtaining affidavits of business records from each provider.

Subsections (e) and (f) encourage tribunals and litigants to take advantage of modern methods of communication in interstate support litigation; most dramatically, the out-of-state party is authorized to testify by the full panoply of audio and audiovisual technologies currently available for direct personal communication and to supply documents by fax, email, or direct transfer between computers or other electronic devices. One of the most useful applications of these subsections is to provide an enforcing tribunal with up-to-date information concerning the amount of arrears.

Subsection (f) unambiguously mandates that telephone or audiovisual testimony in depositions and hearings must be allowed. It anticipates that every courtroom is equipped with a speakerphone. In a day when laptop computers often come equipped with a video camera, live testimony from a remote location is not only possible, but almost as reliable as if the testimony was given in person. No doubt a demeanor is better judged in person than by viewing a video

screen, but the latter is certainly preferable to only a disembodied voice.

Subsection (g) codifies the rule in effect in many states that in civil litigation an adverse inference may be drawn from a litigant's silence that restriction of the Fifth Amendment does not apply. A related analogy is that a refusal to submit to genetic testing may be admitted into evidence and a trier of fact may resolve the question of parentage against the refusing party on the basis of an inference that the results of the test would have been unfavorable to the interest of that party.

Subsection (j), new in 2001, complies with the federally mandated procedure that every state must honor the "acknowledgment of paternity" validly made in another state.

Related to Convention: art. 13. Means of communication; art. 14. Effective access to procedures; art. 29. Physical presence of the child or the applicant not required.

ANNOTATION

Annotator's note. Since § 14-5-316 is similar to §§ 14-5-121 and 14-5-124 as they existed prior to the 1993 repeal and reenactment of this article, relevant cases construing those provisions have been included in the annotations to this section.

Full faith and credit must be given to another state's final order for arrearages entered under the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), § 14-5-101 et seq. In re Sabala, 802 P.2d 1163 (Colo. App. 1990).

Child support installment under California decree became an enforceable judgment in Colorado where husband made support payments in amounts less than the amount ordered by such decree. In re Barone, 895 P.2d 1075 (Colo. App. 1994).

The doctrine of equitable estoppel may properly be applied to afford relief from accrued arrearages in child support if the party asserting the claim demonstrates reasonable reliance, to the party's detriment, upon the acts or representations of the other person, and lack of knowledge or convenient means of knowing the facts. In re Dennin and Lohf, 811 P.2d 449 (Colo. App. 1991).

Eventual and belated compliance with a prior support order may be a defense to an action, but each case must be decided on its own facts and circumstances. Jackson v. Jackson, 157 Colo. 564, 404 P.2d 281 (1965).

It may be a defense if the trial court chooses not to enter an order under the action brought pursuant to the uniform act. Jackson v. Jackson, 157 Colo. 564, 404 P.2d 281 (1965).

Where denial of continuance not prejudicial. Where the trial court has before it the affidavits filed in the initiating state, as well as the deposition of the absent obligee, and the obligor has declined the court's offer to provide a subpoena duces tecum in conjunction with letters rogatory so the obligor could obtain financial documents

from the obligee, there is no prejudice resulting from the trial court's denial of the obligor's request for a continuance. Rohrer v. Kane, 44 Colo. App. 85, 609 P.2d 1121 (1980).

Child's right to support is unaffected by misconduct of his parents, and when a court conditions the disbursement of child support payments upon the custodial parent's complying with visitation orders, the court errs as a matter of law. People ex rel. Meveren v. District Court, 638 P.2d 1371 (Colo. 1982).

Nonresident mother not required to appear in state for determination of state's paternity action and child support order and should have been permitted to testify by telephone pursuant to subsection (f). Court erred in "closing" child support action based on mother's refusal to appear in person in the state due to outstanding warrants. In paternity action, statute displaces any court discretion to reject absentee testimony. People in Interest of S.C., 2020 COA 95, 469 P.3d 564.

Applied in Dewar v. LeNard, 653 P.2d 82 (Colo. App. 1982).

14-5-317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal outside this state in a record, or by telephone, electronic mail, or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

Source: L. 93: Entire article R&RE, p. 1594, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1254, § 24, effective July 1, 2004. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 553, § 24, effective July 1.

COMMENT

This section explicitly authorizes a state tribunal to communicate with a tribunal of another state, foreign country, or in a foreign nation state not defined as a foreign country. It was derived from UCCJA § 110 authorizing such communications to facilitate a fully informed decision. The amendment in UIFSA (2008) not only expands the authorization to worldwide scope, i.e., "outside this state," but specifically adds email to the select modes of communication. Broad cooperation by tribunals is strongly encouraged in order to expedite establishment and enforcement of a support order. American judges are very familiar with this procedure. It remains to be seen whether overseas communication between judges will be received with similar cooperation.

14-5-318. Assistance with discovery.

A tribunal of this state may:

(1) Request a tribunal outside this state to assist in obtaining discovery; and

(2) Upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

Source: L. 93: Entire article R&RE, p. 1594, § 1, effective January 1, 1995. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 553, § 25, effective July 1.

COMMENT

This section takes a logical step to facilitate interstate and international cooperation by enlisting the power of the forum to assist a tribunal of another state or country with the discovery process. The grant of authority is quite broad, enabling the tribunal of the enacting state to fashion its remedies to facilitate discovery consistent with local practice.

14-5-319. Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

Source: L. 93: Entire article R&RE, p. 1594, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1255, § 25, effective July 1, 2004. **L. 2015:** (a) amended, (HB 15-1198), ch. 173, p. 553, § 26, effective July 1.

COMMENT

The first sentence of subsection (a) is truly hortatory in nature, although its principle is implemented insofar as support enforcement agencies are required by federal regulations promulgated by the Office of Child Support Enforcement (OCSE). The second sentence confirms the duty of the agency or tribunal to furnish payment information in interstate or international cases.

As an exception to the usual provisions in Article 3, subsections (b) and (c) are applicable only to interstate cases. The procedure described was inspired by the Office of Child Support Enforcement (OCSE), U.S. Department of Health and Human Services, and is designed to speed up receipt of support payments. Support enforcement agencies are directed to cooperate in the efficient and expeditious collection and transfer of child support from obligor to obligee. Over two-thirds of all child support payments currently are made through direct income withholding actions, whereby an out-of-state IV-D agency sends direct notice to an employer in the obligor's state to withhold funds to satisfy the support obligation. Nonetheless, this section remains viable for those situation in which the direct withholding encounters a glitch. Further, there are ongoing problems in states not having income withholding payments go to the state disbursement unit. This section is intended to solve the problem by directing the payments to the most logical disbursement unit, i.e., the state with continuing exclusive jurisdiction.

PART 4

ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF PARENTAGE

COMMENT

A fundamental principle of U.S. jurisprudence is that our courts are open to litigants with a valid cause of action. This article makes clear this principle applies to support actions, whether initiated by a resident of the United States or of a foreign nation.

14-5-401. Establishment of support order.

(a) If a support order entitled to recognition under this article has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(1) The individual seeking the order resides outside this state; or

(2) The support enforcement agency seeking the order is located outside this state.

(b) The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) A presumed father of the child;

(2) Petitioning to have his paternity adjudicated;

(3) Identified as the father of the child through genetic testing;

(4) An alleged father who has declined to submit to genetic testing;

(5) Shown by clear and convincing evidence to be the father of the child;

(6) An acknowledged father as provided by section 19-4-105 (1)(e), C.R.S.;

(7) The mother of the child; or

(8) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 14-5-305.

Source: L. 93: Entire article R&RE, p. 1594, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1255, § 26, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 553, § 27, effective July 1.

Editor's note: This section is similar to former § 14-5-105 as it existed prior to 1993.

COMMENT

This section authorizes a responding tribunal of this state to issue temporary and permanent support orders binding on an obligor over whom the tribunal has personal

jurisdiction when the person or entity requesting the order is "outside this state," i.e., anywhere else in the world. UIFSA does not permit such orders to be issued when another support order entitled to recognition exists, thereby prohibiting a second tribunal from establishing another support order and the accompanying continuing, exclusive jurisdiction over the matter. *See* Sections 205 and 206.

Related to Convention: art. 11. Application contents; art. 14. Effective access to procedures; art. 15. Free legal assistance for child support applications; art. 16. Declaration to permit use of child-centered means test; art. 17. Applications not qualifying under 15 or 16; art. 20. Bases for recognition and enforcement; art. 25. Documents; art. 27. Findings of fact; art. 28. No review of the merits; art. 37. Direct requests to competent authorities; art. 56. Transitional provisions.

ANNOTATION

Annotator's note. Since § 14-5-401 is similar to § 14-5-105 as it existed prior to the 1993 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

No independent duty of support. This article does not create an independent duty of support but only a means of enforcing a duty arising out of either a foreign support order or the law of the state where the obligor resides. Com. of Pa. v. Barta, 790 P.2d 895 (Colo. App. 1990).

Applied in County of Clearwater v. Petrash, 41 Colo. App. 143, 589 P.2d 1370 (1978), aff'd in part, rev'd on other grounds, 198 Colo. 231, 598 P.2d 138 (1979).

14-5-402. Proceeding to determine parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this article or a law or procedure substantially similar to this article.

Source: L. 2015: Entire part amended, (HB 15-1198), ch. 173, p. 554, § 27, effective July 1.

COMMENT

This article authorizes a "pure" parentage action in the interstate context, i.e., an action not joined with a claim for support. The mother, an alleged father of a child, or a support enforcement agency may bring such an action. Typically an action to determine

parentage across a state line or international border will also seek to establish a support order. *See* Section 401. An action to establish parentage under UIFSA is to be treated identically to such an action brought in the responding state.

In a departure from the rest of this act, in UIFSA (2001) the term "tribunal" was replaced by "court" in this section. The several states have a variety of combinations of judicial or administrative entities that are authorized to establish, enforce, and modify a child-support order. Because the Uniform Parentage Act (UPA) (2000) § 104 restricts parentage determinations to "a court," *see* UPA (2000) § 104, the drafters took the view that only a judicial officer should determine parentage as a matter of public policy. This conclusion was in error insofar as some states are concerned and is reversed in this iteration of the act.

Related to Convention: art. 2. Scope; art. 6. Specific functions of Central Authorities; art. 10. Available applications.

PART 5

ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

Editor's note: This article was repealed and reenacted in 1993, and this part 5 was subsequently amended with relocations in 1997, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 5 prior to 1997, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading. Former C.R.S. section numbers prior to 1997 are shown in editor's notes following those sections that were relocated.

INTRODUCTORY COMMENT

This article governs direct filing of an income withholding order from one state to an employer in another state. Except as provided in Section 507, the provisions of this article only apply to an interstate case and do not apply to an income-withholding order from a foreign country. While U.S. employers routinely enforce sister state income- withholding orders, enforcement of the wide variety of possible foreign support orders would provide too many complexities and challenges to justify requiring an employer to interpret and enforce an ostensible foreign income-withholding order. Indeed, income- withholding orders from a foreign country are quite rare at this time, although instances of that enforcement remedy probably will increase in the future.

14-5-501. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor's employer under the income-withholding law of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

Source: L. 97: Entire part amended with relocations, p. 538, § 11, effective July 1; entire section amended, p. 1263, § 5, effective July 1. **L. 2000:** Entire section amended, p. 1709, § 4, effective July 1. **L. 2003:** Entire section amended, p. 1256, § 27, effective July 1, 2004.

Editor's note: This section was formerly numbered as § 14-5-501 IP(a), and the other provisions of former § 14-5-501 were relocated to § 14-5-502 in 1997.

Cross references: For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

COMMENT

In 1984 Congress mandated that all states adopt procedures for enforcing income-withholding orders of sister states. Direct recognition by the out-of-state obligor's employer of a withholding order issued by another state long was sought by support enforcement associations and other advocacy groups. UIFSA (1992) recognized such a procedure. This article was extensively amended in 1996, but was the subject only of clarifying amendments in 2001.

Section 501 is deliberately written in the passive voice; the act does not restrict those who may send an income-withholding order across state lines. Although the sender will ordinarily be a child support enforcement agency or the obligee, the obligor or any other person may supply an employer with the income-withholding order. "Sending a copy" of a withholding order to an employer is clearly distinguishable from "service" of that order on the same employer. Service of an order necessarily intends to invoke a tribunal's authority over an employer doing business in the state. Thus, for there to be valid "service" of a withholding order on an employer in a state, the tribunal must have authority to bind the employer. In most cases, this requires the assertion of the authority of a local responding tribunal in a "registration for enforcement" proceeding. In short, the formality of "service" defeats the whole purpose of direct income withholding across state lines.

The process contemplated in this article is direct "notification" of an employer in another state of a withholding order without the involvement of initiating or responding tribunals. Therefore, receipt of a copy of a withholding order by facsimile, regular first class mail, registered or certified mail, or any other type of direct notice is sufficient to provide the requisite notice to trigger direct income withholding in the absence of a contest by the employee-obligor. This process is now widely used by not only child support enforcement agencies, but also by private collection agencies or private attorneys acting on behalf of obligees.

Except as provided in Section 507, Administrative Enforcement of Orders, none of the sections in Article 5 are intended to apply to foreign support orders. While it is appropriate for U.S. employers to enforce sister state income-withholding orders routinely, enforcement of the wide variety of possible foreign support orders provides too many complexities and challenges to require an employer to interpret and enforce ostensible foreign income-withholding orders.

14-5-502. Employer's compliance with income-withholding order of another state.

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as otherwise provided in subsection (d) of this section and section 14-5-503 the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support, stated as a sum certain;

(2) The person designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) The employer's fee for processing an income-withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income; and

(3) The times within which the employer must implement the withholding order and forward the child support payment.

Source: L. 97: Entire part amended with relocations, p. 539, § 11, effective July 1; (b) amended, p. 1264, § 6, effective July 1. **L. 98:** (b) amended, p. 753, § 1, effective July 1. **L. 2000:** (b) amended, p. 1709, § 5, effective July 1. **L. 2003:** (c)(2) amended, p. 1256, § 28, effective July 1, 2004.

Editor's note: This section was formerly numbered as § 14-5-501 (a)(1), (a)(2), and (a)(3), and the former § 14-5-502 was relocated to § 14-5-507.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (b), see section 1 of chapter 236, Session Laws of Colorado 1997.

COMMENT

In 1996 major employers and national payroll associations urged NCCUSL to supply more detail regarding the rights and duties of an employer on receipt of an income-withholding order from another state. The Conference obliged with amendments to UIFSA establishing a series of steps for employers to follow.

When an employer receives an income withholding order from another state, the first step is to notify the employee that an income withholding order has been received naming the employee as the obligor of child support, and that income withholding will begin within the time frame specified by local law. In other words, the employer will initially proceed just as if the withholding order had been received from a tribunal of the employer's state. It is the responsibility of the employee to take whatever protective measures are necessary to prevent the withholding if the employee asserts a defense as provided in Section 506, *infra*.

At this point neither an initiating nor a responding tribunal is directly involved. The withholding order may have been forwarded by the obligee, the obligee's attorney, or the out-of-state IV-D agency. In fact, there is no prohibition against anyone sending a valid copy of an income-withholding order, even a

stranger to the litigation, such as the child's grandparent. Subsection (a) does not specify the method for sending this relatively informal notice for direct income withholding, but rather makes the assumption that the employer's communication to the employee regarding receipt of the order will cause an employee-obligor to act to prevent a wrongful invasion of his or her income if it is not owed as current child support or arrears.

Subsection (b) directs an employer of the enacting state to recognize a withholding order of a sister state, subject to the employee's right to contest the validity of the order or its enforcement. Prior to the promulgation of UIFSA, agencies in several states adopted a procedure of sending direct withholding requests to out-of-state employers. A contemporaneous study by the federal General Accounting Office reported that employers in a second state routinely recognized withholding orders of sister states despite an apparent lack of statutory authority to do so. UIFSA marked the first official sanction of this practice. Subsection (b) does not define "regular on its face," but the term should be liberally construed, *see U.S. v. Morton*, 467 U.S. 822 (1984) ("legal process regular on its face"). The rules governing intrastate procedure and defenses for withholding orders will apply to interstate orders.

Subsection (c) answered employers' complaints that insufficient direction for action was given by the original UIFSA. Prior to the 1996 amendments an employer was merely told to "distribute the funds as directed in the withholding order." This section clarifies the terms of the out-of-state order with which the employer must strictly comply. As a general principle, an employer is directed to comply with the specific terms contained in the order, but there are exceptions. Moreover, many income-withholding orders received at that time did not provide the detail necessary for the employer to comply with every directive. Since then, however, the long-anticipated federal forms were promulgated throughout 1997 and 1998, with periodic updates to the present time. Most recently, the text of income withholding orders for child support is fast conforming to a nationwide norm. To the extent that an order is silent, the employer is not required to respond to unstated demands of the issuing tribunal. Formerly, employers often were so concerned about ambiguous or incomplete orders that they telephoned child support enforcement agencies in other states to attempt to understand and comply with unstated terms. Employers should not be expected to become investigators or shoulder the responsibility of learning the law of 50 states.

Subsection (c)(1) directs that the amount and duration of periodic payments of current child support must be stated in a sum certain in order to elicit compliance. The amount of current support and duration of the support obligation are fixed by the controlling order and should be stated in the withholding order so that the employer is informed of the date on which the withholding is anticipated to terminate. The "sum certain" requirement is crucial to facilitating the employer's compliance. For example, an order for a "percentage of the obligor's net income,"

does not satisfy this requirement and is not entitled to compliance from an employer receiving an interstate income-withholding order.

Subsection (c)(2) states the obvious: information necessary for compliance must be clearly stated. For example, the destination of the payments must correspond to the destination originally designated or subsequently authorized by the issuing tribunal, such as by the redirection of payments pursuant to Section 319, *supra*.

Subsection (c)(3) provides that medical support for the child must be stated either by a periodic cash payment or, alternatively, by an order directing the employee-obligor to provide health insurance coverage from his employment. In the absence of an order for payment of a sum certain, issuance of an order for medical support as child support is required to ensure the employer enrolls the obligor's child for coverage if medical insurance is available through the obligor's employment. Failure to enroll the child should elicit, at the least, registration of an order for enforcement in the responding state, to be implemented by an order of a tribunal directing either the employee or the employer to comply to furnish insurance coverage for the child. If the employer is so directed by a medical support order, enrollment of the child in the health care plan at the employee-obligor's expense is not dependent on the obligor's consent, any more than withholding a sum certain from the obligor's income is subject to a veto. It is up to the employee-obligor to assert any defense to prevent the employer from abiding by the medical support order.

Subsection (c)(4) identifies certain costs and fees incurred in conjunction with the support enforcement that may be added to the withholding order.

Subsection (c)(5) requires that the amount of periodic payments for arrears and interest on arrears also must be stated as a sum certain. If the one-order system is to function properly, the issuing tribunal ultimately must be responsible to account for payments and maintain the record of arrears and interest rate on arrears. Full compliance with the support order will only be achieved when the issuing tribunal determines that the obligation no longer exists. The amount of periodic payments for arrears is also fixed by the controlling order unless the law of the issuing state or the state where the order is being enforced provides a procedure for redetermination of the amount.

Subsection (d) identifies those narrow provisions in which the law of the employee's work state applies, rather than the law of the issuing state. A large employer will almost certainly have a number of employees subject to income-withholding orders. From the employer's perspective, the procedural requirements for compliance should be uniform for all of those employees. Certain issues should be matters for the law of the employee's work state, such as the employer's fee for processing, the maximum amount to be withheld, and the time in which to comply. The latter necessarily includes the frequency with which income withholding must occur. This is also consistent with regard to the tax consideration imposed by choice of law

considerations. The only element in the list of local laws identified in subsection (d) which stirred any controversy whatsoever was the fact that the maximum amount permitted to be withheld is to be subject to the law of the employee's work state. Demands of equal treatment for all obligees, plus the practical concern that large employers require uniform computer programming mandate this solution.

14-5-503. Employer's compliance with two or more income-withholding orders.

If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees.

Source: L. 97: Entire part amended with relocations, p. 540, § 11, effective July 1. **L. 2003:** Entire section amended, p. 1256, § 29, effective July 1, 2004.

COMMENT

Consistent with the act's general problem-solving approach, the employer is directed to deal with multiple income orders for multiple families in the same manner as required by local law for orders of the forum state.

In addition to income withholding orders issued by tribunals of other states, state support enforcement agencies may also issue income withholding orders to enforce foreign child-support orders.

14-5-504. Immunity from civil liability.

An employer that complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

Source: L. 97: Entire part amended with relocations, p. 540, § 11, effective July 1. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 554, § 28, effective July 1.

COMMENT

Because employer cooperation is a key element in interstate child support enforcement, it is sound policy to state explicitly that an employer who complies with an income-withholding order from another state is immune from civil liability.

14-5-505. Penalties for noncompliance.

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

Source: L. 97: Entire part amended with relocations, p. 540, § 11, effective July 1. **L. 2015:** Entire section amended, (HB 15-1198), ch. 173, p. 554, § 29, effective July 1.

COMMENT

Only an employer who willfully fails to comply with an interstate order will be subject to enforcement procedures. Local law is the appropriate source for the applicable sanctions and other remedies available under state law.

14-5-506. Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in part 6 of this article, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;

(2) Each employer that has directly received an income-withholding order relating to the obligor; and

(3) The person designated to receive payments in the income-withholding order or if no person is designated, to the obligee.

Source: L. 97: Entire part amended with relocations, p. 540, § 11, effective July 1. **L. 2003:** Entire section amended, p. 1256, § 30, effective July 1, 2004.

COMMENT

This section incorporates into the interstate context the local law regarding defenses an employee-obligor may raise to an income-withholding order. Generally, states have accepted the IV-D requirement that the only viable defense is a mistake of fact, 42 U.S.C. § 666(b)(4)(A). This apparently includes errors in the amount of current support owed, in the amount of accrued arrearage, or mistaken identity of the alleged obligor. Other grounds are excluded, such as inappropriate amount of support ordered, changed financial circumstances of the obligor, or lack of visitation. H.R. Rep. No. 98-527, 98th Cong., 1st Sess. 33 (1983). The latter claims must be pursued in a separate proceeding in the appropriate state, not in a UIFSA proceeding.

This procedure is based on the assumption that valid defenses to income withholding for child support are few and far between. Experience has shown that in relatively few cases does an employee-obligor have a complete defense, e.g., the child has died, another contingency ending the support has occurred, the order has been superseded, or there is a case of mistaken identity and the employee is not the obligor. An employee's complaint that "The child support is too high" must be ignored.

As noted frequently above, instances of multiple orders have become increasingly rare over the past two decades plus. Situations do arise, however, in which an employer has received multiple withholding notices regarding the obligor-employee and the same obligee. The notices may even allege conflicting amounts due, especially for payments on arrears. Additionally, many employees claim to have only learned of default orders when the withholding notice is delivered to the employer. This claim often is based on an assertion that the order being enforced through income withholding was entered without personal jurisdiction over the obligor-employee. A variety of similar fundamental defenses may be asserted, such as mistaken identity, full payment, another order controlling, etc.

Subsection (a) provides for a simple, efficient, and cost-effective method for an employee-alleged obligor to assert a defense. For example, if the existence of a support obligation is acknowledged but the details are at issue, the obligor may register the underlying "controlling" support order with a local tribunal and seek temporary protection pending resolution of the contest. This may be accomplished pro se, employment of private counsel, or by a request for services from the child support enforcement agency of the responding state. Some states provide administrative procedures for challenging the income withholding that may provide quicker resolution of a dispute than a judicially-based registration and hearing process. In the absence of expeditious action by the employee to assert a defense and contest the direct filing of a notice for withholding, however, the employer must begin income withholding in a timely fashion.

Another issue the employee-obligor may raise is that the withholding order received by the employer is not based on the controlling child-support order issued by the tribunal with continuing, exclusive jurisdiction, *see* Section 207, *supra*. Such a claim does not constitute a defense to the obligation of child support, but does put at issue the identity of the order to which the employer must respond.

The one order system initiated by UIFSA effectively has eliminated the multiple-order system of RURESA, which primarily involved multiple orders by different courts for the same child. At present most "duplicate income withholding orders" involve one state seeking state assigned arrears and another state also seeking arrears, and possibly ongoing support as well. Clearly the employer is in no position to make a decision on how to proceed to resolve such conflicting claims. When multiple orders involve the same employee-obligor and child, or multiple children (including those with other mothers), as a practical matter resort to a responding tribunal to resolve the resulting dispute almost certainly will be necessary.

14-5-507. Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this article.

Source: L. 97: Entire part amended with relocations, p. 540, § 11, effective July 1. **L. 2003:** (a) amended, p. 1257, § 31, effective July 1, 2004. **L. 2015:** (a) amended, (HB 15-1198), ch. 173, p. 554, § 30, effective July 1.

Editor's note: This section was formerly numbered as § 14-5-502.

COMMENT

Sections 501 through 506 are posited on the belief that U.S. employers ought not be burdened with enforcement of foreign income-withholding orders received directly

from overseas. This view is inapplicable if a support enforcement agency is involved. The procedural safeguards built into the Title IV-D system of processing requests between Central Authorities provide reasonable assurance that the income withholding order to be enforced is genuine.

This section authorizes summary enforcement of an interstate or foreign child-support order through the administrative means available for intrastate orders if the agency deems it "appropriate" to do so. Under subsection (a), an interested party in another state or foreign country, which necessarily includes a private attorney or a support enforcement agency, may forward a support order or income-withholding order to a support enforcement agency of the responding state. The term "responding state" in this context does not necessarily contemplate resort to a tribunal as an initial step.

Subsection (b) directs the support enforcement agency in the responding state to consider and, if appropriate, to use that state's regular administrative procedures to process an out-of-state order. Thus, a local employer accustomed to dealing with the local agency need not change its procedure to comply with an out-of-state order. Similarly, the administrative agency is authorized to apply its ordinary rules equally to both intrastate and interstate orders. For example, if the administrative hearing procedure must be exhausted for an intrastate order before a contesting party may seek relief in a tribunal, the same rule applies to an interstate order received for administrative enforcement. This subsection also makes it clear that filing liens or submitting claims in legal actions do not require the initial registration of the order.

PART 6

REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT ORDER

INTRODUCTORY COMMENT

Sections 601 through 604 establish the basic procedure for the registration of a support order from another state or a foreign support order. Under RURESA when a tribunal of a responding state was requested to register and enforce an existing child-support order, the common practice was to ignore the request; rather, a separate proceeding would be initiated for the establishment of a new support order. This practice was specifically rejected by UIFSA; this practice under RURESA created the multiple support-order system that UIFSA was specifically designed to eliminate. Under Sections 205 through 207 the one-order system allows only one existing order to be enforced prospectively.

Sections 605 through 608 provide the procedure for the nonregistering party to

contest registration of an order, either because the order is allegedly invalid, superseded, or no longer in effect, or because the enforcement remedy being sought is opposed by the nonregistering party. Other enforcement remedies may be available without resort to the UIFSA process under the law of the responding state. *See* Section 104.

The registration and enforcement provisions in Sections 601 through 608 are consistent with the "recognition and enforcement" provisions of the Convention. The terms of this article and Article 7 suffice to direct international support orders into the proper channels.

SUBPART A

REGISTRATION FOR ENFORCEMENT OF SUPPORT ORDER

14-5-601. Registration of order for enforcement.

A support order or income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

Source: L. 93: Entire article R&RE, p. 1596, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1257, § 32, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 555, § 31, effective July 1.

COMMENT

Registration of an order in a tribunal of the responding state is the first step to enforce a support order from another state or foreign country. If a prior support order has been validly issued by a tribunal with continuing, exclusive jurisdiction, *see* Section 205, such an order is to be prospectively enforced against the obligor in the absence of narrow, strictly defined fact situations in which an existing order may be modified. *See* Sections 609 through 614. Until and unless that order is modified, however, it remains an order of the issuing tribunal and is fully enforceable in the responding state.

Although registration that is not accompanied by a request for the affirmative relief of enforcement is not prohibited, the act does not contemplate registration as serving a purpose in itself. In that regard, registration is a process, and the failure to register does not deprive an otherwise appropriate forum of subject matter jurisdiction. Note that either or both a state support order or a state income-withholding order may be registered. However, although

a foreign support order also may be registered, this section does not contemplate recognition of a foreign income-withholding order.

Related to Convention: art. 23. Procedure on an application for recognition and enforcement; art. 26. Procedure on an application for recognition.

ANNOTATION

A district court in a RURESA action may not enter a judgment for child support arrearages under the original decree in another state unless the petitioning party proceeds under the alternative registration of a foreign support order provisions of §§ 14-5-137 to 14-5-141. Henry v. Knight, 746 P.2d 1375 (Colo. App. 1987) (decided under former § 14-5-137 as it existed prior to the 1993 repeal and reenactment of this article).

14-5-602. Procedure to register order for enforcement.

(a) Except as otherwise provided in section 14-5-706, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

(1) A letter of transmittal to the tribunal requesting registration and enforcement;

(2) Two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) The name of the obligor and, if known:

(A) The obligor's address and social security number;

(B) The name and address of the obligor's employer and any other source of income of the obligor; and

(C) A description and the location of property of the obligor in this state not exempt from execution; and

(5) Except as otherwise provided in section 14-5-312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) Specify the order alleged to be the controlling order, if any; and

(3) Specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

Source: L. 93: Entire article R&RE, p. 1596, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1257, § 33, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 555, § 31, effective July 1.

Editor's note: This section is similar to former § 14-5-140 as it existed prior to 1993.

COMMENT

Subsection (a) outlines the mechanics for registration of an interstate or foreign support order. Substantial compliance with the requirements is expected. The procedure for registration and enforcement set forth in this section is basically unchanged for a foreign support order; indeed, all of Sections 601 through 608 apply. The requirement that the order be "issued by a tribunal" has been subtly modified. Although the vast majority of enforceable support orders will be from a tribunal, in relatively rare instances an enforceable "foreign support order" from a Convention country will not have been issued by a tribunal, *see e.g.*, Section 710, *infra*. Note, however, that a request for registration of a foreign support order for which the Convention is in force is subject to Section 706. This is because the list of documents comprising the required record in subsection (a) differs in a measurable degree with Convention art. 11 and 25.

Millions of interstate domestic cases have been, and will continue to be, processed under the procedure specified in this section. It has been estimated that only approximately one-tenth of one percent (0.1%) of the Title IV-D caseload involve a

foreign support order. Thus, the documentation specified by this section is the same for interstate and non-Convention foreign support orders. A support order from a Convention country is covered by the separate list of specifications in Section 706 to accommodate the differences between this act and the Convention. Because child-support enforcement agencies have successfully dealt with foreign support orders with increasing frequency during the UIFSA era, this may well prove to be a distinction without much difference.

Subsection (b) confirms that the support order being registered is not converted into an order of the responding state; rather, it continues to be an order of the tribunal of the issuing state or foreign country.

Subsection (c) warns that if a particular enforcement remedy must be specifically sought under local law, the same rules of procedure and substantive law apply to an interstate or international case. For example, if license suspension or revocation is sought as a remedy for alleged noncompliance with an order, the substantive and procedural rules of the responding state apply. Whether the range of application of the remedy in the responding state is wider or narrower than that available in the issuing state or foreign country is irrelevant. The responding tribunal will apply the familiar law of its state, and is neither expected nor authorized to consider the enforcement laws of the issuing state or foreign country. In short, the responding tribunal follows the identical path for enforcing the order of a tribunal of another state or foreign country as it would when enforcing an order of the responding state. The authorization of a later filing to comply with local law contemplates that interstate or international pleadings may be liberally amended to conform to local practice.

Subsections (d) and (e) amplify the procedures to be followed when two or more child-support orders exist and registration for enforcement is sought. In such instances, the requester is directed to furnish the tribunal with sufficient information and documentation so that the tribunal may make a determination of the controlling order for prospective support and of the amount of consolidated arrears and interest accrued under all valid orders. *See* Section 207.

Related to Convention: art. 11. Application contents; art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

14-5-603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this part 6, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

Source: L. 93: Entire article R&RE, p. 1597, § 1, effective January 1, 1995. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 556, § 31, effective July 1.

Editor's note: This section is similar to former § 14-5-141 as it existed prior to 1993.

COMMENT

Initially the text of the registration procedure under UIFSA (1992) was nearly identical to that set forth in RURESA. But, the intent of UIFSA registration was always radically different. Under UIFSA, registration of a support order of State A continues to be an order of that state, which is to be enforced by a tribunal of State B. The ordinary rules of evidence and procedure of State B apply to hearings, except as local law may be supplemented or specifically superseded by other local law, i.e., UIFSA. The purpose of the registration procedure in sections 601 through 604 is that the order being registered remains a State A order until modified.

First, note that subsection (a) is phrased in the passive voice; "A support order . . . is registered when the order is filed in the registering tribunal . . . ." This drafting is deliberate. By indirection, in effect UIFSA provides that either the obligor, the obligee, or a support enforcement agency, may register a support order of another state or a foreign support order. In fact, even a stranger to the litigation, for example a grandparent or an employer of an alleged obligor, may register a support order. Presumptively, the order registered is the valid, controlling order. If not, the act depends on the respondent to contest the registration. *See* Sections 605 through 608.

Subsection (b) provides that a support order of another state or a foreign support order is to be enforced and satisfied in the same manner as if it had been issued by a tribunal of the registering state. Conceptually, the responding tribunal is enforcing the order of a tribunal of another state or a foreign support order, not its own order.

Subsection (c) mandates enforcement of the registered order, but forbids modification unless the terms of Sections 609 through 614 are met. Under UIFSA there will be only one order in existence at any one time. That order is enforceable in a responding

state irrespective of whether the order may be modified. In most instances, a child-support order will be subject to the continuing, exclusive jurisdiction of the issuing tribunal. Sometimes the issuing tribunal will not be able to exercise its authority to modify the order because neither the child nor the parties reside in the issuing state. Nonetheless, the order may be registered and is fully enforceable in a responding state until the potential for modification actually occurs in accordance with the strict terms for such a proceeding. *See* Section 611. Thus, the registering tribunal always must bear in mind that the enforcement procedures taken, whether to enforce current support or to assist collecting current and future arrears and interest, are made on behalf of the issuing tribunal, and are not a modification of the controlling order.

Related to Convention: art. 11. Application contents; art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

ANNOTATION

Annotator's note. Since § 14-5-603 is similar to § 14-5-141 as it existed prior to the 1993 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Procedures and defenses available. When a complaining party registers a foreign support order in the responding state, the procedures and defenses available thereafter are those applicable to an action to enforce a foreign money judgment. In re McMahan, 660 P.2d 515 (Colo. App. 1983).

Applied in Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981).

14-5-604. Choice of law.

(a) Except as otherwise provided in subsection (d) of this section, the law of the issuing state or foreign country governs:

(1) The nature, extent, amount, and duration of current payments under a registered support order;

(2) The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) The existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of this state, or of the issuing state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and to collect arrears and interest due on a support order of another state or a foreign country registered in this state.

(d) After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

Source: L. 93: Entire article R&RE, p. 1597, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1258, § 34, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 556, § 31, effective July 1.

Editor's note: This section is similar to former § 14-5-108 as it existed prior to 1993.

COMMENT

Subsection (a) is intended to clarify the wide range of subjects that are governed by the choice-of-law rules established in this section. The task is to identify those aspects of the case for which local law is inapplicable. A basic principle of UIFSA is that throughout the process the controlling order remains the order of the tribunal of the issuing state or foreign country until a valid modification. The responding tribunal only assists in the enforcement of that order. Absent a loss of continuing, exclusive jurisdiction by the issuing tribunal and a subsequent modification of the order, the order never becomes an order of a responding tribunal.

Subsection (a) first identifies those aspects of the initial child-support order that are governed by the term's original decision and the function of the issuing tribunal. First and foremost, ultimate responsibility for enforcement and final resolution of the obligor's compliance with all aspects of the support order belongs to the issuing tribunal. Thus, calculation of whether the obligor has fully complied with the payment of current support, arrears, and interest on arrears is also the duty of the issuing tribunal.

In UIFSA (1992) the decision was made by NCCUSL that the duration of child support should be fixed by the initial controlling child-support order. *See* Section 611(c). This policy decision was somewhat controversial at the time, especially given the general rule that "local law controls." But, case law regarding issues created by movement from one state with one duration to a state with another policy was hopelessly muddled, so a solution was sought. Then, as now, the policies of states on this subject varied greatly: today, a few states continue to set the once most-common age of 21 as

the cut-off date; some continue the obligation past 21, dependent on enrollment in higher education (often with limited time specified); at the other end of the spectrum, some states end the obligation of child support at age 18; in others at 19; and, most popularly, at one or the other of either age 18 or 19, plus graduation from high school, whichever is later.

Under subsection (a), if the initial issuing tribunal sets the age for termination of child support at 18, a responding state must recognize and enforce that child-support order. If the responding state sets its child support to age 21, the responding tribunal may not apply that time duration to require additional support to that age. The converse is also true. If the controlling order of another state ends the support obligation at 21, the responding tribunal in a state with 18 as the maximum duration for child support must enforce the controlling order until age 21. The dissent on this policy decision in UIFSA has abated over time. Interestingly, the Convention establishes age 21 as the hallmark. At the same time, under Convention art. 2(2), a country may reserve the right to limit the application of the Convention with regard to child support to persons who have not reached the age of 18. The United States does not intend to make such a reservation.

Similarly, subsection (a) directs that the law of the issuing state or foreign country governs the answer to questions such as whether a payment made for the benefit of a child, such as a Social Security benefit for a child of a disabled obligor, should be credited against the obligor's child support obligation. In sum, on these subjects the consistent rule is that a controlling order from State A is enforced in State B (and State C as well).

Note that as soon as a general proposition is identified, an exception may well be presented. Subsection (b) contains a choice-of-law provision that often diverges from other local law. In situations in which the statutes of limitation differ from state to state, the statute with the longer term is to be applied. In interstate cases, arrearages often will have accumulated over a considerable period of time before enforcement is perfected. The rationale for this exception to the general rule of "local law applies" is that the obligor should not gain an undue benefit from his or her choice of residence if the forum state, as the obligor's state of residence, has a shorter statute of limitations for arrearages than does the controlling order state. On the other side of the coin, i.e., if the forum has a longer statute of limitations, the obligor will be treated in an identical manner as all other obligors in that state. This choice of limitations also applies to the time period after the accrual of the arrears in which to bring an enforcement action.

Subsection (c) mandates that local law controls with regard to enforcement procedures. For example, if the issuing state or foreign country has enacted a wide variety of license suspension or revocation statutes, while the responding state has a much narrower list of licenses subject to suspension or revocation, local law prevails.

Subsection (d) may initially appear only to express a truism the law of the issuing

state is superior with regard to the terms of the support order. The last clause in the sentence, however, contains an important clarifying provision; that is, the law of the issuing state or foreign country is to be applied to the consolidated arrears, most particularly to the interest to be charged prospectively, even if the support orders of other states contributed a portion to those arrears. In sum, the local tribunal applies its own familiar procedures to enforce a support order, but it is clearly enforcing an order of a tribunal of another state and not an order of the forum.

Related to Convention: art. 2. Scope; art. 11. Application contents; art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

ANNOTATION

Annotator's note. Since § 14-5-604 is similar to § 14-5-108 as it existed prior to the 1993 repeal and reenactment of this article and to repealed § 43-2-7, C.R.S. 1963, relevant cases construing this provision have been included in this section.

Specific adoption of the choice of law provision under the Uniform Interstate Family Support Act by both Colorado and Texas overrides application of the general borrowing limitations statute set forth in § 13-80-110. In re Morris, 32 P.3d 625 (Colo. App. 2001).

The duty of support under this article is that imposed under the laws of the state where the obligor parent is or was present for the period during which support is sought. Ross v. Thomas, 753 P.2d 783 (Colo. App. 1987).

The validity of orders to furnish support and reimbursement are predicated upon a duty to support. Aguilar v. Holcomb, 155 Colo. 530, 395 P.2d 998 (1964).

An order by the California court that the defendant owes a duty of support to the children residing in California was not enforceable in Colorado. The question as to whether defendant had a duty to support the children, whom it was alleged were his, a fact put in issue upon which there was no proof, must have been determined according to the laws of the state of Colorado. Aguilar v. Holcomb, 155 Colo. 530, 395 P.2d 998 (1964).

The trial court could not find a duty of support on the defendant because it does not have any jurisdiction to determine paternity as a part of the proceedings under the uniform act. Aguilar v. Holcomb, 155 Colo. 530, 395 P.2d 998 (1964).

Termination of support liability for Colorado resident. Where the obligor resides in Colorado, he is bound by Colorado law on the issue of when liability for support terminates. McDonald v. McDonald, 634 P.2d 1031 (Colo. App.

1981); Napolitano v. Napolitano, 732 P.2d 245 (Colo. App. 1987).

Application of changed circumstances standard proper. Court properly applied Colorado changed circumstances standard in § 14-10-122 to Colorado resident in action pursuant to Colorado support order rather than conducting new hearing for separate support order. People in Interest of Whittington v. Low, 761 P.2d 274 (Colo. App. 1988) (decided under law in effect prior to enactment of § 14-10-115 (17)).

No independent duty of support. This article does not create an independent duty of support but only a means of enforcing a duty arising out of either a foreign support order or the law of the state where the obligor resides. Com. of Pa. v. Barta, 790 P.2d 895 (Colo. App. 1990).

Applied in County of Clearwater v. Petrash, 41 Colo. App. 143, 589 P.2d 1370 (1978), aff'd in part, rev'd on other grounds, 198 Colo. 231, 598 P.2d 138 (1979); Gruber v. Wallner, 198 Colo. 235, 598 P.2d 135 (1979).

SUBPART B

CONTEST OF VALIDITY OR ENFORCEMENT

14-5-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice unless the registered order is under section 14-5-707;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) Of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice must also:

(1) Identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) Notify the nonregistering party of the right to a determination of which is the controlling order;

(3) State that the procedures provided in subsection (b) of this section apply to the determination of which is the controlling order; and

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding law of this state.

Source: L. 93: Entire article R&RE, p. 1597, § 1, effective January 1, 1995. **L. 97:** (a) and (b)(2) amended, p. 540, § 12, effective July 1. **L. 2003:** (b) and (c) amended and (d) added, p. 1259, § 35, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 557, § 31, effective July 1.

COMMENT

Subsection (a) requires the registering tribunal to provide notice to the nonregistering party of the effect of registration. After such notice is given, absent a successful contest by the nonregistering party, the order will be confirmed and future contest will be precluded. The notice contemplates far more than merely announcing an intent to initiate enforcement of an existing support order. The registered order or orders and other relevant documents and information must accompany the notice, including details about the alleged arrears.

Subsection (b) provides the nonregistering party with a wealth of information about the proceeding, including that: (1) the order is immediately enforceable; (2) a hearing must be requested within a relatively short time; (3) failure to contest "will result" in a confirmation of the order (roughly the equivalent of a default judgment); and (4) the amount of arrears, if any. Initially subsection (b) made the suggestion, via brackets, that [20] days be the time within which a request for a hearing to contest the support order be made. The rationale for this relatively short period was that the matter had already been litigated, and the obligor had already had the requisite "day in court," and was allegedly in default of a known order. Moreover, advocates of child-support enforcement stressed the necessity of quick resolution of an instance of nonsupport.

On the other hand, the Convention requires notice of hearing to be within a fixed time of 30 days, and further a fixed time of 60 days if the respondent resides in a

foreign country. See Convention art. 23(6). This difference between UIFSA and the Convention is accommodated in Section 707. The time frame for notice of registration for an interstate support order and a foreign support order not subject to the Convention will be established by local law.

Subsection (c) is the correlative to Section 602 regarding the notice to be given to the nonregistering party if determination of a controlling order must be made because of the existence of two or more child-support orders. The petitioner requesting this affirmative relief is directed to identify the order alleged to be controlling under Section 207.

Subsection (d) states the obvious; i.e., the obligor's employer also must be notified if income is to be withheld. Often this will not be necessary if the employer has already been notified by the responding state's enforcement agency via the administrative process established in Section 507.

Related to Convention: art. 20. Bases for recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement.

14-5-606. Procedure to contest validity or enforcement of registered support order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by section 14-5-605. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 14-5-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

Source: L. 93: Entire article R&RE, p. 1598, § 1, effective January 1, 1995. **L. 97:** (a) and (c) amended, p. 541, § 13, effective July 1. **L. 2003:** (a) amended, p. 1260, § 36, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 557, § 31, effective July 1.

COMMENT

Subsection (a) directs the "nonregistering party" to contest the registration of an interstate support order or a foreign support order not subject to the Convention within a short period of time or forfeit the opportunity to contest. As noted in Section

605, that time frame is extended for cases subject to the Convention.

Notice of registration is the first step for enforcement or modification of another state's child-support order. Once the nonregistering party is put on notice of the registration, if an error allegedly has been made, the second step is crucial. The nonregistering party is required to assert any existing defense to the alleged controlling order, or forfeit the opportunity to contest the allegations. Note that either the obligor or the obligee may have objections to the registered order, although in the vast majority of cases the obligor is the nonregistering party.

On the other hand, there is a possibility that in multiple-order situations either party may register the order most favorable to that party rather than register the likely controlling order, thus triggering a contest. Deliberately furnishing misinformation regarding the controlling order doubtless constitutes chicanery, which is contrary to Section 605(c). When a support enforcement agency requests registration, Section 307(c) requires reasonable efforts to ensure registration of the proper controlling order. Nonetheless, there may be an honest difference of opinion as to which order controls. The nonregistering obligor has a significant stake in assuring that both the order and the arrears are correctly stated.

Under UIFSA a contest of the fundamental provisions of the registered order is not permitted in the responding state. The nonregistering party must return to the issuing state or foreign country to prosecute such a contest (only as the law of that state or foreign country permits). This approach is akin to the prohibition found in Section 315 against asserting a nonparentage defense in a UIFSA proceeding. There is no attempt by UIFSA to preclude a collateral attack on the support order from being litigated in the appropriate forum.

Subsection (b) precludes an untimely contest of a registered support order.

Subsection (c) directs that a hearing be scheduled when the nonregistering party contests some aspect of the registration.

Related to Convention: art. 20. Bases for recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 26. Procedure on an application for recognition.

14-5-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) The issuing tribunal lacked personal jurisdiction over the contesting party;

(2) The order was obtained by fraud;

(3) The order has been vacated, suspended, or modified by a later order;

(4) The issuing tribunal has stayed the order pending appeal;

(5) There is a defense under the law of this state to the remedy sought;

(6) Full or partial payment has been made;

(7) The statute of limitation under section 14-5-604 precludes enforcement of some or all of the alleged arrearages; or

(8) The alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subsection (a) of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

Source: L. 93: Entire article R&RE, p. 1598, § 1, effective January 1, 1995. **L. 2003:** (a)(6) and (a)(7) amended and (a)(8) added, p. 1260, § 37, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 558, § 31, effective July 1.

COMMENT

Subsection (a) places the burden on the nonregistering party to assert narrowly defined defenses to registration of a support order. The first of the listed defenses, lack of personal jurisdiction over the nonregistering party in the original proceeding, is undoubtedly the most widely discussed topic. It appears that at the appellate level, several of the other listed defenses are more commonly asserted. The decision in Kulko v. Superior Court, 436 U.S. 84 (1978) was somewhat controversial when delivered, and has remained so, at least in the international context. As a practical matter, however, the requirement that a support order be based on personal jurisdiction over both parties but primarily the obligor is a well-established fixture in the jurisprudence of the United States; relatively few appellate cases on this subject have been reported.

A nonregistering obligor may assert a wide variety of listed defenses, such as "payment" or "the obligation has terminated," in response to allegations of noncompliance with the registered order. There is no defense, however, to registration of a valid foreign support order. The nonregistering party also may contest the allegedly controlling order because its terms

have been modified. Or, the defense may be based on the existence of a different controlling order. *See* Section 207. Presumably this defense must be substantiated by registration of the alleged controlling order to be effective.

While subsection (a)(6) is couched in terms that imply the defense to the amount of alleged arrears can only be that they are less, the converse is also available. For example, if the registering party is the obligor and asserts an amount of arrears that the obligee believes is too low, as the nonregistering party the obligee must contest to preclude confirmation of the alleged amount.

In the absence of a valid defense, if the obligor is found to be liable for current support, the registering tribunal must enter an order to enforce that obligation. Additional proof of arrearages must also result in enforcement under the Bradley Amendment, 42 U.S.C. Section 666(a)(10), which requires all states to treat child-support payments as final judgments as they come due (or lose federal funding). Therefore, federal law precludes arrearages from being subject to retroactive modification. Future modification of a child support order from another state is governed by Sections 609-614, and Sections 615-616 regulate modification of foreign child support orders.

Subsection (c) provides that failure to contest a registered order successfully requires the tribunal to confirm the validity of the registered order.

Related to Convention: art. 26. Procedure on an application for recognition.

ANNOTATION

Agreement between parents that was not approved by a court does not constitute a defense to registration under subsection (a)(3). People ex rel. State of Wyo. v. Stout, 969 P.2d 819 (Colo. App. 1998).

Subsection (b) conferred personal jurisdiction over another state's child support enforcement agency that continued to collect withholdings from plaintiff's wages under the Uniform Interstate Family Support Act, contrary to a previous Colorado court order vacating the other state's judgment upon which the wage assignment was based. Vogan v. County of San Diego, 193 P.3d 336 (Colo. App. 2008).

14-5-608. Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Source: L. 93: Entire article R&RE, p. 1599, § 1, effective January 1, 1995. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 558, § 31, effective July 1.

COMMENT

If, after notice, the nonregistering party fails to contest, the registered support order is confirmed by operation of law and no further action by a responding tribunal is necessary. Although the statute is not explicit on the subject, it seems likely in the absence of a contest both the registering and nonregistering party would be estopped from subsequently collaterally attacking the confirmed order, whether on the basis that "the wrong order was registered" or otherwise.

If contested, a registered support order must be confirmed by the responding tribunal if, after a hearing, the defenses authorized in Section 607 are rejected. Thus, either scenario precludes the nonregistering party from raising any issue that could have been asserted in a hearing. Confirmation of a support order, whether by action or as the result of inaction, validates both the terms of the order and the asserted arrearages.

Related to Convention: art. 22. Grounds for refusing recognition and enforcement; art. 26. Procedure on an application for recognition.

SUBPART C

REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER OF ANOTHER STATE

INTRODUCTORY COMMENT

Authority to modify a child-support order of another state depends on the interaction of these sections with the continuing, exclusive jurisdiction of the issuing tribunal. *See* Sections 205 through 206. This also might involve the determination of the controlling order in a situation involving multiple child-support orders. These concepts are not present in the international context. *See* Sections 615, 616, and 711. Thus, modification of a support order from a foreign country other than a Convention country is not governed by Sections 609-614, but is subject to Sections 615-616, *infra*.

Sections 609 through 614 apply only to modification of an interstate child-support order. Most of the act applies to "a support order," which includes both child-support and spousal support. Both categories are generally subject to interstate enforcement under UIFSA. But, as a practical matter, the actual process of that enforcement is quite different. Child support is enforced almost exclusively by governmentally sponsored

Title IV-D agencies, which also may enforce spousal support if it is included in the same order. In some states, local funds are appropriated for enforcement of spousal support as well. Only occasionally will a private attorney be involved in a child-support case, but spousal support not issued in conjunction with a child-support order generally requires representation pro se or by private counsel. More importantly, a tribunal of a responding state may enforce spousal support, but it does not have authority to modify a spousal-support order of another state or foreign country unless the law of that jurisdiction does not assert continuing, exclusive jurisdiction over its order. *See* Section 211.

14-5-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in sections 14-5-601 through 14-5-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

Source: L. 93: Entire article R&RE, p. 1599, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1260, § 38, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 559, § 31, effective July 1.

Editor's note: This section is similar to former § 14-5-110 as it existed prior to 1993.

COMMENT

Sections 609 through 614 deal with situations in which it is permissible for a registering state to modify the existing child-support order of another state. The first step for modification of another state's child-support order is registration in the responding tribunal under Sections 601 to 604. In some situations, this may also involve identification of the controlling order. A petitioner wishing to register a support order of another state for purposes of modification must conform to the general requirements for pleadings in Section 311, and follow the procedure for registration set forth in Section 602. If the tribunal has the requisite personal jurisdiction over the parties and may assume subject matter jurisdiction as provided in Sections 611 or 613, modification may be sought independently, in conjunction with registration and enforcement, or at a later date after the order has been registered and enforced if circumstances have changed.

ANNOTATION

Annotator's note. Since § 14-5-609 is similar to § 14-5-110 as it existed prior to the 1993 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Full faith and credit must be given to another state's final order for arrearages entered under RURESA, § 14-5-101 et seq. In re Sabala, 802 P.2d 1163 (Colo. App. 1990).

The doctrine of equitable estoppel may properly be applied to afford relief from accrued arrearages in child support if the party asserting the claim demonstrates reasonable reliance, to the party's detriment, upon the acts or representations of the other person, and lack of knowledge or convenient means of knowing the facts. In re Dennin and Lohf, 811 P.2d 449 (Colo. App. 1991).

14-5-610. Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of section 14-5-611 or 14-5-613 have been met.

Source: L. 93: Entire article R&RE, p. 1599, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1260, § 39, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 559, § 31, effective July 1.

COMMENT

An order issued in another state registered for purposes of modification may be enforced in the same manner as an order registered for purposes of enforcement. But, the power of the forum tribunal to modify a child-support order of another tribunal is limited by the specific factual preconditions set forth in Sections 611 and 613.

14-5-611. Modification of child support order of another state.

(a) If section 14-5-613 does not apply, upon petition a tribunal of this state may modify a child support order issued in another state which order is registered in this state if, after notice and hearing, the tribunal finds that:

(1) The following requirements are met:

(A) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(B) A petitioner who is a nonresident of this state seeks modification; and

(C) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) This state is the residence of the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under section 14-5-207 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

(e) On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

(f) Notwithstanding subsections (a) through (e) of this section and section 14-5-201 (b), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) One party resides in another state; and

(2) The other party resides outside the United States.

Source: L. 93: Entire article R&RE, p. 1599, § 1, effective January 1, 1995. **L. 97:** Entire section amended, p. 541, § 14, effective July 1. **L. 2003:** Entire section amended, p. 1260, § 40, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 559, § 31, effective July 1.

COMMENT

The Play-away Rule. As long as the issuing tribunal has continuing, exclusive jurisdiction over its child-support order, a responding tribunal is precluded from modifying the controlling order. *See* Sections 205 through 207. UIFSA (1992) made critical choices regarding modification of an existing child-support order. First, the "one-order" rule was to be paramount. Second, the issuing tribunal had continuing, exclusive jurisdiction to modify its order as long as a party or the child continued to reside in the issuing state. The original order remained in force as the controlling order until modified by another tribunal. Third, a separate procedure was created for modification of an existing child-support order when all parties and the child moved from the issuing state and acquired new residences. The key was that the movant seeking modification be "a nonresident of this state." The deciding factor, determined after extended debate, centered on curbing or eliminating the undesirable effect of "ambush or tag" jurisdiction, e.g., the likelihood that the parties would vie to strike first to obtain a home-town advantage. Although constitutional under Burnham v. Superior Court, 495 U.S. 604 (1990), such lawsuits would discourage continued contact between the child and the obligor, or between the parties for fear of a lawsuit in a distant forum. Thus, the goal was to avoid the situation in which modification would be available in a forum having personal jurisdiction over both parties based solely on the ground that service of process was made in the would-be forum state.

Under subsection (a)(1), before a responding tribunal may modify the existing controlling order, three specific criteria must be satisfied. First, the individual parties and the child must no longer reside in the issuing state. Second, the party seeking modification, usually the obligee, must register the order as a nonresident of the forum. That forum is almost always the state of residence of the other party, usually the obligor. A colloquial (but easily understood) description is that the nonresident movant for modification must "play an away game on the other party's home field." Third, the forum must have personal jurisdiction over the parties. By registering the support order, the movant submits to the personal jurisdiction of the forum through seeking affirmative relief. On rare occasion, personal jurisdiction over the respondent may be supplied by long-arm jurisdiction. *See* Section 201.

The underlying policies of this procedure contemplate that the issuing tribunal no longer has an interest in exercising its continuing, exclusive jurisdiction to modify its order, nor information readily available to it to do so. The play-away rule achieves rough justice between the parties in the majority of cases by preventing ambush in a local tribunal. Moreover, it takes into account the factual realities of the situation. In the overwhelming majority of cases the movant is the obligee who is receiving legal

assistance in the issuing and responding states from Title IV-D support enforcement agencies. Further, evidence about the obligor's ability to pay child support and enforcement of the support order is best accomplished in the obligor's state of residence.

Fairness requires that an obligee seeking to modify the existing child-support order in the state of residence of the obligor will not be subject to a cross-motion to modify custody merely because the issuing tribunal has lost its continuing, exclusive jurisdiction over the support order. The same restriction applies to an obligor who moves to modify the support order in a state other than that of his or her residence.

There are exceptions to the play-away rule. Under subsection (a)(2), the parties may agree that a particular forum may serve to modify the order, even if the issuing tribunal has continuing, exclusive jurisdiction. Subsection (a)(2) also applies if the individual parties agree to submit the modification issue to a tribunal in the petitioner's state of residence. Implicit in this shift of jurisdiction is that the agreed tribunal has subject matter jurisdiction and personal jurisdiction over at least one of the parties or the child, and that the other party submits to the personal jurisdiction of that forum. UIFSA does not contemplate that parties may agree to confer jurisdiction on a tribunal without a nexus to the parties or the child.

Proof that neither individual party nor the child continues to reside in the issuing state is made directly in the responding tribunal. No purpose is served by requiring the movant to return to the original issuing tribunal for a hearing to elicit confirmation of fact that none of the relevant persons still lives in the issuing state. Thus, the issuing tribunal is not called upon to transfer or surrender its continuing, exclusive jurisdiction or otherwise participate in the process, nor does it have discretion to refuse to yield jurisdiction.

There is a distinction between the processes involved under subsection (a). Once the requirements of subsection (a)(1) are met for assumption of jurisdiction, the responding tribunal acts on the modification and then notifies the issuing tribunal that the prior controlling order has been replaced by a new controlling order. In contrast, for another tribunal to assume modification jurisdiction by agreement under subsection (a)(2), the individual parties first must agree in a record to modification in the responding tribunal and file the record with the issuing tribunal. Thereafter they may proceed in the responding tribunal.

A similar exception is found in Section 205(a)(2), which enables the parties to agree in a record of the original issuing tribunal that it may retain jurisdiction over the order even if all parties have left that state. Note that such an agreement can be incorporated in the initial order of the issuing tribunal.

Section 613 also is an exception to subsection (a)(1): it supplants the play-away rule if all parties have left the original issuing state and now reside in the same state, whether by chance or design.

Subsection (b) provides that when a responding tribunal assumes modification

jurisdiction because the issuing tribunal has lost continuing, exclusive jurisdiction, the proceedings will generally follow local law with regard to modification of a child-support order, except as provided in subsections (c) and (d).

Duration of the Child Support Obligation. Prior to 1993 American case law was thoroughly in chaos over modification of the duration of a child-support obligation when an obligor or obligee moved from one state to another state and the states had different ages for the duration of child support. The existing duration usually was ignored by the issuance of a new order applying local law, which elicited a variety of appellate court opinions. UIFSA (1992) determined that a uniform rule should be proposed, to wit, duration of the child-support obligation would be fixed by the initial controlling order. Subsection (c) provides the original time frame for support is not modifiable unless the law of the issuing state provides for its modification. After UIFSA (1996) was universally enacted, some tribunals sought to subvert this policy by holding that completion of the obligation to support a child through age 18 established by a now-completed controlling order did not preclude the imposition of a new obligation to support the child through age 21, or beyond.

Subsection (d) prohibits imposition of multiple, albeit successive, support obligations. The initial controlling order may be modified and replaced by a new controlling order in accordance with the terms of Sections 609 through 614. But, the duration of the child support obligation remains constant, even though other aspects of the original order may be changed.

Sometimes a domestic-violence protective order includes a provision for child support that will be in force for a specific time. The duration of the protective order often is less than the general law of the state for duration of the child-support obligation. Under these facts the general law of the issuing state regarding duration controls a subsequent child-support order.

Subsection (e) provides that on modification the new child-support order becomes the controlling order to be recognized by all UIFSA states. Good practice mandates that the responding tribunal should explicitly state in its order that it is assuming responsibility for the controlling child-support order. Neither the parties nor other tribunals should be required to speculate about the effect of the action.

International Effect. Prohibiting modification based on the play-away principle in the international context is problematic. The issue arises because the United States is wedded to personal jurisdiction over the individual parties at a state level, rather than the child-based, national jurisdiction found virtually everywhere else. For example, a foreign country typically regards a support order to be of the country, not an order from a political subdivision, e.g., an order from Germany. In some important instances, however, a foreign support order is indeed made in a political subdivision, e.g., a support order from a Canadian province. Although consideration was given to labeling a support order issued in a state to

be an order of the United States, conforming modification of child support to the general principles of state law through UIFSA is the only practical choice.

Subsection (f) creates a necessary exception to the play-away concept when the parties and the child no longer reside in the issuing state and one party resides outside the United States. The play-away principle makes sense when the tribunals involved have identical laws regarding continuing, exclusive jurisdiction to modify a child-support order. *See* Sections 205 through 207. If one party resides in a foreign country, a pure play-away rule would deny modification in a forum subject to UIFSA rules to the party or child who has moved from the issuing state, but continues to reside in the United States. This result does not occur under Convention art.18, which places restrictions on modification of a support order in another Convention country if the obligee remains in the issuing Convention country. That article does not mention an effect when only the obligor remains in the issuing country, perhaps because the Convention makes clear that under a child-based system modification jurisdiction will follow the obligee and the child.

Subsection (f) identifies the tribunal that issued the controlling order as the logical choice for an available forum in which UIFSA will apply. This exception to the play-away rule provides assured personal jurisdiction over the parties, which in turn enables the issuing tribunal to retain continuing jurisdiction to modify its order. Of course, the party residing outside the United States has the option to pursue a modification in the state where the other party or child currently reside.

In sum, under this section personal service on either the custodial or noncustodial party found within the state borders, by itself, does not yield jurisdiction to modify. A party seeking to exercise rights of visitation, delivering or picking-up the child for such visitation, or engaging in unrelated business activity in the state, will not be involuntarily subjected to protracted litigation in an inconvenient forum. The play-away rule avoids the possible chilling effect on the exercise of parental contact with the child that the possibility of such litigation might have. The vast majority of disputes about whether a tribunal has jurisdiction will be eliminated. Moreover, submission by the petitioner to the state of residence of the respondent obviates this issue. Finally, because there is an existing order, the primary focus will shift to enforcement, thereby curtailing unnecessary modification efforts.

UIFSA Relationship to UCCJEA. Jurisdiction for modification of child support under subsections (a)(1) and (a)(2) is distinct from modification of custody under the federal Parental Kidnapping Prevention Act (PKPA), 42 U.S.C. § 1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) §§ 201 202. These acts provide that the court of exclusive, continuing jurisdiction may "decline jurisdiction." Declining jurisdiction, thereby creating a potential vacuum, is not authorized under UIFSA. Once a controlling child-support order is

established under UIFSA, at all times thereafter there is an existing order in effect to be enforced. Even if the issuing tribunal no longer has continuing, exclusive jurisdiction, its order remains fully enforceable until a tribunal with modification jurisdiction issues a new order in conformance with this article.

UIFSA and UCCJEA seek a world in which there is but one order at a time for child support and custody and visitation. Both have similar restrictions on the ability of a tribunal to modify the existing order. The major difference between the two acts is that the basic jurisdictional nexus of each is founded on different considerations. UIFSA has its focus on the personal jurisdiction necessary to bind the obligor to payment of a child-support order. UCCJEA places its focus on the factual circumstances of the child, primarily the "home state" of the child; personal jurisdiction to bind a party to the custody decree is not required. An example of the disparate consequences of this difference is the fact that a return to the decree state does not reestablish continuing, exclusive jurisdiction under the UCCJEA. *See* UCCJEA § 202. Under similar facts UIFSA grants the issuing tribunal continuing, exclusive jurisdiction to modify its child-support order if, at the time the proceeding is filed, the issuing tribunal "is the residence" of one of the individual parties or the child. *See* Section 205.

Related to Convention: art. 18. Limit on proceedings.

ANNOTATION

Court is authorized to modify a child support order that was issued in another state and is registered in this state if: (1) The child, individual obligee, and the obligor do not reside in the issuing state; (2) the petitioning party seeking modification is a nonresident of this state; and (3) the respondent is subject to the personal jurisdiction of the tribunal of this state. In re Zinke, 967 P.2d 210 (Colo. App. 1998).

14-5-612. Recognition of order modified in another state.

If a child support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the "Uniform Interstate Family Support Act", a tribunal of this state:

(1) May enforce its order that was modified only as to arrears and interest accruing before the modification;

(2) May provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

(3) Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

(4) (Deleted by amendment, L. 2003, p. 1261, § 41, effective July 1, 2004.)

Source: L. 93: Entire article R&RE, p. 1600, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1261, § 41, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 560, § 31, effective July 1.

Editor's note: This section is similar to former § 14-5-110 as it existed prior to 1993.

COMMENT

A key aspect of UIFSA is the deference to the controlling child-support order of a sister state demanded from a tribunal of the forum state. This applies not just to the original order, but also to a modified child-support order issued by a second state under the standards established by Sections 611and 613. For the act to function properly, the original issuing tribunal must recognize and accept the modified order as controlling, and must regard its prior order as prospectively inoperative. Because the UIFSA system is based on an interlocking series of state laws, it is fundamental that a modifying tribunal of one state lacks the authority to direct the original issuing tribunal to release its continuing, exclusive jurisdiction. That result is accomplished through the enactment of UIFSA by all states, which empowers a modifying tribunal to assume continuing, exclusive jurisdiction from the original issuing tribunal and requires an issuing tribunal to recognize such an assumption of jurisdiction. This explains why the U.S. Congress took the extraordinary measure in PRWORA of mandating universal passage of UIFSA (1996), as amended. *See* Prefatory Note.

The original issuing tribunal retains authority post-modification to take remedial enforcement action directly connected to its now-modified order.

ANNOTATION

Annotator's note. Since § 14-5-612 is similar to § 14-5-110 as it existed prior to the 1993 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Full faith and credit must be given to another state's final order for arrearages entered under RURESA, § 14-5-101 et seq. In re Sabala, 802 P.2d 1163 (Colo. App. 1990).

The doctrine of equitable estoppel may properly be applied to afford relief from

accrued arrearages in child support if the party asserting the claim demonstrates reasonable reliance, to the party's detriment, upon the acts or representations of the other person, and lack of knowledge or convenient means of knowing the facts. In re Dennin and Lohf, 811 P.2d 449 (Colo. App. 1991).

14-5-613. Jurisdiction to modify child support order of another state when individual parties reside in this state.

(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of parts 1 and 2 of this article, this part 6, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Parts 3, 4, 5, 7, and 8 of this article do not apply.

Source: L. 97: Entire section added, p. 542, § 15, effective July 1. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 560, § 31, effective July 1.

COMMENT

It is not unusual for the parties and the child subject to a child-support order to no longer reside in the issuing state, and for the individual parties to have moved to the same new state. The result is that the child-support order remains enforceable, but the issuing tribunal no longer has continuing, exclusive jurisdiction to modify its order. A tribunal of the state of mutual residence of the individual parties has jurisdiction to modify the child-support order and assume continuing, exclusive jurisdiction. Although the individual parties must reside in the forum state, there is no requirement that the child must also reside in the forum state (although the child must have moved from the issuing state).

Finally, because modification of the child-support order when all parties reside in the forum is essentially an intrastate matter, subsection (b) withdraws authority to apply most of the substantive and procedural provisions of UIFSA, i.e., those found in the act other than in Articles 1, 2, and 6. Note the duration of the support obligation is a nonmodifiable aspect of the original controlling order, *see* Section 611(c)-(d).

14-5-614. Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

Source: L. 97: Entire section added, p. 542, § 15, effective July 1. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 560, § 31, effective July 1.

COMMENT

For the act to function properly, the prevailing party in a proceeding that modifies a controlling order must inform the original issuing tribunal about its loss of continuing, exclusive jurisdiction over its child-support order. Thereafter, the original tribunal may not modify, or review and adjust, the amount of child support. Notice to the issuing tribunal and other affected tribunals that the continuing, exclusive jurisdiction of the former controlling order has been modified is crucial to avoid the confusion and chaos of the multiple-order system UIFSA replaced.

The new issuing tribunal has authority to impose sanctions on a party who fails to comply with the requirement to give notice of a modification to all interested tribunals. Note, however, that failure to notify a displaced tribunal of the modification of its order does not affect the validity of the modified order.

SUBPART D

REGISTRATION AND MODIFICATION OF FOREIGN CHILD SUPPORT ORDER

14-5-615. Jurisdiction to modify child support order of foreign country.

(a) Except as otherwise provided in section 14-5-711, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order

otherwise required of the individual pursuant to section 14-5-611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

(b) An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

Source: L. 2003: Entire section added, p. 1262, § 42, effective July 1, 2004. **L. 2015:** Entire part amended, (HB 15-1198), ch. 173, p. 561, § 31, effective July 1.

COMMENT

Subsection (a) provides that a state tribunal may modify a foreign child-support order, other than a Convention order, when the foreign issuing tribunal lacks or refuses to exercise jurisdiction to modify its order. The standard example cited for the necessity of this special rule involved the conundrum posed when an obligor has moved to the responding state from the issuing country and the law of that country requires both parties to be physically present at a hearing before the tribunal in order to sustain a modification of child support. In that circumstance, the foreign issuing tribunal is unable to exercise jurisdiction to modify under its law. Ordinarily, under Section 611 the responding state tribunal is not authorized to issue a new order, in effect modifying the foreign support order, because the child or the obligee continues to reside in the issuing country. To remedy the perceived inequity in such a fact situation, this section provides an exception to the rule of Section 611. If both parties are subject to the personal jurisdiction of a state by the obligee's submission and the obligor's residence, or other grounds under Section 201, the responding state tribunal may modify the foreign child-support order. Modification of a Convention order is governed by Section 711.

The ability of a state tribunal to modify when the foreign country refuses to exercise its jurisdiction should be invoked with circumspection, as there may be a cogent reason for such refusal. Note, Section 317 empowers tribunals to communicate regarding this issue, rather than rely upon representations of one or more of the parties.

Subsection (b) states that if a new order is issued under subsection (a), it becomes the UIFSA controlling order insofar as other states are concerned. Obviously this act cannot dictate the same result to the issuing foreign tribunal, although it seems highly likely that either through child-based jurisdiction or an action filed by the obligee recognition by the foreign tribunal will occur.

Related to Convention: art. 18. Limit on proceedings.

14-5-616. Procedure to register child support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in this state under sections 14-5-601 through 14-5-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

Source: L. 2015: Entire part amended, (HB 15-1198), ch. 173, p. 561, § 31, effective July 1.

COMMENT

The procedure for registration and enforcement set forth in Sections 601 through 608 is applicable to a child-support order from a non-Convention country. This section provides coverage for modification in that situation. Presumptively, the general law of the state regarding modification of a child-support order will apply because, by their terms, Sections 609 through 614 apply only to modification of a child-support order by a state tribunal. The rationale is that modification is available because the foreign order is not founded on the UIFSA principles of continuing, exclusive jurisdiction and a controlling order. *See* Sections 205 through 207.

PART 7

SUPPORT PROCEEDING UNDER CONVENTION

Editor's note: This article was repealed and reenacted in 1993, and this part 7 was subsequently repealed and reenacted in 2015 resulting in the addition, relocation, or elimination of sections as well as subject matter. For amendments to this part 7 prior to 2015, consult the 2014 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

INTRODUCTORY COMMENT

This article contains provisions adapted from the Convention that could not be readily integrated into the existing body of Articles 1 through 6. For the most part, extending the coverage of UIFSA (2008) to foreign countries was a satisfactory solution to merge the appropriate Convention terms into this act. In understanding this process, it must be clearly stated that the terms of the Convention are not substantive law.

The Convention is a multilateral treaty which binds the United States and the other Convention countries to assure compliance. As such, it will be the law of the land; but the treaty is not self-executing. *See*, Medellin v. Texas, 552 U.S. 491, 128 S.Ct. 1346, 170 L.Ed.2d 190 (2008). Thus, the ultimate enforcement of the treaty in the United States is dependent on the key implementing federal law and the enactment of both federal and state legislation which provide the mechanism for enforcing the requirements of the Convention. This act is predicated on the principle that the enactment of UIFSA (2008) in all States and federal jurisdictions will effectively implement the Convention through state law by amending Articles 1 through 6, plus the addition of this article. The treaty, in essence, establishes the framework for a system of international cooperation by emulating the interstate effect of UIFSA for international cases, especially those affected by the Convention.

In relatively few instances, the provisions of the Convention are sufficiently specific that a choice was made between amending UIFSA accordingly, with a disproportionate effect on all support orders enforced under state law, or accommodating potential conflicts by creating a separate article to apply only to Convention support orders. The choice was to draft this article as state law to minimize disruption to interstate support orders, which constitute the vast majority of orders processed under UIFSA. Note that this act is the substantive and procedural state law for: (1) responding to an application for establishment, recognition and enforcement, or modification of a Convention support order; and, (2) initiating an application to a Convention country for similar action.

The four Hague maintenance conventions that preceded the 2007 Convention, and the three prior versions of UIFSA, have common goals. The distinctions between the jurisdictional rules in the common-law tradition in the United States, and the civil law systems in most of the countries that were parties to the earlier maintenance conventions, were obstacles to participation of the United States in any of the multilateral maintenance treaties. As the world has grown smaller and globalization has become the order of the day, reconciling the differences has become more and more important. Understanding the necessity for accommodation has made the task easier. This is not to say easy, as evidenced by the fact that the formal negotiations leading to the final text of the Convention spanned from May, 2003, to November, 2007.

The United States signed the Convention on November 23, 2007 and the Senate gave its advice and consent to ratification in 2010. Enabling federal legislation was enacted on September 29, 2014 which requires all states to enact UIFSA (2008) by the end of 2015. At that point the United States will deposit its instrument of ratification and the Convention will enter into force in the United States.

UIFSA (2008) and the 2007 Convention have far more in common than did former uniform acts and maintenance conventions, and, in fact, many provisions of the Convention are modeled on UIFSA principles. The negotiations demonstrated

that it is possible to draft an international convention, which incorporates core UIFSA principles into a system for the establishment and enforcement of child support and spousal-support orders across international borders, and creates an efficient, economical, and expeditious procedure to accomplish these goals. Matters in common, however, go far beyond identical goals. The negotiations provided an opportunity for an extended interchange of ideas about how to adapt legal mechanisms to facilitate child support enforcement between otherwise disparate legal systems.

International cross-border enforcement has been far more important in Western Europe, and more recently, throughout the countries of the European Union than has been the case in the United States. On the other hand, experience with establishment and enforcement of interstate child-support orders in the United States has been building since 1950, and accelerated rapidly with enactment of Title IV-D of the Social Security Act in 1975. Clearly, the issues are far easier to deal with nationally because of the common language, currency, and legal system, and, since 1996, with the Title IV-D requirement that all states enact the same version of UIFSA. In fact, since the advent of UIFSA and Title IV-D, millions of interstate cases have been processed through the child support enforcement system and thousands of support orders from other countries have also been registered and enforced in the United States because UIFSA treated such orders as if they had been entered by one of the states. In the future, in Convention countries, this country's orders will be entitled to similar treatment. The entry into force of the Convention is designed to further improve the process and will most certainly lead in a few years to a substantial increase in international cases, both incoming and outgoing.

To create UIFSA (2008), it was necessary to integrate the texts of UIFSA (2001) and the Convention. This did not present a significant drafting challenge for the most part. By far the most common amendment in Articles 1 through 6 is to substitute "state or foreign country" for the term "state." These simple amendments expanded a majority of this act to cover foreign support orders. In this article statutory directions are given to "a tribunal of this state," and also to a "governmental entity, individual petitioner, support enforcement agency, or a party."

14-5-701. Definitions.

In this part 7:

(1) "Application" means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) "Central authority" means the entity designated by the United States or a foreign country described in section 14-5-102 (3.3)(D) to perform the functions specified in the Convention.

(3) "Convention support order" means a support order of a tribunal of a foreign country described in section 14-5-102 (3.3)(D).

(4) "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.

(5) "Foreign central authority" means the entity designated by a foreign country described in section 14-5-102 (3.3)(D) to perform the functions specified in the Convention.

(6) "Foreign support agreement":

(A) Means an agreement for support in a record that:

(i) Is enforceable as a support order in the country of origin;

(ii) Has been:

(I) Formally drawn up or registered as an authentic instrument by a foreign tribunal; or

(II) Authenticated by, or concluded, registered, or filed with a foreign tribunal; and

(iii) May be reviewed and modified by a foreign tribunal; and

(B) Includes a maintenance arrangement or authentic instrument under the Convention.

(7) "United States central authority" means the secretary of the United States department of health and human services.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 561, § 32, effective July 1.

COMMENT

A readily apparent difference between UIFSA (2008) and the Convention is the perceived need for definitions in the former, and the very limited number of definitions in the latter. This act contains twenty-nine definitions in Section 102, and an additional seven for this article. In contrast, the Convention contains only seven official definitions. Some of these are synonyms for definitions in UIFSA, i.e., "creditor and debtor" for "obligor and obligee," and "agreement in writing" for "record."

Subsection (1), "application" refers to the process for an individual obligor or obligee to request assistance from a central authority under the Convention.

Subsections (2) and (5) identify the governmental entities, i.e., central authority, in each contracting country or political subdivisions thereof, that will function as the operating agencies to facilitate contacts between Convention countries. The Convention is a treaty between the countries in which it is in force thus creating mutual

obligations. The duties assigned in the Convention to the central authority of each country will be performed according to the choice of each country. It is crucial to recognize that in the United States it will be the Title IV-D agency of each state that will be designated by the U.S. central authority to perform most of the functions specified in the Convention. It appears likely that in many foreign countries the central authority will serve in the role of a clearinghouse, rather than as the operative enforcement entity, while some countries may assign all central authority functions to one agency.

Subsection (3), "Convention support order" narrows the term "foreign support order," as employed in Articles 1 through 6. The provisions in those articles also apply to Convention support orders, but when this act is not congruent with the Convention, support orders under the Convention are subject to this article. This article has no application to a support order from a non-Convention foreign country, as defined in Section 102(5)(A) and (B) or a support order entitled to comity, Section 102(5)(C), except to the extent that a Convention country may request enforcement of a non-Convention support order that has been recognized in the United States under some other procedure, *see* Section 704.

Subsection (4) integrates the "direct request" authorized by the Convention with the provisions for filing a petition in Articles 1 through 6.

The definition in the Convention for "maintenance arrangement" has been rephrased in Subsection (6), and must be read together with Section 710 to understand the process authorized in the Convention.

Convention source: art. 3. Definitions; art. 30. Maintenance arrangements.

Related to Convention: art. 4. Designation of Central Authorities; art. 37. Direct requests to competent authorities.

14-5-702. Applicability.

This part 7 applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this part 7 is inconsistent with parts 1 through 6 of this article, this part 7 controls.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 562, § 32, effective July 1.

COMMENT

The first sentence definitively states that this article applies only to a proceeding involving a Convention country, as defined in Section 102(5)(D). This article does not generally apply to a support order from a non-Convention foreign country as defined in Section 102(5)(A) and (B) or to a support order entitled to comity. The second

sentence resolves a situation in which there is a conflict between a section in this article and a provision in Articles 1 through 6, in which case this article controls.

Related to Convention: art. 1. Object; art. 2. Scope; art. 4. Designation of Central Authorities.

14-5-703. Relationship of state department of human services to United States central authority.

The state department of human services of this state is recognized as the agency designated by the United States central authority to perform specific functions under the Convention.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 562, § 32, effective July 1.

COMMENT

The Secretary of Health and Human Services has designated the state Title IV-D child support agencies as the governmental entities that will carry out many of the central authority's functions under the Convention. Each state determines which public office or administrative agency will perform the Title IV-D services for child support enforcement. Because the federal government provides a significant subsidy for this effort, the actions of the agency must comply with federal statutes and regulations and the state legislature must enact certain mandatory laws. The relationship is symbiotic in that states choose to participate in the Title IV-D program, and do so by following their own state procedures and legislative enactments that recognize and authorize the state officer or agency to function under these conditions.

Related to Convention: ch. II. Administrative co-operation, arts. 4-8; ch. III. Applications through central authorities, arts. 9-17.

14-5-704. Initiation by state department of human services of support proceeding under Convention.

(a) In a support proceeding under this part 7, the state department of human services of this state shall:

(1) Transmit and receive applications; and

(2) Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

(1) Recognition or recognition and enforcement of a foreign support order;

(2) Enforcement of a support order issued or recognized in this state;

(3) Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) Establishment of a support order if recognition of a foreign support order is refused under section 14-5-708 (b)(2), (4), or (9);

(5) Modification of a support order of a tribunal of this state; and

(6) Modification of a support order of a tribunal of another state or a foreign country.

(c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

(1) Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(2) Modification of a support order of a tribunal of this state; and

(3) Modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 562, § 32, effective July 1.

COMMENT

This section is designed to enable lawyers and non-lawyers to better understand proceedings under the Convention, which itself is written in terminology unfamiliar to legal proceedings in the United States.

Subsection (a) lists the rights and duties of a support enforcement agency.

Subsection (b) lists what rights and duties are available to an obligee, whether the proceeding is inbound from a Convention country or outbound to a Convention country.

In contrast to the general rule in UIFSA, which attempts to maintain something of parity between the obligor and obligee, subsection (c) limits the rights and duties available to an obligor under the Convention. This reflects the equal treatment ideal espoused by UIFSA in Articles 1 through 6, and the pro-obligee philosophy of the Convention. In actual

practice, the results may not be that different. Recall that until replaced by UIFSA, an informal subtitle given to URESA by its leading proponents was "The Runaway Pappy Act."

Subsection (d) tracks Convention art. 14 (5).

Convention source: art. 6. Specific functions of Central Authorities; art. 10. Available applications; art. 14. Effective access to procedures.

Related to Convention: ch. II. Administrative co-operation, arts. 4-7; ch. III. Applications through central authorities, arts. 9-17.

14-5-705. Direct request.

(a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, sections 14-5-706 through 14-5-713 apply.

(c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

(1) A security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

(2) An obligee or obligor that in the issuing country has benefitted from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the state child support services agency in the state department of human services.

(e) This part 7 does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 563, § 32, effective July 1.

COMMENT

Given the long history of open courts in the United States, this section may seem axiomatic, redundant, or unnecessary. In fact, because this principle has not always been universal, it is important to recognize that the Convention confirms that an

individual residing in a Convention country may file a petition directly in a tribunal of another Convention country without requesting the assistance of a central authority or a support enforcement agency. Given the variety of legal systems that may be involved under the Convention, this freedom of choice is explicitly protected. A person residing in a Convention county, whether a citizen or a noncitizen of the United States, may apply to a tribunal in the United States for establishment, recognition, and enforcement of a child-support order for enforcement of a spousal support order, for recognition and enforcement of a foreign support agreement, and in some situations, for modification of an existing support order. Of course, the freedom of an individual to petition for relief in a tribunal says nothing about the nature of legal representation, if any, implicit in the right of access to a tribunal, is that representation may be pro se or by private counsel. *See* Section 309.

Subsection (a) provides that an individual party may file a proceeding directly in a tribunal, thus submitting to the jurisdiction of the tribunal and to state law. The object of the proceeding may be establishment of a support order, determination of parentage of a child, or modification of an existing support order.

Subsection (b) recognizes that an individual party may file a proceeding in a tribunal requesting recognition and enforcement of a Convention support order, or a foreign support agreement as defined in Section 710. The party thereby chooses not to seek the services of a central authority or support enforcement agency. Nonetheless, the individual will be affected indirectly by the terms of the Convention because the proceeding is subject to Sections 706 through 713, which are drawn from the Convention. This effect applies to an individual residing in a Convention country and to an individual residing elsewhere who is seeking to enforce a Convention support order.

Subsection (c) contains two provisions drawn from the Convention specifically applicable to a petition for recognition and enforcement of a Convention support order. First, a guarantee of payment of costs may not be required. Second, if the individual has benefited from free legal assistance in a Convention country, that individual is entitled to free legal assistance if it is available in similar circumstances under the law of the responding state.

Under subsection (d) an individual party who files a direct request regarding a Convention support order in a tribunal is not entitled to assistance from the governmental entity, i.e. the support enforcement agency.

Subsection (e) echoes Article 52 of the Convention. An individual party who files a petition in a tribunal may take advantage of any "simplified, more expeditious procedures" which may be available in the requested state, so long as they are "compatible with the protection offered to the parties under articles 23 and 24" of the Convention.

Convention source: art. 14. Effective access to procedures; art. 17. Applications not qualifying under Article 15 or Article 16;

art. 37. Direct requests to competent authorities; art.52, Most effective rule.

Related to Convention: ch. II. Administrative co-operation, arts.4-8; ch. III. Applications through central authorities, arts. 9-17; art. 20. Bases for recognition and enforcement; art. 25. Documents; art. 27. Findings of fact; art. 28. No review of the merits; art. 37. Direct requests to competent authorities; art. 56. Transitional provisions.

14-5-706. Registration of Convention support order.

(a) Except as otherwise provided in this part 7, a party who is an individual or that is a support enforcement agency seeking recognition of a Convention support order shall register the order in this state as provided in part 6 of this article.

(b) Notwithstanding sections 14-5-311 and 14-5-602 (a), a request for registration of a Convention support order must be accompanied by:

(1) A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by The Hague Conference on Private International Law;

(2) A record stating that the support order is enforceable in the issuing country;

(3) If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) A record showing the amount of arrears, if any, and the date the amount was calculated;

(5) A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under section 14-5-707 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 564, § 32, effective July 1.

COMMENT

Subsection (a) integrates the Convention support order into the registration for enforcement procedure set forth in Sections 601 through 608. A state support enforcement agency and a tribunal will use basically the same procedures for a Convention order under this article as would be used in a non-Convention proceeding.

From inception, UIFSA contained detailed provisions for substantive procedures for interstate child- support orders. To facilitate expedited processing, detailed statutory instructions have encouraged uniformity of legal documents. The Convention follows this precedent. The list of documents to be provided, however, is somewhat different than the documents described in Sections 311 and 602. In order to ensure that a document satisfying the requirements of the Convention will be accepted by a support enforcement agency or tribunal, subsection (a) identifies the documents required to accompany an application under the Convention.

Several of the required documents may be unfamiliar in the United States, e.g., the authority to provide an abstract or an extract of an order rather than the complete text of an order under paragraph (b)(1); the requirement for a statement of enforceability of the order under paragraph (b)(2); proof that the respondent had proper notice of the proceedings and an opportunity to be heard if the respondent did not appear and was not represented under (b)(3); and proof that the applicant received free legal assistance in the issuing country under paragraph (b)(6).

Subsection (c) provides that a petitioner may request only partial enforcement of a support order, *see* Section 709. *infra*, which speaks to partial enforcement by a tribunal.

Subsections (d) and (e) authorize action by a tribunal available under the Convention that may not be available under other state law. Subsection (d) permits the tribunal to vacate registration, acting on its own motion, under certain exceptional circumstances, and subsection (e) requires that notice be promptly provided of any such order vacating registration. Such *ex officio* review, if used to refuse recognition of an order, is in tension with the core UIFSA policy of requiring recognition. In any event, the subsections are not a vehicle for a review of the merits of the decision. An example would be useful here, but there is none in the Explanatory Report to the Convention, just the negative reference that a country could not use this to enforce a policy against ordering support for a child born out of wedlock.
http://www.hcch.net/upload/expl38.pdf.
Perhaps an example could be that the court might reject an application to establish support from a biological parent whose

rights had been terminated and the child was subsequently adopted.

Convention source: art. 25. Documents; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

Related to Convention: art. 11. Application contents; art. 20. Bases for recognition and enforcement.

14-5-707. Contest of registered Convention support order.

(a) Except as otherwise provided in this part 7, sections 14-5-605 through 14-5-608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than thirty days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than sixty days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection (b), the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in section 14-5-708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) May not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 565, § 32, effective July 1.

COMMENT

Subsection (a) states the general rule that a contest of a registration is generally governed by Sections 605 through 608, *supra*. Subsection (b), however, establishes separate, longer time frames to contest the registration of a Convention support order than for filing a contest as established in Section 605. If notice of contest is to be

given in the United States, the time difference is relatively modest, i.e., 30 days instead of 20. A more significant difference is created for out-of-country notice, i.e., 60 days instead of 20. Arguably this takes into account that providing notice to a party in a foreign country may take longer than ordinarily expected. In any event, the longer time frames are specifically required in connection with a Convention order. Note that while the principle may always be true that notice to a party situated in a foreign country may take longer, the additional times for notice apply only to an order subject to the Convention.

Subsections (c)-(g) transform Convention language into UIFSA terminology. Subsection (g), which prohibits a stay in enforcement pending a challenge or appeal except in exceptional circumstances, is another substantive provision required by the Convention. It does not apply in non-Convention cases, in which domestic law determines whether a stay of enforcement should be granted pending an appeal or other challenge.

Convention source: art. 23. Procedure on an application for recognition and enforcement; art. 27. Findings of fact; art. 28. No review of the merits.

Related to Convention: art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 27. Findings of fact; art. 28. No review of the merits.

14-5-708. Recognition and enforcement of registered Convention support order.

(a) Except as otherwise provided in subsection (b) of this section, a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) The issuing tribunal lacked personal jurisdiction consistent with section 14-5-201;

(3) The order is not enforceable in the issuing country;

(4) The order was obtained by fraud in connection with a matter of procedure;

(5) A record transmitted in accordance with section 14-5-706 lacks authenticity or integrity;

(6) A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this article in this state;

(8) Payment, to the extent alleged arrears have been paid in whole or in part;

(9) In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(B) If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) The order was made in violation of section 14-5-711.

(c) If a tribunal of this state does not recognize a Convention support order under subsection (b)(2), (4), or (9) of this section:

(1) The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) The state department of human services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under section 14-5-704.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 565, § 32, effective July 1.

COMMENT

Enforceability; the general rule, with exceptions. Subsection (a) states the general proposition that if a child-support order is issued by a tribunal in a Convention country, except as otherwise provided in subsection (b), the order shall be recognized and enforced. In domestic cases UIFSA requires recognition of child-support order of a sister state, 28 U.S.C.A. § 1738B, Full Faith and Credit for Child Support Orders Act (FFCCSOA). Receipt of a child-support order from a sister state is routinely processed and enforced. Critical examination of the sister state order for defects is not called for; it is the responsibility of the respondent to assert any defenses available. Moreover, experience has shown that child-support orders are generally valid, for relatively modest amounts, and seldom subject to claims of fraud. The most common defect is one of mistake, rather than deliberate misconduct.

Subsection (b) combines provisions from four separate articles in the Convention. These articles provide an extensive number of specific reasons for a tribunal or support enforcement agency of one Convention country to refuse to recognize a child-support order from another Convention country. For this act to be consistent with the Convention, it is necessary to identify the potential defects of a support order from a Convention country in which a defendant might raise a challenge based on lack of jurisdiction, due process, or enforceability of an order for arrearages. The majority of these defects arguably are self-explanatory, and almost all are subject to factual dispute to be resolved by the tribunal, to wit: (b)(1) "manifestly incompatible" with public policy, including violation of minimum standards of due process; (b)(2) issued without personal jurisdiction over the individual party *(discussed at length below)*; (b)(3) unenforceable in the issuing country; (b)(4) obtained by fraud in connection with a matter of procedure; (b)(5) the record lacks authenticity or integrity, e.g., forged; (b)(6) a prior proceeding is pending; (b)(7) a more recent support order is controlling; (b)(8) full or partial payment; (b)(9)(A),(B), no appearance, notice, or opportunity to be heard *(discussed below)*; and, (b)(10) exceeds limitations and restraints on modification. As with domestic cases, the norm will be to recognize and enforce a foreign order absent a challenge by the respondent. Three provisions most likely to trigger a tribunal to refuse to recognize and enforce a foreign support order require more attention, i.e., subsections (b)(2), (4) and (9)(A), (B).

Of particular note, subsection (c) applies to a refusal to recognize and enforce a Convention order under any of these grounds. From the perspective of the United States, subsection (b)(2) is likely to be the primary reason for a tribunal to refuse to recognize and enforce a registered Convention support order. Key to its participation in the negotiations leading to the Convention, the United States insisted that a support order may be refused recognition by a tribunal if the issuing foreign tribunal lacked personal jurisdiction over the respondent. The facts underlying the Convention support order must be measured by a tribunal as consistent with the long-arm jurisdictional provisions of UIFSA. *See* Sections 201-202. A potential problem occurs only if a Convention support order cannot be enforced by a tribunal because there was no appropriate nexus between the foreign country and the respondent.

Subsection (c) provides that any of the reasons enumerated for not recognizing and enforcing a registered Convention support order, i.e., (b)(2), (4) and (9), will trigger the obligation of the tribunal not to dismiss the proceeding before allowing a reasonable time for a party to seek the establishment of a new child-support order. Moreover, if the Title IV-D support enforcement agency is involved, it must "take all appropriate measures to request a child-support order;" i.e., file a petition seeking to establish an initial child-support order by the tribunal. In that case, the tribunal shall treat the request for recognition and enforcement as a petition for establishment of a new order.

Two systems; direct and indirect jurisdiction. In drafting the Convention, the subject of the requisite jurisdiction to issue a support order generated considerable discussion. The choice divided itself into two distinct categories; rules of direct and indirect jurisdiction. Direct jurisdiction provides explicit bases on which a tribunal is vested with the power to assert its authority and enter a support order. *See* Section 201.

The UIFSA long-arm provisions are paradigm rules of direct jurisdiction. Section 201 identifies the bases on which a tribunal may assert personal jurisdiction over a nonresident individual, obligor or obligee, without regard to the current residence of the individual or child. As discussed in the comment to Section 201, *supra*, these long-arm jurisdictional rules for child support and spousal support orders were fashioned case-by-case by the Supreme Court, *see Estin v. Estin*, 334 U.S. 541, 68 S. Ct. 1213, 92 L.Ed. 1561 (1948); *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 77 S. Ct. 1360, 1 L.Ed.2d 1456 (1957) (spousal support); *Kulko v. Superior Court*, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978) (child support).

An initial difficulty arose because some authorities from foreign countries expressed concern about the UIFSA long-arm statute. This was especially true regarding Section 201(a)(1), i.e., service of legal process that creates personal jurisdiction, sometimes called "tag or ambush jurisdiction." Some experts in civil law countries regard the claim that jurisdiction can be acquired merely by serving documents on an individual passing through, with no fundamental ties to the jurisdiction, as "exorbitant," and fundamentally unfair. Another provision eliciting criticism was Section 201(a)(6), which literally reads that an allegation of engaging in sexual intercourse in the state that "may have" resulted in conception will suffice to support a basis for issuing a child support-order.

Similarly, rules of jurisdiction recognized by civil law countries are contrary to the principles that apply to proceedings in the United States. The fact that residence of a child or an obligee in a forum is sufficient basis in most foreign countries to support a child-support order, even though the obligor has no personal nexus with the forum, is generally viewed as wholly inconsistent with notions of due process in the United States. Assuming the obligor has never been physically present in the forum and has not participated in any of the acts described in Section 201, an assertion of jurisdiction to establish a support order based solely on the residence of the obligee or child in that forum is widely regarded in the United States as unconstitutional.

The Convention adopts a rule of indirect jurisdiction which requires a tribunal to register and enforce the order of another tribunal if certain basic jurisdictional requirements have been satisfied. The Convention does not actually prescribe the bases on which the tribunal may assert jurisdiction, as UIFSA does in Section 201. Most commonly, in countries other than the United States if a child is a "habitual resident" of a country, a support order of a tribunal of that country will be recognized in another country. As a practical matter,

although "habitual residence" of the obligee provides no basis for assertion of personal jurisdiction over the obligor in the United States, the home tribunal is almost always the preferred forum if the obligee has any basis under Section 201 to obtain long-arm jurisdiction over a non-resident obligor. That is, the actual custodian of the child is almost always the person who seeks to establish and enforce child support and, if possible, chooses to bring a proceeding in the state of residence of the obligee and the child. A tribunal that recognizes "habitual residence" as a basis for indirect jurisdiction would, accordingly, register and enforce an order from a tribunal in the "habitual residence" of the obligee or child without concern about whether the obligor has a nexus with that tribunal. Thus, most foreign concerns about the tenuous reaches of long-arm jurisdiction in the United States are obviated in practice.

The Convention eschews rules of direct jurisdiction, choosing instead to rely on half-a-dozen indirect rules of jurisdiction, "habitual residence" of any of the parties (respondent, creditor or child) being the most common. The focus of the Convention is to identify the bases on which a tribunal of one Convention country will be required to recognize the assertion of jurisdiction by a tribunal of another Convention country. When the Convention is in force in both countries, a support order issued by a tribunal of Country A will be enforced by a tribunal of Country B, provided that the order is enforceable in Country A, plus the host of other possible considerations discussed above. There are a limited number of exceptions, or "reservations," to such rules permitted under the Convention, which give rise to additional procedures noted below. Once recognition is accorded to a support order, the normal procedures available to enforce the order come into play. The routes to arrive at enforcement by way of direct or indirect jurisdiction are different, but the destination is the same.

Virtually all foreign countries recognize and enforce a child-support order based on the residence of the obligee or the child. The U.S. requirement of personal jurisdiction over the obligor is often regarded abroad as idiosyncratic. Nonetheless, the new Convention requires recognition of U.S. orders based on long-arm jurisdiction asserted over the obligor, a.k.a. "debtor" if the forum state is also the state of residence of the obligee, a.k.a. "creditor." From the perspective of a foreign tribunal, such an order should be considered valid, if only for creditor- or child-based jurisdictional reasons. The fact that the state tribunal requires a personal nexus between the parties and the tribunal is irrelevant to the foreign tribunal.

These distinct views of appropriate jurisdiction presented a genuine issue for resolution. The United States delegation took the position that, as a matter of constitutional law, its tribunals could not recognize and enforce creditor- or child-based support orders under certain factual circumstances accepted in other countries as providing appropriate jurisdiction. The conclusion of the delegation was that this approach conflicts with the *Kulko* decision, *supra*. The potential lack of nexus with the obligor, if jurisdiction was based solely on the "habitual residence" of the obligee,

would present an impenetrable barrier to participation in the Convention by the United States.

Fairly early on in the Convention negotiations, a consensus developed that these different systems of jurisdiction could be accommodated. On the U.S. side, a challenge to a foreign child-support order will be rejected if the factual circumstances are sufficient to support an assertion of long-arm jurisdiction in the foreign tribunal. Rather obviously, the foreign tribunal need not, and almost certainly will not, consider whether there is a factual basis for establishing personal jurisdiction over the absent obligor based upon "minimum contacts" with the forum. This is not a part of the jurisprudence of the foreign tribunal. If a challenge to a support order is raised by the obligor when the order is sought for enforcement in a United States tribunal, however, that tribunal shall undertake a determination of whether the jurisdictional bases of Section 201 would have been applicable if that issue had been raised in the foreign tribunal. If so, the order is enforceable in this country, notwithstanding that the foreign tribunal based its decision on jurisdiction on the fact that the child or the obligee resided in that forum. *See* Convention art. 20(1)(c)-(d).

Asserting long-arm jurisdiction to establish a support order by a tribunal in a proceeding under UIFSA will be unaffected by the entry into force of the Convention. This will be true irrespective of whether the nonresident respondent resides in another state or in a foreign country, or even resides in a non-Convention foreign nation.

The term "habitually resident" is used in a number of private international law conventions, including the 2007 Maintenance Convention. The term is not defined in any of them. Rather, in common law countries its meaning is determined on a case-by-case basis by the practice and case law of each country. In the United States and elsewhere there is no consistent interpretation of the term by the courts considering it in the context of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The negotiators of the Convention from the United States made it clear that case law on the meaning of "habitually resident" in the child abduction context should not automatically be applied to child support cases. That is because the effect of the use of "habitual residence" in the 1980 Child Abduction Convention is intended to restrict the ability of a person to obtain a new custody order shortly after arriving in another country. In fact, one of the objects of the 1980 Convention is to limit the ability of a parent unhappy with the custody order of one court to "forum shop" by moving to another country and seeking a new order. In the 2007 Maintenance Convention, the object is to make it easier for an obligee to recover child support in an international case, not to restrict the ability of an obligee to apply for that support.

Due process under the Convention. Subsection (b)(9)(A) applies to a failure to give a party prior notice of the proceedings and an opportunity to be heard, which is the classic denial of due process in a proceeding in the United States.

Subsection (b)(9)(B) will be unfamiliar to practitioners in this country and requires some explanation. This provision recognizes the legitimacy of, and provides a method for challenge of, a support order which may be routinely entered in some administrative systems in an ex parte proceeding. The support order is issued without prior notice to the obligor or opportunity to be heard. The due process opportunity is provided after the ex parte decision. This system is currently in use in administrative proceedings in Australia and New Zealand. Because the respondent will not have participated in the original proceeding, the post facto due process allows the obligor an opportunity to challenge the decision on fact or law.

Convention source: art. 20. Bases for recognition and enforcement; art. 21. Severability and partial recognition and enforcement; art. 22. Grounds for refusing recognition and enforcement; art. 23. Procedure on an application for recognition and enforcement; art. 25. Documents.

Related to Convention: art. 11. Application contents.

14-5-709. Partial enforcement.

If a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 566, § 32, effective July 1.

COMMENT

This section transforms Convention language into UIFSA terminology. If a responding tribunal is unable to enforce the entirety of a Convention support order, it shall enforce a severable part of the order. For example, a mother of a child may have another woman as her registered partner in a Convention country. If a support order provides support for both the mother and child support for the child, that part of the order awarding support to the mother from the registered partner may not be enforceable in some states. Nonetheless, a tribunal is obligated to recognize and enforce that part of the order for support of the child. The second sentence authorizes the mother to request enforcement only of the child support portion, *see also* Section 706 (c), *supra*.

Convention source: art. 21. Severability and partial recognition and enforcement.

Related to Convention: art. 20. Bases for recognition and enforcement.

14-5-710. Foreign support agreement.

(a) Except as otherwise provided in subsections (c) and (d) of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) A complete text of the foreign support agreement; and

(2) A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) Recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) The agreement was obtained by fraud or falsification;

(3) The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this article in this state; or

(4) The record submitted under subsection (b) of this section lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 567, § 32, effective July 1.

COMMENT

Section 701(6) provides an extensive definition of a "foreign support agreement," which is UIFSA terminology to make more readily understandable for U.S. bench and bar a process that is denominated as a "maintenance arrangement" in the Convention. Subsection (a) requires a state tribunal to recognize and enforce a foreign support agreement if the terms of this section are met. Most crucially, such an

agreement must be accompanied by a document stating that the foreign support agreement is as enforceable as a support order would be in the country of origin.

This section basically translates into common parlance the procedure identified in Convention art. 30, which was the result of a very extended discussions about "authentic instruments and private agreements" during the negotiations on the Convention. In many countries, such an agreement is unknown insofar as enforcement by a tribunal is concerned. In the United States, a purely private agreement is treated as a form of contract, rather than as an order of a tribunal. Under the Convention, however, a foreign support agreement meeting the standards established in this section, and as defined in Section 701(6), is entitled to enforcement by the tribunal. Advantages for enforcement of child support binding on the parties in the country of origin stem from the inclusion of a foreign support agreement because there is a growing tendency internationally to promote amicable solutions and avoid contentious procedures. In view of the movement towards alternative methods of dispute resolution in the United States, this mechanism provides for recognition and enforcement of a dispute resolution system in some of the likely Convention countries. The absence of this provision would have been a loss for the Convention, and limited its usefulness for support agreements, particularly in the Scandinavian countries. Although the possibility of a reservation is available, the United States has not indicated that it intends to make such a reservation.

To reiterate, the key to enforcement is that the foreign support agreement must be "enforceable as a decision" in the foreign country of its origin (quoting the Convention). If such an agreement is enforceable only as a contract, it will not fall within the scope of this section. Another key provision is that under subsection (e) the enforcement proceeding will be suspended if the respondent challenges the underlying agreement in a tribunal that has jurisdiction to hear challenges to the agreement.

Convention source: art. 3. Definitions; art. 30. Maintenance arrangements.

14-5-711. Modification of Convention child support order.

(a) A tribunal of this state may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child support order because the order is not recognized in this state, section 14-5-708 (c) applies.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 567, § 32, effective July 1.

COMMENT

One goal of the Convention was to limit the number of multiple foreign orders with respect to the same parties to the extent possible. But, given differing laws and jurisdictional bases, consensus on limiting modification was reached only on the fact patterns presented by Section 711(a).

First, this section transforms Convention language into UIFSA terminology. The restriction identified on modification of a child-support order in subsection (a) strikes a familiar note. Similar to Section 611, *supra*, a restriction is placed on modification of a support order if the obligee remains in the issuing Convention country. Subsection (a)(1) provides an exception if, by failure to object, the obligee submits to the jurisdiction of another tribunal. Subsection (a)(2) is similar to Section 615, *supra*. From the perspective of the obligee, the restriction has virtually the same effect as found in Sections 205 and 611. That is, in effect the issuing foreign tribunal has a form of continuing, exclusive jurisdiction that it maintains over modification of the order so long as the obligee remains a resident of the country. The difference is that the protection against modification is accorded only to the obligee, and not to the obligor. Thus, under the Convention the obligee may be free to seek a modification in another forum notwithstanding the fact that the obligor remains in the issuing country but the obligee moves to another country, with the implicit requirement that the issuing foreign tribunal must have personal jurisdiction over the obligor to sustain the enforcement of modification by a state tribunal.

Subsection (b) requires a state tribunal to issue a new child-support order if the Convention order was founded on child-based jurisdiction, the foreign tribunal lacked personal jurisdiction over the obligor, and there is a request to establish an order in accordance with Section 708.

Convention source: art. 18. Limit on proceedings; art. 21. Severability and partial recognition and enforcement.

Related to Convention: art. 18. Limit on proceedings; art. 20. Bases for recognition and enforcement.

14-5-712. Personal information - limit on use.

Personal information gathered or transmitted under this part 7 may be used only for the purposes for which it was gathered or transmitted.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 568, § 32, effective July 1.

COMMENT

This section is an almost word-for-word tracking of the Convention provision, rephrased in UIFSA terminology. This single sentence is illustrative of the different drafting rules for a uniform act and an international treaty. Although certainly not always adhered to, cardinal rules for drafting a uniform act include writing in the active voice, identifying the intended actor, and specifying the consequences for failure to follow the directive or ignore the proscription. Convention provisions, such as this one, are generally written in passive voice, the actor is not identified, and no penalty is specified for noncompliance. Insofar as the admirable goals of the provision are concerned, ambiguity in the statute, or an exception to the rule, must be resolved case-by-case.

Confidentiality is highly prized in the United States in many circumstances, e.g., the attorney-client privilege is protected to the maximum extent possible. Under other circumstances, the opposite is true, e.g., records of litigation are generally available, and a judicial decision is ordinarily in open court or public record. Neither goal is absolute. Section 312, *supra*, adds another exception, i.e., nondisclosure of information is sometimes required to protect the health, safety, or liberty of a party or a child. In a case in which there is a risk of domestic violence or parental kidnapping, nondisclosure may be crucial.

The anticipated breadth of application of this provision is to constrain individuals and entities subject to a Convention support order. Protection of personal information in this computerized world is increasingly important, whatever the medium or means of communication. Both the sender and recipient of personal information transmitted electronically are expected to take appropriate measures vis-à-vis their service providers to meet the requirements of this section. The exact meaning of the statutory phrase "for the purpose for which it was gathered or transmitted" will necessarily remain ambiguous until elaborated by statute, caselaw, or regulation.

Convention source: art. 38. Protection of personal data.

14-5-713. Record in original language - English.

A record filed with a tribunal of this state under this part 7 must be in the original language and, if not in English, must be accompanied by an English translation.

Source: L. 2015: Entire part R&RE, (HB 15-1198), ch. 173, p. 568, § 32, effective July 1.

COMMENT

The United States will declare that English is the official language for transmittals to this country. Further, the United States will make a reservation objecting to the use of French, the other official language of the Convention, as a default translation. Of course, the original order may be in French. The cost of translation is borne by the issuing state or Convention country.

Convention source: art. 44. Language requirements; art. 62. Reservations; art. 63. Declarations.

Related to Convention: art. 45. Means and costs of translation.

PART 8

INTERSTATE RENDITION

Cross references: For extradition procedures generally, see article 19 of title 16.

14-5-801. Grounds for rendition.

(a) For purposes of this part 8, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this article.

(b) The governor of this state may:

(1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) On the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this article applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

Source: L. 93: Entire article R&RE, p. 1601, § 1, effective January 1, 1995. **L. 2003:** (b)(2) amended, p. 1262, § 44, effective July 1, 2004.

COMMENT

This section has not been amended substantively since 1968. Virtually no controversy has been generated regarding this procedure. Arguably application of subsection (c) is problematic in situations in which the obligor neither was present in the demanding state at the time of the commission of the crime nor fled from the demanding state. The possibility that an individual may commit a crime in a state without ever being physically present there has elicited considerable discussion and some case law. *See* "L. BRILMAYER, AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM," 329-335 (1986) (discussing minimum contacts theory for criminal jurisdiction); Rotenberg, *Extraterritorial Legislative Jurisdiction and the State Criminal Law*, 38 TEX. L. REV. 763, 784-87 (1960) (due process requires that the behavior of the defendant must be predictably subject to state's criminal jurisdiction); cf. *Ex parte Boetscher*, 812 S.W.2d 600 (Tex. Crim. App. 1991) (Equal Protection Clause limits disparate treatment of nonresident defendants); *In re King*, 3 Cal.3d 226, 90 Cal. Rptr. 15, 474 P.2d 983 (1970), cert. denied 403 U.S. 931 (enhanced offense for nonresidents impacts constitutional right to travel).

14-5-802. Conditions of rendition.

(a) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this article or that the proceeding would be of no avail.

(b) If, under this article or a law substantially similar to this article, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

Source: L. 93: Entire article R&RE, p. 1601, § 1, effective January 1, 1995. **L. 2003:** (a) and (b) amended, p. 1263, § 45, effective July 1, 2004.

COMMENT

This section has not undergone significant change since 1968. Interstate rendition remains the last resort for support enforcement, in part because a governor may exercise considerable discretion in deciding whether to honor a demand for rendition of an obligor.

PART 9

MISCELLANEOUS PROVISIONS

14-5-901. Uniformity of application and construction.

In applying and construing this article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 93: Entire article R&RE, p. 1602, § 1, effective January 1, 1995. **L. 2003:** Entire section amended, p. 1263, § 46, effective July 1, 2004.

14-5-902. Transitional provision.

This article, as amended by House Bill 15-1198, enacted in 2015, applies to proceedings begun on or after July 1, 2015, to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

Source: L. 93: Entire article R&RE, p. 1602, § 1, effective January 1, 1995. **L. 2003:** (b) added by revision, pp. 1263, 1275, §§ 47, 72. **L. 2015:** Entire section RC&RE, (HB 15-1198), ch. 173, p. 568, § 33, effective July 1.

Editor's note: Prior to the recreation and reenactment of this section in 2015, subsection (b) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 1263, 1275.)

14-5-903. Severability clause.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Source: L. 93: Entire article R&RE, p. 1602, § 1, effective January 1, 1995.

PART 10

COLORADO IMPLEMENTATION PROVISIONS

14-5-1001. Venue. (Repealed)

Source: L. 93: Entire article R&RE, p. 1602, § 1, effective January 1, 1995. **L. 98:** Entire section repealed, p. 753, § 2, effective July 1.

Editor's note: This section was amended by House Bill 98-1183. Those amendments will not become effective because of the repeal of the section by Senate Bill 98-139.

14-5-1002. Jurisdiction by arrest. (Repealed)

Source: L. 93: Entire article R&RE, p. 1602, § 1, effective January 1, 1995. **L. 98:** Entire section repealed, p. 754, § 3, effective July 1.

14-5-1003. Duty of officials of this state as responding state. (Repealed)

Source: L. 93: Entire article R&RE, p. 1603, § 1, effective January 1, 1995. **L. 98:** Entire section repealed, p. 754, § 4, effective July 1.

14-5-1004. Proceedings not to be stayed. (Repealed)

Source: L. 93: Entire article R&RE, p. 1603, § 1, effective January 1, 1995. **L. 96:** Entire section repealed, p. 593, § 5, effective July 1.

14-5-1005. Declaration of reciprocity - repeal. (Repealed)

Source: L. 93: Entire article R&RE, p. 1603, § 1, effective January 1, 1995. **L. 2003:** (b) added by revision, pp. 1263, 1275, §§ 48, 72.

Editor's note: (1) This section was similar to former § 14-5-144 as it existed prior to 1993.

(2) Subsection (b) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 1263, 1275.)

14-5-1006. Interstate central registry - duties as the responding and initiating state - repeal. (Repealed)

Source: L. 93: Entire article R&RE, p. 1604, § 1, effective January 1, 1995. **L. 94:** (1) amended, p. 2644, § 103, effective July 1. **L. 2003:** (3) added by revision, pp. 1264, 1275, §§ 49, 72.

Editor's note: Subsection (3) provided for the repeal of this section, effective July 1, 2004. (See L. 2003, pp. 1264, 1275.)

14-5-1007. Enforcement of interstate income withholding. (Repealed)

Source: L. 94: Entire section added, p. 1547, § 27, effective January 1, 1995. **L. 96:** (4) and (5)(a) amended, p. 593, § 6, effective July 1. **L. 97:** (2)(e)(I) amended, p. 1264, § 7, effective July 1. **L. 98:** Entire section repealed, p. 754, § 5, effective July 1.

ARTICLE 6

Nonsupport

14-6-101. Nonsupport of spouse and children - penalty.
14-6-102. Suspension of sentence. (Repealed)
14-6-103. Extradition.
14-6-104. Jurisdiction.
14-6-105. Spouse competent witness.
14-6-106. Venue.
14-6-107. Venue - home or school of child.
14-6-108. Citizenship - residence.
14-6-109. Forfeiture of bond - disposition of fines.
14-6-110. Joint liability for family expenses.
14-6-111. Legislative declaration.
14-6-112. Procedures by clerk. (Repealed)
14-6-113. Remedies additional to those now existing.

14-6-101. Nonsupport of spouse and children - penalty.

(1) Any person who willfully neglects, fails, or refuses to provide reasonable support and maintenance for his spouse or for his children under eighteen years of age, whether natural, adopted, or whose parentage has been judicially determined, or who willfully fails, refuses, or neglects to provide proper care, food, and clothing in case of sickness for his spouse or such children or any such children being legally the inmates of a state or county home or school for children in this state, or who willfully fails or refuses to pay to a trustee, who may be appointed by the court to receive such payment, or to the board of control of such home or school the reasonable cost of keeping such children in said home, or any person, being the father or mother of children under eighteen years of age, who leaves such children with intent to abandon such children, or any man who willfully neglects, fails, or refuses to provide proper care, food, and clothing to the mother of his child during childbirth and attendant illness is guilty of a class 5 felony. It shall be an affirmative defense, as defined in section 18-1-407, C.R.S., to a prosecution under this section that owing to physical incapacity or other good cause the defendant is unable to furnish the support, care, and maintenance required by this section. No child shall be deemed to lack proper care for the sole reason that he is being provided remedial treatment in accordance with section 19-3-103, C.R.S.

(2) Repealed.

Source: L. 11: p. 527, § 1. **C.L.** § 5566. **CSA:** C. 83, § 1. **CRS 53:** § 43-1-1. **L. 55:** p. 287, § 1. **C.R.S. 1963:** § 43-1-1. **L. 73:** p. 547, § 1. **L. 81:** (1) amended, p. 901, § 1, effective May 27. **L. 87:** (1) amended, p. 815, § 16, effective October 1. **L. 92:** (2) repealed, p. 396, § 1, effective June 3; (1) amended, p. 202, § 7, effective August 1.

ANNOTATION

I. General Consideration.

II. Elements of Offense and Excuses for Failure to Support.

III. Pleading and Practice.

I. GENERAL CONSIDERATION.

Law reviews. For an article on "Ten Years of Domestic Relations in Colorado — 1940-1950", see 27 Dicta 399 (1950). For article on "The Problem of Compelling Fathers to Support Their Dependent Children", see 27 Dicta 442 (1950). For article, "A Lawyer's Advice to the Unmarried Mother", see 31 Dicta 112 (1954). For article, "Highlights of the 1955 Colorado Legislative Session — Domestic Relations", see 28 Rocky Mt. L. Rev. 66 (1955). For article, "Highlights of the 1955 Legislative Session — Criminal Law and Procedure", see 28 Rocky Mt. L. Rev. 69 (1955). For note, "Enforcement of Support Duties in Colorado", see 33 Rocky Mt. L. Rev. 70 (1960). For note, "Aid to Families with Dependent Children — A Study of Welfare Assistance", see 44 Den. L.J. 102 (1967).

Annotator's note. Cases relevant to § 14-6-101 decided prior to its earliest source, L. 11, p. 527, § 1, have been included in the annotations to this section.

This article was held not to violate § 1 of art. V, Colo. Const. Pearman v. People, 64 Colo. 26, 170 P. 192 (1917); Wamsley v. People, 64 Colo. 521, 173 P. 425 (1918).

This section does not violate § 12 of art. II, Colo. Const., prohibiting imprisonment for debt. Martin v. People, 69 Colo. 60, 168 P. 1171 (1917); People v. Elliott, 186 Colo. 65, 525 P.2d 457 (1974).

Purpose. The felony nonsupport statute is designed to promote and protect the health and welfare of minor children and to prevent such children from becoming wards of the state. People v. Elliott, 186 Colo. 65, 525 P.2d 457 (1974).

This article does not change the law as to the civil liability of the husband to furnish his wife reasonable support; it just provides a penalty in case he fails to do so, unless excused by physical incapacity or other good cause Poole v. People, 24 Colo. 510, 52 P. 1025 (1898).

Duty to support spouse ceases when marriage is dissolved unless an order of maintenance is entered in connection with the dissolution decree. Com. of Pennsylvania v. Barta, 790 P.2d 895 (Colo. App. 1990).

The nonsupport statutes such as this have been regarded only as enforcing, and

not as creating, a duty on the part of husbands and fathers with reference to the support of wives and children. Kilpatrick v. People, 64 Colo. 209, 170 P. 956 (1918).

It simply makes the willful neglect of a duty theretofore existing a felony. People v. Driscoll, 72 Colo. 115, 209 P. 869 (1922).

The supreme court was fortified in limiting the court's authority to require security for the payment of alimony by reason of the fact that with respect to orders for the payment of sums required for the support and maintenance and education of the minor children of the parties, the general assembly had enacted this section which made it a felony for a husband to neglect, fail or refuse to provide reasonable support and maintenance for his minor children under the age of 16 years. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Therefore a father who neglects to discharge his natural, as well as his statutory, duty to his children "shall be deemed guilty of a felony", and may be imprisoned for so doing unless he provides a bond conditioned upon the support of such children. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Formerly, the primary obligation for the support of a minor child rested upon its father, and the fact that the mother was self-supporting did not serve to relieve the father of his obligation. McQuade v. McQuade, 145 Colo. 218, 358 P.2d 470 (1960).

Obligation of mother now equal to that of father. The general assembly in 1973 reassessed the relative responsibilities of the parents with regard to support of their children and imposed an obligation on the mother equal to that of the father. People v. Elliott, 186 Colo. 65, 525 P.2d 457 (1974).

Changing legislative view of role and capabilities of mother. This enlargement of the scope of protection for minor children suggests a legislative view that the role of the mother has expanded beyond the domestic sphere to which it had been relegated and that the economic abilities and opportunities of the parents are more nearly on a parity concerning their capability of providing support for their children. People v. Elliott, 186 Colo. 65, 525 P.2d 457 (1974).

Since the father is under a legal duty or obligation to support his child in an adequate manner, resort to the courts may be had to enforce compliance, and such action is not made nonmaintainable because of statutory proceedings relating to the support of children in divorce, separate maintenance and annulment actions nor because of the statute relating to dependent and neglected children. McQuade v. McQuade, 145 Colo. 218, 358 P.2d 470 (1960).

The inherent right to support belongs to the child, and there exists no reason to hinge the enforcement of such right upon the existence or nonexistence of statutory right in the mother to obtain a divorce or separate maintenance, or upon a statute designed for children neglected by both parents. McQuade v. McQuade, 145 Colo. 218, 358 P.2d 470 (1960).

The rights of the child exist independent of the rights of the mother, and are enforceable in equity in the absence

of a statute providing for relief in the express circumstances. McQuade v. McQuade, 145 Colo. 218, 358 P.2d 470 (1960).

A dismissal of complaints seeking divorce and separate maintenance is not res judicata concerning the right of a minor child to compel adequate support by his father. McQuade v. McQuade, 145 Colo. 218, 358 P.2d 470 (1960).

An alleged father of an illegitimate child, in any case where such child is under 16 years of age, may be prosecuted for failure to support it, without having been adjudged, in some prior proceeding, to be such father. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

This section contains the provision that any man who shall willfully refuse to support his legitimate or illegitimate child under 16 years of age shall be deemed guilty of a felony. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

No provision of the bastardy act has any bearing upon a prosecution under this section. Wamsley v. People, 64 Colo. 521, 173 P. 425 (1918).

The gravamen of the offense is not the fathering of the illegitimate child, but the failure to make provision for his support if and when it becomes a dependent child under the statute. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

This section does not attempt to punish the father for begetting or neglecting to support the child before the section took effect, but requires a defendant, as the father of a child, to contribute to his support and maintenance, thus relieving the mother or others upon whom the burden may chance to fall. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

The parent cannot be released of his duty to support the child by contract with anyone, but the fact that he entered into a contract and thereby made provisions for such support may have an important bearing upon the issue as to whether his neglect was willful or not. Laws v. People, 59 Colo. 562, 151 P. 433 (1915).

Although a bastardy prosecution under one statute is barred because not brought in time, an action may still be maintained under another statute for failure to support an illegitimate child. Ortega v. Portales, 134 Colo. 537, 307 P.2d 193 (1957).

II. ELEMENTS OF OFFENSE AND EXCUSES FOR FAILURE TO SUPPORT.

"Support and maintenance" are of much broader import than "food, clothing, and shelter", and may include many things besides food and clothing, and shelter. Campbell v. People, 42 Colo. 228, 94 P. 256 (1908).

Construed as applying to the duty of the husband when the wife is sick, the "food, clothing, and shelter" are properly connected, and it seems to have been the intention of the general assembly to require the husband, whatever provision he may have made for his wife and minor children while they were well, that he furnish, not money, with which they may provide for their own comfort, but in the case of their

sickness that he must, at his peril, provide them with proper food, clothing, shelter, and care. Campbell v. People, 42 Colo. 228, 94 P. 256 (1908).

An information alleging that defendant "did willfully fail, refuse, and neglect to provide proper food, clothing, and shelter, and care in case of sickness for his wife", was fatally defective, in that it failed to allege that defendant's wife was sick at the time it was charged he failed to provide for her. Campbell v. People, 42 Colo. 228, 94 P. 256 (1908).

The term "willfully" is defined as intentionally done without just cause, excuse or justification after notice and request for support. People v. Green, 178 Colo. 77, 495 P.2d 549 (1972).

To be willful the neglect must have occurred while defendant knew, or ought to have known, that the need existed. Laws v. People, 59 Colo. 562, 151 P. 433 (1915).

Where willful neglect to support minor children is an element of an offense under this section, it is proper for a court to instruct the jury on intent. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

Because this section provides that the willful neglect, failure or refusal to provide reasonable support for a minor child or children is an element of the offense, therefore intent is material in a case, and it is proper for a court to so instruct the jury. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

Every person mentally capable of knowing right from wrong in relation to his acts is presumed to intend to do that which he does do, and to intend the natural and probable consequences of his act, and it is for a jury to determine the fact as to a defendant's intent, which may be shown by direct or by circumstantial evidence. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

Intent is an act or a purpose of the mind rarely discoverable except by the acts of a person, and is manifested by the circumstances connected with the perpetration of an offense, and the sound mind and discretion of the accused. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

The people sustained their burden of establishing that defendant willfully failed to provide the required child support when they showed that for a period of time he earned more than $400 per month and yet made no support payments. Gallegos v. People, 161 Colo. 158, 420 P.2d 409 (1966).

A willful failure where the defendant is earning a salary has been defined, as intentionally done "without just cause, excuse or justification" after notice and request for support. Gallegos v. People, 161 Colo. 158, 420 P.2d 409 (1966).

That part of this section which states that a defendant is guilty of nonsupport when he willfully fails to provide that required support "unless it shall appear that owing to physical incapacity or other good cause he is unable to furnish the support, care, and maintenance herein required", is not a true exception. Gallegos

v. People, 161 Colo. 158, 420 P.2d 409 (1966).

This is so because of the use of the term "willfully" in the first part of the section, and the supreme court holds that the word "willfully" is synonymous with the statutory expression which begins "unless it shall appear" Gallegos v. People, 161 Colo. 158, 420 P.2d 409 (1966).

This renders the later clause surplusage since "willfully" necessarily implies lack of just cause, excuse or justification; thus, allegation of the willful (or felonious) nature of the act is all that is required. Gallegos v. People, 161 Colo. 158, 420 P.2d 409 (1966).

Good cause is defined as a substantial or legal cause as distinguished from an assumed or imaginary pretense. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

The question of good cause is properly for the jury. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957); Silcott v. People, 177 Colo. 451, 492 P.2d 70 (1971).

Evidence that a father is capable of earning, and did earn good wages during a period of four months, is sufficient to show that his neglect to support minor children is not due to good cause. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

The fact that a defendant has other demands upon his income, including support of a new family, does not constitute good cause for failure to support minor children. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

A father's testimony that he has been in financial straits since the separation from his wife is not an excuse or good cause. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

In a prosecution of a husband for failure to support his wife, he was not relieved from such support on account of the financial means of the wife. Poole v. People, 24 Colo. 510, 52 P. 1025 (1898).

It was immaterial that the wife had means of her own, such means not having been obtained from the husband. Poole v. People, 24 Colo. 510, 52 P. 1025 (1898).

If it had been established that the wife left the defendant without an adequate excuse, refused without reasonable grounds to return to him, and he offered and was willing to support her if she returned, he could not be convicted of willful nonsupport of his wife. Kilpatrick v. People, 64 Colo. 209, 170 P. 956 (1918).

The act of 1893, providing that any person living in this state who shall willfully neglect to provide support for his wife may be adjudged guilty of misdemeanor, did not affect the general powers of a court of equity to entertain suits to compel a husband to pay alimony consistent with his condition in life, and reasonable for the maintenance of his wife or his family or both. Dye v. Dye, 9 Colo. App. 320, 48 P. 313 (1897).

An allowance of temporary alimony to the wife in an action brought by her for divorce is not admissible evidence against the husband in a prosecution for nonsupport. Kilpatrick v. People, 64 Colo. 209, 170 P. 956 (1918).

One acquitted of sexual intercourse with an unmarried female under 18 years of age is not liable to prosecution under this section for failure to support the illegitimate child alleged to be the fruit of the same illicit intercourse averred in the first information. Reil v. People, 62 Colo. 567, 164 P. 315 (1917).

Under this section the father of an illegitimate child under 16 years of age may be prosecuted for his failure to support it, without any prior adjudication of the paternity and this whether the child were begotten before or after the enactment of the statute. Pearman v. People, 64 Colo. 26, 170 P. 192 (1917); Wamsley v. People, 64 Colo. 521, 173 P. 425 (1918).

Where, in a prosecution under this section, the child in question was not born in wedlock, the prosecution has the burden of showing parentage. Martin v. People, 60 Colo. 575, 155 P. 318 (1916).

The accused is entitled to deny that the child is his, and though a marriage with the mother is shown, he must be permitted to put in evidence that at the time of such marriage the woman was the wife of another, and to exclude the evidence is error. Martin v. People, 60 Colo. 575, 155 P. 318 (1916).

A decree of divorce which commits the child to the custody of the mother, and is silent as to the child's support, does not relieve the father of his duty. Desch v. Desch, 55 Colo. 79, 132 P. 60 (1913).

A divorced wife may, in an original action, recover of the father a reasonable sum for necessaries furnished by her for a child's support, after such decree, the recovery being commensurate with his means and station in life. Desch v. Desch, 55 Colo. 79, 132 P. 60 (1913).

III. PLEADING AND PRACTICE.

The word "feloniously" when used in an indictment or information has been held by the supreme court to be equivalent to the word "willfully", and its use satisfies the requirements of pleading the essential elements of the crime, though it is much better form to follow the precise statutory wording. Gallegos v. People, 161 Colo. 158, 420 P.2d 409 (1966).

Where an information filed with a justice of the peace on January 18, 1897, charging a party with failure to support his wife alleged the time of the offense as "on or about the 19th day of September, and continuously since, A. D. 1897", it was held, that from the language employed charging the time when the offense was committed, it is fairly inferable that it was at a date prior to the filing of the information, and although it might have been successfully attacked at the proper time, by a motion on account of form, or ambiguity, it is too late to raise that question after trial. Poole v. People, 24 Colo. 510, 52 P. 1025 (1898).

In a prosecution under this section for failure to support an illegitimate child, it is not necessary to prove that the child is in need of support. Trujillo v. People, 122 Colo. 436, 222 P.2d 775 (1950).

It was permissible to introduce into evidence the register of a hotel where the complainant testified she and defendant had stayed overnight, where the defendant

acknowledged signatures in the register as his own. Trujillo v. People, 122 Colo. 436, 222 P.2d 775 (1950).

The trial court's action in excluding a letter written by the complainant to defendant's witness was not prejudicial to the defendant where the effect of the whole letter was to entreat the witness to tell the truth, if he did testify. Trujillo v. People, 122 Colo. 436, 222 P.2d 775 (1950).

Where the complainant denied having had sex relations with anyone other than the defendant, and the defense put on four witnesses to testify to her alleged promiscuity, it was not error for the complainant to testify in rebuttal of the testimony of the four witnesses. Trujillo v. People, 122 Colo. 436, 222 P.2d 775 (1950).

In such a prosecution, the state must prove its case beyond a reasonable doubt, and it was not error for the trial court to refuse defendant's instruction which stated that the state had to prove its case simply by a preponderance of the evidence. Trujillo v. People, 122 Colo. 436, 222 P.2d 775 (1950).

It was permissible to allow the doctor who attended complainant during her confinement to refresh his memory from a birth certificate which he made at the time even though the certificate was obtained from the local registrar of vital statistics. Trujillo v. People, 122 Colo. 436, 222 P.2d 775 (1950).

Where there was judgment that defendant pay a certain sum monthly, etc., until the further order of the court, "and execute a bond in the sum, etc., for the faithful performance, etc., and upon failure, to be transported to the penitentiary to be there kept in close confinement at hard labor for three months", it was held a sufficient compliance with the statute. Poor v. People, 67 Colo. 60, 185 P. 467 (1919).

In a prosecution for willful failure to support minor children, evidence of a pending criminal case against a defendant, elicited on cross examination of defendant and within the scope of his direct examination, is not prejudicial. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

Failure of the father to inquire as to the needs of the child was held, in view of the circumstances, insufficient to convict him of willful neglect. Laws v. People, 59 Colo. 562, 151 P. 433 (1915).

14-6-102. Suspension of sentence. (Repealed)

Source: L. 11: p. 528, § 2. **C.L.** § 5567. **CSA:** C. 83, § 2. **CRS 53:** § 43-1-2. **C.R.S. 1963:** § 43-1-2. **L. 73:** p. 548, § 2. **L. 92:** Entire section repealed, p. 396, § 2, effective June 3.

14-6-103. Extradition.

It is the duty of the district attorney or other proper officer, in any such case where the defendant is beyond the state of Colorado, to take all necessary and proper steps and proceedings to extradite such defendant and to obtain a requisition from the governor of the state of Colorado to the governor of the state in which such defendant may be found in order to secure his return from such state to the jurisdiction in which the case is being prosecuted. Extradition under this article shall be governed in accordance with the provisions of article 19 of title 16, C.R.S.

Source: L. 11: p. 529, § 3. **C.L.** § 5568. **CSA:** C. 83, § 3. **CRS 53:** § 43-1-3. **C.R.S. 1963:** § 43-1-3. **L. 92:** Entire section amended, p. 397, § 3, effective June 3.

Cross references: For extradition procedures generally, see article 19 of title 16.

14-6-104. Jurisdiction.

Courts of record in this state shall have jurisdiction under this article as provided in this section, and a complaint or information for the violation of this article may be filed in any court of record by the prosecuting attorney or other appropriate agency or before the county court of the county in which such offense defined in section 14-6-101 is committed.

Source: L. 11: p. 529, § 4. **C.L.** § 5569. **CSA:** C. 83, § 4. **CRS 53:** § 43-1-4. **L. 61:** p. 352, § 1. **C.R.S. 1963:** § 43-1-4. **L. 64:** p. 246, § 115. **L. 92:** Entire section amended, p. 397, § 4, effective June 3.

ANNOTATION

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959).

The juvenile court is a court of record, and, under this section has jurisdiction of an information for the nonsupport of the wife of the accused. Smith v. People, 64 Colo. 290, 170 P. 959 (1918).

This section also confers jurisdiction on the county court in nonsupport cases. Tucker v. People, 136 Colo. 581, 319 P.2d 983 (1957).

14-6-105. Spouse competent witness.

In all proceedings or prosecutions under this article, a wife or husband shall be a competent witness against his spouse with or without his consent.

Source: L. 11: p. 530, § 5. **C.L.** § 5570. **CSA:** C. 83, § 5. **CRS 53:** § 43-1-5. **C.R.S. 1963:** § 43-1-5. **L. 73:** p. 548, § 3.

14-6-106. Venue.

If the offense charged is desertion or abandonment or neglect or refusal to provide such children or spouse with the necessary and proper home, care, food, and clothing, as provided in section 14-6-101, the offense shall be held to have been committed in any county of this state in which such children or spouse may be at the time such complaint is made.

Source: L. 11: p. 531, § 7. **C.L.** § 5571. **CSA:** C. 83, § 6. **CRS 53:** § 43-1-6. **C.R.S. 1963:** § 43-1-6. **L. 73:** p. 548, § 4.

14-6-107. Venue - home or school of child.

If the offense charged is the neglect or refusal to pay to the trustees of a child's home or school or the trustee who may be appointed by the court to receive such payment the reasonable cost of keeping such child, the offense shall be held to have been committed in the county where the child's home or school may be situated.

Source: L. 11: p. 531, § 8. **C.L.** § 5572. **CSA:** C. 83, § 7. **CRS 53:** § 43-1-7. **C.R.S. 1963:** § 43-1-7.

14-6-108. Citizenship - residence.

For all the purposes of this article 6, citizenship or residence once acquired in this state by any parent of a child living in this state continues until the child has arrived at the age of sixteen years, so long as the child continues to live in this state. In case of prosecution under this article 6 for the violation of any of the provisions of this article 6, such citizenship or residence likewise continues so long as the spouse or parent resides in this state and is entitled to the support or maintenance provided for in section 14-6-101.

Source: L. 11: p. 531, § 9. **C.L.** § 5573. **CSA:** C. 83, § 8. **CRS 53:** § 43-1-8. **C.R.S. 1963:** § 43-1-8. **L. 73:** p. 548, § 5. **L. 2018:** Entire section amended, (SB 18-095), ch. 96, p. 753, § 7, effective August 8.

Cross references: For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

ANNOTATION

Annotator's note. A case relevant to § 14-6-108 decided prior to its earliest source, L. 11, p. 531, § 9, has been included in the annotations to this section.

In a prosecution for the failure of a husband to support his wife, it is not necessary to allege in the information that the defendant is a resident of the state. Poole v. People, 24 Colo. 510, 52 P. 1025 (1898).

Nonresidents are excepted from the operation of this section, but it is not necessary to negate the exceptions because if the defendant was a nonresident, that was a matter of defense. Poole v. People, 24 Colo. 510, 52 P. 1025 (1898).

14-6-109. Forfeiture of bond - disposition of fines.

(1) In accordance with the laws of this state, bond shall be set by the court. Pursuant to subsection (2) of this section, where the defendant has been released upon deposit of cash, stocks, or bonds, or upon surety bond secured by property, if the defendant fails to appear in accordance with the primary condition of the bond, the court shall declare a forfeiture. Notice of the order of forfeiture shall be mailed immediately by the court to the defendant and sureties, if any, at last-known address. If the defendant does not appear and surrender to the court having jurisdiction within thirty days from the date of the forfeiture, or within that period satisfy the court that appearance and surrender by the defendant is impossible and without the defendant's fault, the court shall enter judgment against the defendant and the sureties, if any, for the amount of the bail and costs of the court proceedings.

(2) Any moneys collected or paid upon any such execution or in any case upon said bond shall be turned over to the clerk of the court in which the bond is given to be applied to the child support obligation, including where the obligation is assigned to the department of human services pursuant to section 26-2-111 (3), C.R.S.

Source: L. 11: p. 531, § 10. **C.L.** § 5574. **CSA:** C. 83, § 9. **CRS 53:** § 43-1-9. **C.R.S. 1963:** § 43-1-9. **L. 73:** p. 549, § 6. **L. 92:** Entire section amended, p. 398, § 5, effective June 3. **L. 94:** (2) amended, p. 2644, § 104, effective July 1. **L. 97:** (1) amended, p. 561, § 4, effective July 1; (2) amended, p. 1240, § 36, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (2), see section 1 of chapter 345, Session Laws of Colorado 1994.

14-6-110. Joint liability for family expenses.

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

Source: L. 1891: p. 238, § 1. **R.S. 08:** § 3021. **C.L.** § 5575. **CSA:** C. 83, § 10. **CRS 53:** § 43-1-10. **C.R.S. 1963:** § 43-1-10.

ANNOTATION

Law reviews. For comment on Wall v. Crawford, appearing below, see 11 Rocky Mt. L. Rev. 207 (1939). For article, "The Seller of One Mink Coat v. Pvt. Johnnie Doe", see 29 Dicta 148 (1952). For article, "One Year Review of Torts", see 38 Dicta 93 (1961). For comment on Nitzel v. Colorado Indus. Bank, appearing below, see 34 Rocky Mt. L. Rev. 240 (1962). For article, "The Big, Bad D's: Debts and Death in Divorce -- Part I", see 25 Colo. Law. 57, (July 1996).

This section has not the effect to relieve the father of the duty to support his minor child, so far as the child is incapable of self-support, even though, upon divorce, the child is committed to the mother, and the decree makes no provision for its support. Desch v. Desch, 55 Colo. 79, 132 P. 60 (1913).

This section was not given a retroactive effect so as to cover contracts made before its passage. Kelly v. Canon, 6 Colo. App. 465, 41 P. 833 (1895).

Where the wife lives apart from the husband, with the children, the liability of the husband for clothing furnished to the children without his authority, depends upon common-law principles, and this section regarding family expenses has no application. O'Brien v. Galley-Stockton Shoe Co., 65 Colo. 70, 173 P. 544 (1918).

The duties of the wife, as wife, form the consideration for the husband's liability for her maintenance, and if she is guilty of

offenses against the marital relation that entitles her husband to a divorce, and by reason thereof they do not live together, her contracts for necessaries will not bind the unoffending husband. Denver Dry Goods Co. v. Jester, 60 Colo. 290, 152 P. 903 (1915).

Where the parties were not living together as a family in fact, at the time the goods were sold, it is conceded that this section, relative to family expenses has no application. Denver Dry Goods Co. v. Jester, 60 Colo. 290, 152 P. 903 (1915).

Before this section can be invoked, a primary obligation upon either the husband or the wife, for the debt sought to be charged against them, must be established. Parker v. Joslin Dry Goods Co., 52 Colo. 238, 120 P. 1042 (1911).

In the absence of fraud between the husband and a family creditor, debts for family expenses, though contracted by the husband, bind the property of both husband and wife; agreements of the husband concerning such expenses are binding upon both; the cause of action accrues against both at the maturity of a note given for such expenses, not at the time the debt was contracted; renewal of the note by the husband alone does not discharge the lien; and the statute of limitations does not run in favor of either from the maturity of the first note, but of the new one. Wall v. Crawford, 103 Colo. 66, 82 P.2d 749 (1938).

A wife can be compelled to pay an indebtedness for something of which the family, or some one or more of its members, has had the actual benefit since it was incurred for family expenses. Straight v. McKay, 15 Colo. App. 60, 60 P. 1106 (1900).

Either husband or wife may incur indebtedness for the family expenses, and for such indebtedness either or both will be liable. Straight v. McKay, 15 Colo. App. 60, 60 P. 1106 (1900).

Outside of the expenses of the family and the education of the children, neither can impose an obligation upon the other. Straight v. McKay, 15 Colo. App. 60, 60 P. 1106 (1900).

What should be included in the term, "family expenses", must be determined by the facts and circumstances of each case, subject to the limitation, that an article or articles must have been purchased for, and used in or by, the family, or some member thereof. Houck v. La Junta Hdwe. Co., 50 Colo. 228, 114 P. 645 (1911).

A buggy purchased by the husband, while living with the wife, and which is used not only by the husband, but by the members of the family, while they are so living together, is a family expense for which the wife is liable. Houck v. La Junta Hdwe. Co., 50 Colo. 228, 114 P. 645 (1911).

Food and clothing are family expenses, and so are luxuries purchased for the use of the family, because such expenses are not confined to necessaries, but to be family expenses they must be for things received by the family, or some member of the family. Straight v. McKay, 15 Colo. App. 60, 60 P. 1106 (1900).

The expenses of procuring a team of horses used on the family farm is a family expense. Wall v. Crawford, 103 Colo. 66, 82 P.2d 749 (1938).

The rent of a house which the family does not occupy is not a family expense. Straight v. McKay, 15 Colo. App. 60, 60 P. 1106 (1900).

Applicability of family expense doctrine. Under the family expense doctrine, furniture which is used by and purchased for the family would be an obligation of the husband of the debtor even though he was not the contracting party, while personal property to be used by the debtor alone does not seem to be a family expense. In re Stanton-Rieger, 25 B.R. 650 (Bankr. D. Colo. 1982).

Goods sold to the husband on the sole credit of a third person are not a charge upon the family, though consumed in the family. Parker v. Joslin Dry Goods Co., 52 Colo. 238, 120 P. 1042 (1911).

Under this section the goods of the wife are chargeable with the lien equally with those of the husband. McDonnell v. Solomon, 64 Colo. 226, 170 P. 951 (1918).

Funeral expenses come within the purview of this section. Espinoza v. Gurule, 144 Colo. 381, 356 P.2d 891 (1960).

Where plaintiffs become obligated for funeral expenses of their deceased son under this section, such obligation being imposed upon them by the wrongful act of defendant, they are entitled to recover such expenses in an action at law. Espinoza v. Gurule, 144 Colo. 381, 356 P.2d 891 (1960).

The fact that petitioner may not be legally liable for his wife's necessities under this section has no application to the homestead provisions, their purpose, and effect. Haas v. De Laney, 165 F. Supp. 488 (D. Colo. 1958).

Where at the time of filing the homestead entry and at the time of bankruptcy, a bankrupt was the head of a family, he was therefore entitled to claim a homestead exemption even though his wife had been absent at the time of filing for more than four years, and no family existed so as to make the bankrupt liable for the wife's expenses under the provisions of this section. Haas v. De Laney, 165 F. Supp. 488 (D. Colo. 1958).

Where a counterclaim on the note as a holder in due course was limited by the provisions thereof, it could not be asserted as a claim against the husband as a family expense as there was no evidence in the record showing that the husband legally assumed or agreed to pay the indebtedness, and he could not be held liable. Nitzel v. Colo. Indus. Bank, 145 Colo. 215, 358 P.2d 31 (1960).

14-6-111. Legislative declaration.

It is hereby declared to be the policy of the state of Colorado that, in order to promote the life, health, property, and public welfare of this state, it is necessary to establish procedures to assist

in the collection of child support, maintenance where combined with child support, and maintenance.

Source: L. 61: p. 354, § 1. **CRS 53:** § 43-1-11. **C.R.S. 1963:** § 43-1-11. **L. 87:** Entire section amended, p. 593, § 16, effective July 10.

ANNOTATION

Law reviews. For article, "One Year Review of Domestic Relations", see 39 Dicta 102 (1962).

14-6-112. Procedures by clerk. (Repealed)

Source: L. 61: p. 354, § 2. **CRS 53:** § 43-1-12. **C.R.S. 1963:** § 43-1-12. **L. 72:** p. 558, § 14. **L. 92:** Entire section repealed, p. 399, § 6, effective June 3.

14-6-113. Remedies additional to those now existing.

The remedies provided in this article are in addition to and not in substitution for any other remedies.

Source: L. 61: p. 355, § 3. **CRS 53:** § 43-1-13. **C.R.S. 1963:** § 43-1-13.

ARTICLE 7

Parent and Child

14-7-101. Commitment of child - parent liable for support.
14-7-102. Action by state or county for support of child.
14-7-103. District and county attorneys to report actions.
14-7-104. Application of article.
14-7-105. Recovery for child support debt. (Repealed)

14-7-101. Commitment of child - parent liable for support.

The commitment of any child, under any law of this state, to any state institution shall not relieve the parents or legal guardian of such child from responsibility for the support of the child. It is the duty of any court committing any child to any state institution or any private institution where such child is kept at the expense of the county or state, at the time of the commitment, to forthwith notify the district attorney, if a state expense, and the county attorney, if a county expense, of the name and address of such parents and such other information as may be adduced at any hearing of such case concerning the financial responsibility of the parents to care for such child. In order to obtain such information, any court committing any child, at the time of commitment or at any convenient time to be designated by the court, is authorized to require the attendance of the parents or legal guardian upon such court to be examined under oath concerning the property, possessions, and financial responsibility of such parents or legal guardian.

Source: L. 05: p. 295, § 1. **R.S. 08:** § 4739. **C.L.** § 5587. **CSA:** C. 121, § 1. **CRS 53:** § 43-3-1. **C.R.S. 1963:** § 43-3-1.

ANNOTATION

The fathering of an illegitimate child in and of itself is not a "tortious act" in regard to the long arm statute. In re People, 30 Colo. App. 603, 498 P.2d 1166 (1972).

14-7-102. Action by state or county for support of child.

The state of Colorado or the county, as the case may be, at whose expense such child is kept shall be entitled to recover from the parent, legal guardian, or other person responsible for the support of such child such sum for the care, support, and maintenance of the child as may be reasonable therefor, and in no case shall such sum be less than the per capita monthly or yearly amount of expense in the institution in which the child is confined or the actual expense incurred by the state or county for the care and maintenance of such child. Any action or proceeding by the state or county against any parent shall be conducted in accordance with the procedure in civil cases. In case any action is maintained by the state, it shall be brought in the name of the people of the state of Colorado, and any moneys recovered in any action shall be paid to the state treasurer and credited to the particular fund for the benefit of the institution having the custody and care of such child. If an action is maintained by the county in cases where the county pays the expense of the care and maintenance of such child, such action shall be in the name of the

board of county commissioners of such county or other body performing the functions of a board of county commissioners, and any amount collected in any such action shall be paid to the county treasurer of such county. When such action is prosecuted to a final judgment and judgment is rendered in favor of the people of the state of Colorado or the board of county commissioners of the county prosecuting such action, as the case may be, an execution may issue against the property of the defendant as in other civil cases.

Source: L. 05: p. 295, § 2. **R.S. 08:** § 4740. **C.L.** § 5588. **CSA:** C. 121, § 2. **CRS 53:** § 43-3-2. **C.R.S. 1963:** § 43-3-2.

ANNOTATION

This section expressly commands complete parental reimbursement of the actual expense incurred by the county for the care and maintenance of the child, does not condition the parents' obligation on their financial ability to pay, and embodies a legislative policy that the parents shoulder the entire financial burden of the child's placement. M.S. v. People, 812 P.2d 632 (Colo. 1991).

The language of §§ 19-1-115 (4)(d) and 26-5-102 conflicts with this section since those sections speak in terms of the parents' ability to pay and this section imposes absolute liability without regard for the parents financial condition. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Sections 19-1-115 (4)(d) and 26-5-102 are specific provisions concerning dependency and neglect adjudications and, with regard to the parental support obligation, control over this section. M.S. v. People, 812 P.2d 632 (Colo. 1991).

Once child has been adjudicated dependent or neglected and placed pursuant to § 19-1-115, the responsibility to reimburse state for costs for residential care is governed by § 19-1-115 (4)(d), not this section. People ex rel. B.S.M., 251 P.3d 511 (Colo. App. 2010).

14-7-103. District and county attorneys to report actions.

On or before December 1 of each year, the district attorney and the county attorney shall make a written report to the judiciary committees of the house of representatives and the senate, or their successor committees, stating the number of reports, provided for in section 14-7-101, received from the courts of the county or state and the nature and result of any action directed in this article 7 by such officers respectively to recover from such parents the expenses of the care and maintenance of such children. If no action has been taken, such report shall detail the reason for the failure of the officer to take action. The county commissioners shall pay any court costs

or other expenses necessary for the prosecution of any suit provided for in this article 7. Nothing in this article 7 shall be construed to repeal any law of this state concerning the responsibility of parents to support their children, providing for the punishment of parents or other persons responsible for the delinquency or dependency of children, or providing for the punishment of any parents for the nonsupport of their children; and nothing in such law shall prevent proceedings under this article 7 in any proper case.

Source: L. 05: p. 296, § 3. **R.S. 08:** § 4741. **C.L.** § 5589. **CSA:** C. 121, § 3. **CRS 53:** § 43-3-3. **C.R.S. 1963:** § 43-3-3. **L. 2024:** Entire section amended, (SB 24-135), ch. 34, p. 106, § 3, effective March 22.

14-7-104. Application of article.

This article 7 does not apply to liability for the support of children admitted, certified, committed, or transferred to any public institution of this state supervised by the department of human services for the care, support, maintenance, education, or treatment of a person with a behavioral or mental health disorder or a person with an intellectual and developmental disability.

Source: L. 64: p. 492, § 4. **C.R.S. 1963:** § 43-3-5. **L. 94:** Entire section amended, p. 2644, § 105, effective July 1. **L. 2006:** Entire section amended, p. 1396, § 39, effective August 7. **L. 2017:** Entire section amended, (HB 17-1046), ch. 50, p. 157, § 6, effective March 16; entire section amended, (SB 17-242), ch. 263, p. 1294, § 112, effective May 25.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

14-7-105. Recovery for child support debt. (Repealed)

Source: L. 79: Entire section added, p. 638, § 3, effective June 7. **L. 81:** Entire section repealed, p. 910, § 4, effective June 8.

DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES

ARTICLE 10

Uniform Dissolution of Marriage Act

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legislative declaration - definitions.

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14-10-131.5. Joint custody modification - termination. (Repealed)

14-10-131.7. Designation of custody for the purpose of other state and federal statutes.

14-10-131.8. Construction of 1999 revisions.

14-10-132. Affidavit practice.

14-10-133. Effective date - applicability.

14-10-101. Short title.

This article shall be known and may be cited as the "Uniform Dissolution of Marriage Act".

Source: L. 71: R&RE, p. 520, § 1. **C.R.S. 1963:** § 46-1-1.

ANNOTATION

Law reviews. For note, "The Extraterritorial Validity of Colorado Divorces", see 7 Rocky Mt. L. Rev. 271 (1935). For article, "Divorce — Stalemate", see 16 Dicta 107 (1939). For article, "What Divorce Statutes Are Now in Effect in Colorado?", see 21 Dicta 68 (1944). For article, "Ten Years of Domestic Relations in Colorado — 1940-1950", see 27 Dicta 399 (1950). For article, "Workmen's Compensation, Attorneys and Family Law", see 31 Dicta 1 (1954). For article, "A Proposal for Some Modest Changes in Divorce and Annulment Laws", see 26 Rocky Mt. L. Rev. 221 (1954). For article, "Colorado's New Divorce Law", see 35 Dicta 219 (1958). For note, "The New Colorado Divorce Statute", see 31 Rocky Mt. L. Rev. 207 (1959). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Divorce Policy and Divorce Reform", see 42 U. Colo. L. Rev. 403 (1971). For article, "Effects of Reconciliation on Separation Agreements in Colorado", see 51 U. Colo. L. Rev. 399 (1980). For article, "Mediation of Contested Child Custody Disputes", see 11 Colo. Law. 336 (1982). For article, "Colorado: Now a Community Property State?", see 25 Colo. Law. 55 (May 1996). For article, "Blending Spousal Tort Claims and Colorado Divorce Actions", see 25 Colo. Law. 57 (May 1996).

Act applicable regardless of date marriage began. Regardless of the date the marriage began, if the dissolution of marriage occurs after the effective date of this article, the parties are subject to all provisions of the uniform act. In re Lester, 647 P.2d 688 (Colo. App. 1982).

14-10-102. Purposes - rules of construction.

(1) This article 10 must be liberally construed and applied to promote its underlying purposes.

(2) The underlying purposes of this article 10 are:

(a) To promote the amicable settlement of disputes that have arisen between parties to a marriage;

(b) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(c) To make the law of legal dissolution of marriage more effective for dealing with the realities of matrimonial experience by making an irretrievable breakdown of the marriage relationship the sole basis for its dissolution; and

(d) To provide safeguards for a parent with a disability, pursuant to the provisions of section 24-34-805.

Source: L. 71: R&RE, p. 520, § 1. **C.R.S. 1963:** § 46-1-2. **L. 2018:** Entire section amended, (HB 18-1104), ch. 164, p. 1133, § 2, effective April 25.

ANNOTATION

Every state as a sovereign has rightful and legitimate concern in marital status of those persons who are domiciled within the state. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

Marriage is favored over less formalized relationships. The state of Colorado has an interest in marriage, and marriage is favored over less formalized relationships which exist without the benefit of marriage. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Temporary support orders further purpose of article to mitigate potential harm to spouses and their children caused by the process of legal dissolution of marriage by maintaining status quo pending final disposition of dissolution proceeding. In re Price, 727 P.2d 1073 (Colo. 1986).

Joinder of interspousal tort claims with marriage dissolution proceedings precluded. Marriage dissolution action cannot be joined with an interspousal claim sounding in tort since this section encourages the amicable settlement of disputes between parties to a marriage. Simmons v. Simmons, 773 P.2d 602 (Colo. App. 1988); In re Lewis, 66 P.3d 204 (Colo. App. 2003).

Dissolution court lacks jurisdiction to determine whether a parent should be removed as custodian of a Uniform Gift to Minors Act account. This issue may be considered instead by a district court that obtains jurisdiction over the account in a separate civil proceeding. In re Ludwig, 122 P.3d 1056 (Colo. App. 2005).

This act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations, and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

The public policies to be furthered under this act include dividing of assets equitably and mitigating the harm to spouses and children. These policies take precedence over any contract arguments that may be raised by either spouse. Thus, the trial court was correct in refusing husband's indemnification argument and in interpreting the divorce decree as requiring the husband to compensate the wife for the fair market value of business property apportioned to her in the equitable distribution. In re Plesich, 881 P.2d 379 (Colo. App. 1994).

14-10-103. Definitions and interpretations of terms.

(1) As used in this article, unless the context otherwise requires, the term "decree" includes the term "judgment"; and, for the purposes of the tax laws of the state of Colorado or of any other jurisdiction, the term "maintenance" includes the term "alimony".

(1.5) As used in this article 10, unless the context otherwise requires:

(a) "Coercive control" means a pattern of threatening, humiliating, or intimidating actions, including assaults or other abuse, that is used to harm, punish, or frighten an individual. "Coercive control" includes a pattern of behavior that takes away the individual's liberty or freedom and strips away the individual's sense of self, including the individual's bodily integrity and human rights. "Coercive control" includes isolating the individual from support, exploiting the individual, depriving the individual of independence, and regulating the individual's everyday behavior. "Coercive control" includes, but is not limited to, any of the following:

(I) Isolating the individual from friends and family;

(II) Monitoring, surveilling, regulating, or controlling the individual's, or the individual's child's or relative's, finances, economic resources, or access to services;

(III) Monitoring, surveilling, regulating, or controlling the individual's, or the individual's child's or relative's, activities, communications, or movements, including through technology;

(IV) Name-calling, degrading, or demeaning the individual, or the individual's child or relative, on a frequent basis;

(V) Threatening to harm or kill the individual, or the individual's child or relative, including wearing, accessing, displaying, using, or cleaning a weapon in an intimidating or threatening manner;

(VI) Threatening to commit suicide or otherwise harm one's own person when used as a method of coercion, control, punishment, intimidation, or retaliation against the person;

(VII) Threatening to harm or kill an animal with which the individual, or the individual's child or relative, has an emotional bond;

(VIII) Threatening to publish the individual's, or the individual's child's or relative's, sensitive personal information, including sexually explicit material, or make reports to the police or authorities;

(IX) Damaging the individual's, or the individual's child's or relative's, property or household goods;

(X) Threatening the individual, or the individual's child or relative, with deportation or contacting authorities based on perceived or actual immigration status, withholding essential

documents required for immigration, or threatening to withdraw or interfere with an active immigration application or process; or

(XI) Forcing the individual, or the individual's child or relative, to take part in criminal activities or child abuse.

(b) (I) "Domestic violence" means one of the following committed by a party, whether or not the conduct constitutes a criminal offense:

(A) An act or threatened act of physical assault or bodily harm against the other parent or a family or household member, including a child;

(B) An act or threatened act of damage to property belonging to the other parent or a family or household member, including a child;

(C) An act or threatened act of physical assault or bodily harm against an animal belonging to the other parent or a family or household member, including a child;

(D) Stalking;

(E) Sexual assault;

(F) Coercive control;

(G) Economic abuse; or

(H) Human trafficking.

(II) "Domestic violence" does not mean behaviors that are used by a parent to protect themself; a family or household member, including a child; or property, including an animal, from the harm or risk of harm presented by the other parent.

(c) "Economic abuse" means a behavior that is coercive, deceptive, or manipulative, or that restrains, sabotages, or unreasonably controls a person's ability to acquire, use, or maintain economic resources that the person is entitled to, including using coercion, threat of harm, force, fraud, or manipulation to:

(I) Restrict a person's access to money, assets, credit, or financial information;

(II) Steal or unfairly use a person's economic resources, including money, assets, or credit;

(III) Use a person's credit or property without authorization;

(IV) Prevent a person from leaving the person's residence to attend school or employment;

(V) Exploit the person's resources for personal gain;

(VI) Withhold individual resources from a person, such as food, clothing, necessary medications, or shelter;

(VII) Cause or attempt to cause a person to be financially dependent by maintaining control over the person's financial resources; or

(VIII) Exert undue influence over a person's financial behavior or decisions, including forcing default on joint or other financial obligations; exploiting powers of attorney, guardianship, or conservatorship; or threatening to expose a person's suspected citizenship or immigration status or the suspected citizenship or immigration status of a person's family member to a federal, state, or local agency.

(c.4) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both parents of the same child, regardless of whether the persons have been married or have lived together at any time.

(c.6) "Sexual assault" has the meaning set forth in section 19-1-103.

(d) "Unlawful sexual behavior" has the same meaning as set forth in section 16-22-102.

(2) Whenever any law of this state refers to or mentions divorce, annulment, or separate maintenance, said law shall be interpreted as if the words dissolution of marriage, declaration of invalidity of marriage, and legal separation, respectively, were substituted therefor.

(3) On and after July 1, 1993, the term "visitation" has been changed to "parenting time". It is not the intent of the general assembly to modify or change the meaning of the term "visitation" nor to alter the legal rights of a parent with respect to the child as a result of changing the term "visitation" to "parenting time".

(4) On and after February 1, 1999, the term "custody" and related terms such as "custodial" and "custodian" have been changed to "parental responsibilities". It is not the intent of the general assembly to modify or change the meaning of the term "custody" nor to alter the legal rights of any custodial parent with respect to the child as a result of changing the term "custody" to "parental responsibilities".

(5) As used in this article 10, unless the context otherwise requires, for purposes of proceedings for allocation of parental responsibilities pursuant to section 14-10-123 (1.5) only, the term "child" means an unmarried individual who has not attained twenty-one years of age.

Source: L. 71: R&RE, p. 520, § 1. **C.R.S. 1963:** § 46-1-4. **L. 72:** p. 595, § 73. **L. 73:** p. 552, § 1. **L. 93:** (3) added, p. 576, § 5, effective July 1. **L. 98:** (3) amended and (4) added, p. 1376, § 1, effective February 1, 1999. **L. 2019:** (5) added, (HB 19-1042), ch. 55, p. 193, § 4, effective March 28. **L. 2025:** (1.5) added, (SB 25-116), ch. 212, p. 960, § 2, effective August 6. **L. 2026:** (1.5)(a) and (1.5)(b) amended and (1.5)(c.4) and (1.5)(c.6) added, (HB 26-1309), ch. 163, p. 973, § 2, effective May 27.

Cross references: For the legislative declaration contained in the 1993 act enacting subsection (3), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration in SB 25-116, see section 1 of chapter 212, Session Laws of Colorado 2025. For the legislative declaration in HB 26-1309, see section 1 of chapter 163, Session Laws of Colorado 2026.

14-10-104. Uniformity of application and construction.

(1) This article shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact it.

(2) The term "irretrievable breakdown" shall be construed as being similar to other terms having a like import in the law of other jurisdictions adopting this or a similar law.

Source: L. 71: R&RE, p. 520, § 1. **C.R.S. 1963:** § 46-1-3.

ANNOTATION

Applied in In re Parsons, 30 P.3d 868 (Colo. App. 2001). But see In re Cerrone, 2021 COA 116, 499 P.3d 1064.

14-10-104.5. Legislative declaration.

The general assembly recognizes that it is in the best interests of the parties to a marriage in which a dissolution has been granted and in which there are children of the marriage for the parties to be able to resolve disputes that arise subsequent to the dissolution in an amicable and fair manner. The general assembly further recognizes that, in most cases, it is in the best interests of the children of the marriage to have a relationship with both parents, including a parent with a disability, and that, in most cases, it is the parents' right to have a relationship with their children. The general assembly emphasizes that one of the underlying purposes of this article 10 is to mitigate the potential harm to the spouses and their children and the relationships between the parents and their children caused by the process of legal dissolution of marriage. The general assembly recognizes that when a marriage in which children are involved is dissolved, both parties either agree to or are subject to orders that contain certain obligations and commitments. The general assembly declares that the honoring and enforcing of those obligations and commitments made by both parties are necessary to maintaining a relationship that is in the best interest of the children of the marriage. Therefore, the general assembly declares that both parties

should honor and fulfill all of the obligations and commitments made between the parties and ordered by the court.

Source: L. 88: Entire section added, p. 633, § 8, effective July 1. **L. 98:** Entire section amended, p. 1376, § 2, effective February 1, 1999. **L. 2018:** Entire section amended, (HB 18-1104), ch. 164, p. 1134, § 3, effective April 25.

ANNOTATION

The state has a public interest in mitigating the potential harm to children caused by the dissolution of marriage. Thus, a parent has no privacy interest in the process by which child support obligations are determined because support levels are not purely private determinations but serve a public function and are subject to court approval. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

Furthermore, the child support guidelines do not infringe upon a fundamental right. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

Nor do the child support guidelines discriminate against a suspect class or significantly interfere with a fundamental right. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

The state has a legitimate interest in requiring divorced or separated parents to provide child support based on the parties' combined gross incomes. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

Intent of act requires enforcement of child support agreement even though it does not specify a dollar amount. To allow otherwise would be to allow father to unilaterally terminate child support obligation without first obtaining an order of modification. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

14-10-105. Application of Colorado rules of civil procedure.

(1) The Colorado rules of civil procedure apply to all proceedings under this article, except as otherwise specifically provided in this article.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of ..... and .....". A proceeding for the allocation of parental responsibilities or a support proceeding shall be entitled "In re the (Parental responsibilities concerning) (Support of) .....".

(2.5) A proceeding for dissolution of a civil union, legal separation, or declaration of invalidity of a civil union shall be entitled "In re the Civil Union of ..... and .....".

(3) The initial pleading in all proceedings under this article shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings and all pleadings in other matters under this article shall be denominated as provided in the Colorado rules of civil procedure.

Source: L. 71: R&RE, p. 521, § 1. **C.R.S. 1963:** § 46-1-5. **L. 98:** (2) amended, p. 1395, § 33, effective February 1, 1999. **L. 2013:** (2.5) added, (SB 13-011), ch. 49, p. 163, § 13, effective May 1.

ANNOTATION

Annotator's note. Since § 14-10-105 is similar to repealed § 46-1-2, C.R.S. 1963, and CSA, C. 56, § 3, relevant cases construing those provisions have been included in the annotations to this section.

The rules of civil procedure, where the divorce statutes are silent as to any method of procedure, govern. Myers v. Myers, 110 Colo. 412, 135 P.2d 235 (1943); Holman v. Holman, 114 Colo. 437, 165 P.2d 1015 (1946).

The rules of civil procedure apply to a divorce action, unless a contrary rule appears in the divorce statutes. Bacher v. District Court, 186 Colo. 314, 527 P.2d 56 (1974).

Service of notice in proceedings under this article is governed by the rules of civil procedure. In re Henne, 620 P.2d 62 (Colo. App. 1980).

On the question of venue in divorce actions, C.R.C.P. 98(c) is controlling, notwithstanding this article concerning divorce actions and kindred matters. People ex rel. Stanko v. Routt County Court, 110 Colo. 428, 135 P.2d 232 (1943); Brownell v. District Court ex rel. County of Larimer, 670 P.2d 762 (Colo. 1983).

For the purpose of the venue requirements in C.R.C.P. 98, the petitioner and respondent in a dissolution of marriage proceeding are the equivalent of a plaintiff and defendant, respectively. Brownell v. District Court ex rel. County of Larimer, 670 P.2d 762 (Colo. 1983).

There is no specific venue statute which would override the rules of civil procedure. Bacher v. District Court, 186 Colo. 314, 527 P.2d 56 (1974).

The rules of procedure do not govern procedure and practice in actions in divorce where they may conflict with the procedure and practice provided by the applicable statutes. Moats v. Moats, 168 Colo. 120, 450 P.2d 64 (1969).

There is no exception in this section which dispenses with the necessity of filing a motion for a new trial, or which permits the court in the exercise of its discretion to dispense with such a motion. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Order under C.R.C.P. 54(b) authorized. This section, providing that the Colorado rules of civil procedure apply to dissolution proceedings except as "otherwise specifically provided in the act", and § 14-10-120, providing that a decree of dissolution of marriage is "final" when entered, subject to the right of appeal, authorize the trial court to enter an order pursuant to C.R.C.P. 54(b) making the decree final for purposes of appeal. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Appealability of decree on entry of such order. Upon the entry of an order under C.R.C.P. 54(b) a decree of dissolution of marriage may be appealed prior to entry of permanent orders on the issues of child custody, support, and division of property. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Applied in Hubbard v. District Court, 192 Colo. 98, 556 P.2d 478 (1976); Menne v. Menne, 194 Colo. 304, 572 P.2d 472 (1977); In re Femmer, 39 Colo. App. 277, 568 P.2d 81 (1977); In re Gallegos, 41 Colo. App. 116, 580 P.2d 838 (1978); M & G Engines v. Mroch, 631 P.2d 1177 (Colo. App. 1981); In re Boyd, 643 P.2d 804 (Colo. App. 1982).

14-10-106. Dissolution of marriage - legal separation.

(1) (a) The district court shall enter a decree of dissolution of marriage or a decree of legal separation when:

(I) The court finds that one of the parties has been domiciled in this state for ninety-one days next preceding the commencement of the proceeding;

(II) The court finds that the marriage is irretrievably broken; and

(III) The court finds that ninety-one days or more have elapsed since it acquired jurisdiction over the respondent either as the result of process pursuant to rule 4 of the Colorado rules of civil procedure or as the result of the act of the respondent in joining as copetitioner in the petition or in entering an appearance in any other manner.

(b) In connection with every decree of dissolution of marriage or decree of legal separation and to the extent of its jurisdiction to do so, the court shall consider, approve, or allocate parental responsibilities with respect to any child of the marriage, the support of any child of the marriage who is entitled to support, the maintenance of either spouse, and the disposition of property; but the entry of a decree with respect to parental responsibilities, support, maintenance, or disposition of property may be deferred by the court until after the entry of the decree of dissolution of marriage or the decree of legal separation upon a finding that a deferral is in the best interests of the parties.

(c) In a proceeding to dissolve a marriage or in a proceeding for legal separation or in a proceeding for declaration of invalidity, the court is deemed to have made an adjudication of the

parentage of a child of the marriage if the court acts under circumstances that satisfy the jurisdictional requirements of section 14-5-201 and the final order:

(I) Expressly identifies a child as a "child of the marriage", "issue of the marriage", or similar words indicating that the husband is the father of the child; or

(II) Provides for support of the child by the husband unless paternity is specifically disclaimed in the order.

(d) Paternity is not adjudicated for a child not mentioned in the final order.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

Source: L. 71: R&RE, p. 521, § 1. **C.R.S. 1963:** § 46-1-6. **L. 73:** p. 552, § 2. **L. 77:** (1)(a)(I) and (1)(a)(II) amended and (1)(a)(III) added, p. 823, § 1, effective June 1. **L. 98:** (1)(b) amended, p. 1395, § 34, effective February 1, 1999. **L. 2003:** (1)(c) and (1)(d) added, p. 1264, § 50, effective July 1. **L. 2012:** IP(1)(a) and (1)(b) amended, (HB12-1233), ch. 52, p. 187, § 1, effective July 1; (1)(a)(I) and (1)(a)(III) amended, (SB 12-175), ch. 208, p. 830, § 24, effective July 1.

ANNOTATION

I. General Consideration.

II. Domicile or Residency Required.

III. District Court's Jurisdiction.

I. GENERAL CONSIDERATION.

Law reviews. For article on residence of plaintiff in divorce action, see 25 Dicta 110 (1948). For article, "Ten Years of Domestic Relations in Colorado — 1940-1950", see 27 Dicta 399 (1950). For comment on People v. District Court, appearing below, see 31 Dicta 118 (1954). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 21 (1960). For article, "One Year Review of Domestic Relations", see 37 Dicta 55 (1960). For article, "One Year Review of Domestic Relations", see 40 Den. L. Ctr. J. 115 (1963). For article, "Child Support Obligations After Death of the Supporting Parent", see 16 Colo. Law. 790 (1987). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017).

Annotator's note. Since § 14-10-106 is similar to repealed §§ 46-1-2 and 46-1-3, C.R.S. 1963, §§ 46-1-2 and 46-1-3, CRS 53, CSA, C. 56, §§ 6 and 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

An action for divorce is of a purely personal nature. Morris v. Propst, 98 Colo. 213, 55 P.2d 944 (1936); Wood v. Parkerson, 163 Colo. 271, 430 P.2d 467 (1967).

The power of the court in such an action to issue decrees relative to alimony, to exonerate the wife's estate from the husband's claims, and to make orders relative to the care and custody of the children is merely incidental to the primary object of changing the status or relation of the parties to each other. Wood v. Parkerson, 163 Colo. 271, 430 P.2d 467 (1967).

Such actions, in the absence of a statute providing to the contrary, abate absolutely upon the death of either party before judgment, and cannot be revived in the name of or against the representatives of the deceased party. Wood v. Parkerson, 163 Colo. 271, 430 P.2d 467 (1967).

Masters should not be appointed as a routine matter in divorce cases where the issues are not complex and the facts are not complicated. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

The trial court may, for good cause shown, allow an extension of time within which to file an answer in a divorce action, even though the original time within which to file has expired. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

Not abuse to refuse continuance when party could not appear. It is not an abuse of discretion for the court to refuse to grant a continuance at a hearing as to the question of dissolution of the marriage, where the wife could not appear at the hearing. In re Lester, 647 P.2d 688 (Colo. App. 1982).

Deferring property division. A specific finding that it is in the best interest of the parties to defer the property division is required to prevent unwarranted delays in dividing property in dissolution of marriage cases. That purpose is complied with when the parties are given time limits within which to submit their proposals for the property division. In re Rose, 40 Colo. App. 176, 574 P.2d 112 (1977).

II. DOMICILE OR RESIDENCY REQUIRED.

Domicile is keystone for jurisdiction to determine the marital status, and domicile of one of the parties to the divorce action is required. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

Jurisdiction cannot be conferred by consent; lack of residence cannot be waived. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957); McMillion v. McMillion, 31 Colo. 33, 497 P.2d 331 (1972).

Actual bona fide residence is essential and must be established with some degree of certainty. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

Unless the residence required by this section is in some manner shown, the court is without jurisdiction. People ex rel. Plunkett v. District Court, 127 Colo. 483, 258 P.2d 483 (1953).

When bona fide residence in a county is not established, the court is under a mandatory duty to refuse to hear or grant any motions whatever in an action, and its dismissal must follow. People ex rel. Plunkett v. District Court, 127 Colo. 483, 258 P.2d 483 (1953).

Under statutes pertaining to jurisdiction in divorce proceedings, the

word "residence" is synonymous with the legal meaning of the word "domicile", and a person's domicile, once established, continues until he acquires legal residence or domicile elsewhere. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

Residence requires domicile. Residence for the purposes of divorce jurisdiction has always required and continues to require domicile. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

Where husband's residency was established by an earlier proceeding as being in Colorado, that determination is res judicata and creates a presumption that he is still a resident, absent a showing that a new residency has been established. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

Where jurisdictional facts are admitted in pleadings, decree is not void for failing to recite them. Jones v. Jones, 71 Colo. 420, 207 P. 596 (1922).

Failure to allege 90-day residence immediately prior to proceeding is not fatal. Section 14-10-107 does not require that a petition for dissolution of marriage contain an allegation that the residency period includes the 90 days immediately prior to the commencement of the proceeding, and petitioner's failure to make her allegation in the words of this section was not a fatal defect. In re Alper, 33 Colo. App. 225, 517 P.2d 404 (1973).

Purpose of residency requirements was to prevent nonresidents from establishing temporary residence to obtain divorce. Cairnes v. Cairnes, 29 Colo. 260, 68 P. 233 (1902); Sedgwick v. Sedgwick, 50 Colo. 164, 114 P. 488 (1911).

An alien who made this state his home, in good faith, and had no residence elsewhere, was a citizen within the meaning of the former statute. Sedgwick v. Sedgwick, 50 Colo. 164, 114 P. 488 (1911).

Where no witness testified to plaintiff's residence, in answer to any direct question, but in effect it appeared that he had resided here for many years prior to the institution of his action, it was held a compliance with the statute. Sedgwick v. Sedgwick, 50 Colo. 164, 114 P. 488 (1911).

Where plaintiff alleged and proved more than a year's residence in Colorado before the commencement of the action, but defendant at the time of filing his cross complaint had resided in Colorado less than one year, the allegations of plaintiff's complaint vested the court with jurisdiction of plaintiff and the subject matter. Harms v. Harms, 120 Colo. 212, 209 P.2d 552 (1949).

Where prior to the trial plaintiff had registered to vote in Colorado, his automobile was registered in Colorado, he had a Colorado driver's license, and for several months prior to trial he has been engaged in part-time civilian employment in Colorado Springs in a field in which he intended to continue on his retirement, and plaintiff had for four years been present in Colorado in military service, the foregoing facts formed a sound basis for the finding of the trial judge that the court had jurisdiction based on residence. Mulhollen v. Mulhollen, 145 Colo. 479, 358 P.2d 887 (1961).

Mere presence in state as member of armed forces insufficient to confer jurisdiction but after 90 days domicile may be established. A serviceman may establish a Colorado domicile to support jurisdiction for a Colorado court to grant a decree of dissolution of marriage after he has been stationed in Colorado for 90 days. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

III. DISTRICT COURT'S JURISDICTION.

The district courts are invested by the statute with jurisdiction in this class of actions. Pleyte v. Pleyte, 1 Colo. App. 70, 28 P. 23 (1891).

Only a final decree of divorce in a foreign state constitutes a bar to a divorce action in Colorado. In re Quay, 647 P.2d 693 (Colo. App. 1982).

Formerly, where a complaint alleged that the parties were residents of the state of Colorado, and that defendant had been guilty of acts of mental cruelty committed within the state of Colorado, and prayed for divorce alleging sufficient facts to give the court jurisdiction. Raygor v. Raygor, 29 Colo. App. 453, 485 P.2d 930 (1971).

Service by publication insufficient for jurisdiction in custody issue. Service by publication pursuant to the uniform act is not sufficient to vest a trial court with jurisdiction to resolve a custody issue. In re Blair, 42 Colo. App. 270, 592 P.2d 1354 (1979).

A trial court which in fact lacks jurisdiction over the subject matter cannot acquire jurisdiction even though the parties expressly or impliedly consent thereto. Triebelhorn v. Turzanski, 149 Colo. 558, 370 P.2d 757 (1962).

The jurisdiction of the district court of Adams county, arising from the filing and disposition of the divorce action would not preclude the district court of the city and county of Denver from proceeding pursuant to the reciprocal support act when the mother and children had moved to Nevada. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

A district court is without jurisdiction to hear a divorce action involving two members of a reservation Indian tribe. Whyte v. District Court, 140 Colo. 334, 346 P.2d 1012 (1959) (1960).

The court acquires jurisdiction over the parties when the initial petition is served on respondent, even when the initial pleading is a petition for invalidity rather than a petition for dissolution. In re Carey, 2026 COA 3, 586 P.3d 725.

Where the trial court had jurisdiction to divide property at the time of entry of a final decree of divorce, but did not do so, nor then reserve the matter for further consideration, it lost jurisdiction to thereafter make a valid division of such property. Triebelhorn v. Turzanski, 149 Colo. 558, 370 P.2d 757 (1962); Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

Trial court, which had personal jurisdiction over husband but lacked the authority to divide the husband's military pension as marital property, did not retain jurisdiction to divide the pension at

a later date. Even though final decree provided that trial court had continuing jurisdiction over the action and that the wife would remain entitled to any and all military benefits, the court did not have the authority to divide military pension as a result of subsequent case law declaring such pensions to be marital property. Language in final decree refers only to the court's continuing authority to divide property as such court had on the date of the final decree. In Re Booker, 833 P.2d 734 (Colo. 1992).

Federal act specifying whether the court has jurisdiction over a military member's pension preempts state rules of procedure governing jurisdiction. In Re Booker, 833 P.2d 734 (Colo. 1992).

Jurisdiction retained until all matters resolved. A district court which properly acquires jurisdiction of the parties and subject matter in a dissolution action retains that jurisdiction until all matters arising out of the litigation are resolved. Gonzales v. District Court, 629 P.2d 1074 (Colo. 1981).

Jurisdiction does not extend to resolution of all financial issues. Jurisdiction to grant a divorce does not automatically include the right to resolve all financial issues between the parties to the marriage. Viernes v. District Court, 181 Colo. 284, 509 P.2d 306 (1973).

The dissolution court has jurisdiction to grant relief but only in equity and not at law. Tort claims concerning property that was the subject of the dissolution court may not be joined into an otherwise equitable dissolution proceeding. In re Mockelmann, 121 P.3d 335 (Colo. App. 2005).

Where it appears from a record and from the conduct of counsel that the parties agreed that a court would defer determination of permanent alimony, property settlement, and related matters until after the entry of a final decree. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

Although, resumption of marital relations by the parties to a divorce action affords good grounds for a dismissal thereof, it does not serve to divest the court of jurisdiction. Stockham v. Stockham, 145 Colo. 376, 358 P.2d 1026 (1961).

Husband's motion to abate and reduce child support amounted to consent to the court's personal jurisdiction. In Re Booker, 833 P.2d 734 (Colo. 1992).

Purported father found to have transacted business in state. Purported father's sending of letter agreeing to pay support that father knew would be relied upon by Colorado authorities for purpose of determining eligibility for public assistance constituted transacting business in this state conferring personal jurisdiction over him pursuant to § 13-1-124. In re Parental Responsibilities of H.Z.G., 77 P.3d 848 (Colo. App. 2003).

Decree of dissolution entered after a spouse's death is void for lack of jurisdiction, and the dissolution action is abated. In Re Connell, 870 P.2d 632 (Colo. App. 1994).

This section mandates that bifurcation of dissolution proceedings may occur only if the district court finds that "such a deferral is necessary in the best interest of the parties" and should only be considered in

exceptional cases. Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

A decree of dissolution when entered by the district court is final to dissolve the marriage even when the district court refuses to certify the decree as a final judgment appealable under C.R.C.P. 54 (b). Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

14-10-106.5. Dissolution of civil unions - legal separation - jurisdiction - applicability of article and case law.

(1) Any person who enters into a civil union in Colorado pursuant to article 15 of this title consents to the jurisdiction of the courts of Colorado for the purpose of any action relating to a civil union even if one or both parties cease to reside in this state. In a matter seeking a dissolution, legal separation, or declaration of invalidity of a civil union, the court shall follow the procedures that are set forth in this article for dissolution, legal separation, or declaration of invalidity. The provisions of this article and any case law construing this article apply to the dissolution, legal separation, or declaration of invalidity of a civil union.

(2) The court shall follow the laws of Colorado in a matter filed in Colorado that is seeking a dissolution, legal separation, or invalidity of a civil union that was entered into in another jurisdiction.

Source: L. 2013: Entire section added, (SB 13-011), ch. 49, p. 163, § 14, effective May 1.

ANNOTATION

Law reviews. For article, "Maintenance Revisited The New Act", see 42 Colo. Law. 69 (Nov. 2013).

14-10-107. Commencement - pleadings - abolition of existing defenses - automatic, temporary injunction - enforcement.

(1) All proceedings under this article shall be commenced in the manner provided by the Colorado rules of civil procedure.

(2) The petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) The residence of each party and the length of residence in this state;

(b) The date and place of the marriage;

(c) The date on which the parties separated;

(d) The names, ages, and addresses of any living children of the marriage and whether the wife is pregnant;

(e) Any arrangements as to the allocation of parental responsibilities with respect to the children of the marriage and support of the children and the maintenance of a spouse;

(f) The relief sought; and

(g) A written acknowledgment by the petitioner and the co-petitioner, if any, that he or she has received a copy of, has read, and understands the terms of the automatic temporary injunction required by paragraph (b) of subsection (4) of this section.

(2.5) Upon the filing of a petition for dissolution of marriage or legal separation pursuant to this article, each party shall provide to the court, in the manner prescribed by the court, his or her social security number and the social security number of each child named in the petition pursuant to paragraph (d) of subsection (2) of this section.

(3) Either or both parties to the marriage may initiate the proceeding. In addition, a legal guardian, with court approval pursuant to section 15-14-315.5, C.R.S., or a conservator, with court approval pursuant to section 15-14-425.5, C.R.S., may initiate the proceeding. If a legal guardian or conservator initiates the proceeding, the legal guardian or conservator shall receive notice in the same manner as the parties to the proceeding.

(4) (a) Upon the commencement of a proceeding by one of the parties, or by a legal guardian or conservator of one of the parties, the other party shall be personally served in the manner provided by the Colorado rules of civil procedure, and he or she may file a response in accordance with such rules; except that, upon motion verified by the oath of the party commencing the proceeding or of someone in his or her behalf for an order of publication stating the facts authorizing such service, and showing the efforts, if any, that have been made to obtain personal service within this state, and giving the address or last-known address of each person to be served or stating that his or her address and last-known address are unknown, the court shall hear the motion ex parte and, if satisfied that due diligence has been used to obtain personal service within this state or that efforts to obtain the same would have been to no avail, shall order one publication of a consolidated notice in a newspaper published or having general circulation in the county in which the proceeding is filed, notwithstanding the provisions of article 70 of title 24. A consolidated notice shall be published at least once during a calendar month and shall list the proceedings filed subsequent to those named in the previously published consolidated notice, stating as to each proceeding the names of the parties, the action number, the nature of the action, that a copy of the petition and summons may be obtained from the clerk of the court during regular business hours, and that default judgment may be entered against that party upon whom

service is made by such notice if he or she fails to appear or file a response within thirty-five days after the date of publication. Costs of publication of a consolidated notice may be assessed pro rata to each of the proceedings named in the notice; except that, if a party is indigent or otherwise unable to pay such publication costs, the costs shall be paid by the court from funds appropriated for the purpose. Service shall be complete upon such publication, and a response or appearance by the party served by publication under this subsection (4) shall be made within thirty-five days thereafter, or default judgment may be entered. No later than the day of publication, the clerk of the court shall also post for thirty-five consecutive days a copy of the process on a bulletin board in his or her office or on the website of the district court in which the case was filed and shall mail a copy of the process to the other party at his or her last-known address, and shall place in the file of the proceeding his or her certificate of posting and mailing. Proof of publication of the consolidated notice shall be by placing in the file a copy of the affidavit of publication, certified by the clerk of the court to be a true and correct copy of the original affidavit on file in the clerk's office.

(b) (I) Upon the filing of a petition for dissolution of marriage or legal separation by the petitioner or copetitioner or by a legal guardian or conservator on behalf of one of the parties and upon personal service of the petition and summons on the respondent or upon waiver and acceptance of service by the respondent, a temporary injunction shall be in effect against both parties until the final decree is entered or the petition is dismissed or until further order of the court:

(A) Restraining both parties from transferring, encumbering, concealing, or in any way disposing of, without the consent of the other party or an order of the court, any marital property, except in the usual course of business or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the injunction is in effect;

(B) Enjoining both parties from molesting or disturbing the peace of the other party;

(C) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the consent of the other party or an order of the court; and

(D) Restraining both parties, without at least fourteen days' advance notification and the written consent of the other party or an order of the court, from canceling, modifying, terminating, or allowing to lapse for nonpayment of premiums, any policy of health insurance, homeowner's or renter's insurance, or automobile insurance that provides coverage to either of the parties or the minor children or any policy of life insurance that names either of the parties or the minor children as a beneficiary.

(II) The provisions of the injunction shall be printed upon the summons and the petition and the injunction shall become an order of the court upon fulfillment of the requirements of subparagraph (I) of this paragraph (b). However, nothing in this paragraph (b) shall preclude

either party from applying to the court for further temporary orders, an expanded temporary injunction, or modification or revocation under section 14-10-108.

(III) The summons shall contain the following advisements:

(A) That a request for genetic tests shall not prejudice the requesting party in matters concerning allocation of parental responsibilities pursuant to section 14-10-124 (1.5); and

(B) That, if genetic tests are not obtained prior to a legal establishment of paternity and submitted into evidence prior to the entry of the legal final decree of dissolution, the genetic tests may not be allowed into evidence at a later date.

(4.1) With regard to the automatic, temporary injunction that becomes effective in accordance with paragraph (b) of subsection (4) of this section when a petition for dissolution of marriage or legal separation is filed and served, whenever there is exhibited by the respondent to any duly authorized peace officer as described in section 16-2.5-101, C.R.S., a copy of the petition and summons duly filed and issued pursuant to this section, or, in the case of the petitioner, a copy of the petition and summons duly filed and issued pursuant to this section, together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and the peace officer has cause to believe that a violation of that part of the automatic, temporary injunction which enjoins both parties from molesting the other party has occurred, such peace officer shall use every reasonable means to enforce that part of the injunction against the petitioner or respondent. A peace officer shall not be held civilly or criminally liable for his or her action pursuant to this subsection (4.1) if the action is in good faith and without malice.

(5) Defenses to divorce and legal separation existing prior to January 1, 1972, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are hereby abolished.

(6) All issues raised by these proceedings shall be resolved by the court sitting without a jury.

Source: L. 71: R&RE, p. 521, § 1. **C.R.S. 1963:** § 46-1-7. **L. 72:** p. 296, § 1. **L. 83:** (4) amended, p. 641, § 1, effective July 1. **L. 86:** (4.1) added, p. 716, § 1, effective April 29. **L. 87:** (4.1) amended, p. 1578, § 21, effective July 10. **L. 98:** (2)(e) amended, p. 1395, § 35, effective February 1, 1999. **L. 99:** (2)(g) and (4)(b)(I)(D) added and (4)(b)(I)(B), (4)(b)(I)(C), and (4)(b)(II) amended, p. 1059, §§ 1, 2, effective June 1; (3), (4)(a), and IP(4)(b)(I) amended, p. 465, § 3, effective July 1. **L. 2000:** (3) amended, p. 1833, § 7, effective January 1, 2001. **L. 2003:** (4.1) amended, p. 1621, § 34, effective August 6. **L. 2005:** (4)(b)(III) added, p. 377, § 1, effective January 1, 2006. **L. 2011:** (2.5) added, (SB 11-123), ch. 46, p. 118, § 2, effective August 10. **L. 2012:** (4)(a) amended, (SB 12-175), ch. 208, p. 830, § 25, effective July 1. **L. 2016:** (4)(a)

amended, (HB 16-1258), ch. 116, p. 329, § 1, effective April 21. **L. 2017:** (4)(a) amended, (HB 17-1142), ch. 66, p. 209, § 5, effective September 1.

ANNOTATION

I. General Consideration.

II. Commencement of the Proceeding.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Expediting Court Procedure", see 10 Dicta 113 (1933). For an article on divorce, see 16 Dicta 107 (1939). For article, "Comments on the Rules of Civil Procedure", see 22 Dicta 154 (1945). For article, "The Doctrine of Recrimination in Divorce Proceedings", see 21 Rocky Mt. L. Rev. 407 (1949). For article, "Forms Committee Presents Standard Pleading Samples to be Used in Divorce Litigation", see 29 Dicta 94 (1952). For article, "One Year Review of Criminal Law and Procedure", see 36 Dicta 34 (1959). For comment on Reed v. Reed, appearing below, see 31 Rocky Mt. L. Rev. 240 (1959). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983). For article, "Recovering the Parentally Kidnapped Child", see 12 Colo. Law. 1798 (1983). For article, "Injunctive Remedies for Interpersonal Violence", see 18 Colo. Law. 1743 (1989). For article, "A Modest Proposal: The Rule 3(a) Waiver Agreement", see 46 Colo. Law. 23 (Mar. 2017). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017).

Annotator's note. Cases relevant to § 14-10-107 decided prior to its earliest source, L. 71, p. 521, § 1, have been included in the annotations to this section.

A court having properly acquired jurisdiction over the subject matter and parties to a divorce action, including minor children, is not at liberty to thereafter divest itself of such jurisdiction to the prejudice of interested parties. Cartier v. Cartier, 94 Colo. 157, 28 P.2d 1010 (1934).

In divorce proceedings, the parties are the husband and wife, and the jurisdiction of the divorce court is exercised as between husband and wife. Ross v. Ross, 89 Colo. 536, 5 P.2d 246 (1931).

There are, in reality, three parties to every divorce action: The plaintiff, the defendant, and the state. Reed v. Reed, 138 Colo. 74, 329 P.2d 633 (1958).

A wife or husband may well be entitled to a divorce, but whether or not she or he will exercise that right is optional with her or him. Faith v. Faith, 128 Colo. 483, 261 P.2d 225 (1953).

The policy of the court should be to discourage, rather than encourage, divorces. Faith v. Faith, 128 Colo. 483, 261 P.2d 225 (1953).

When a plaintiff moves to dismiss a divorce action, it is the duty of a trial court to dismiss the case. McClanahan v. County Court, 136 Colo. 426, 318 P.2d 599 (1957).

The court cannot compel one to take a divorce when he does not desire to have

one. Faith v. Faith, 128 Colo. 483, 261 P.2d 225 (1953).

Due process notice and hearing requirements met. The basic requirements of the due process clause of our constitution are that no person be deprived of valuable rights without adequate notice and opportunity for hearing, and the divorce statute does make provision for such notice and hearing before the termination of the marriage. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Action for dissolution of marriage is proceeding in rem. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Scope of court's jurisdiction over nonresident respondent is established by this section. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Service by publication insufficient for jurisdiction in custody issue. Service by publication pursuant to the uniform act is not sufficient to vest a trial court with jurisdiction to resolve a custody issue. In re Blair, 42 Colo. App. 270, 592 P.2d 1354 (1979).

Default judgment would be proper after a member of the armed services entered an appearance and asserted cross claims. Federal Soldiers' and Sailors' Civil Relief Act is to protect members of the military from having default judgments entered against them without their notice of the pendency of the action. It does not prevent entry of such a judgment when there has been notice of the pendency of the action and the member has had adequate time to defend the action. In re Custody of Nugent, 955 P.2d 584 (Colo. App. 1997).

In an action for divorce it is sufficient compliance with the rules of civil procedure if a court makes findings on the material and ultimate facts. Lininger v. Lininger, 138 Colo. 338, 333 P.2d 625 (1958).

Maintenance must be requested in petition. Under the uniform act, maintenance must be requested in the petition for dissolution. In re Boyd, 643 P.2d 804 (Colo. App. 1982).

All the provisions of the code which are applicable shall control in the trial and disposition of divorce cases, except as otherwise provided in the divorce act itself, either expressly or by necessary implication. Eickhoff v. Eickhoff, 27 Colo. 380, 61 P. 225 (1900); People ex rel. Lackey v. District Court, 30 Colo. 123, 69 P. 597 (1902).

The former defense of condonation was in the nature of confession and avoidance. Cochran v. Cochran, 164 Colo. 99, 432 P.2d 752 (1967).

Condoned adultery was not a bar to a divorce, because it was not a ground for divorce. Jones v. Jones, 71 Colo. 420, 207 P. 596 (1922).

If there was any collusion or fraud between the parties, the court would see to it that a decree for divorce is not entered. Reed v. Reed, 138 Colo. 74, 329 P.2d 633 (1958).

Where each party was at fault, a court could not grant relief to either party.

Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959).

Formerly, the defendant in an action for divorce could set up any matter by way of cross-complaint that would defeat the plaintiff's action. Cupples v. Cupples, 33 Colo. 449, 80 P. 1039 (1905).

It was not necessary, in order to entitle the defendant to set up matters by way of cross-complaint, in bar of the plaintiff's action, that the defendant was seeking a divorce. Cupples v. Cupples, 33 Colo. 449, 80 P. 1039 (1905).

Where a cross-complaint, defective because it omitted a jurisdictional averment so that no divorce could be awarded thereon to the defendant, must have been investigated, and could serve to defeat the action. Cupples v. Cupples, 33 Colo. 449, 80 P. 1039 (1905); Garver v. Garver, 52 Colo. 227, 121 P. 165 (1911).

Decedent's naming of her brother as the payable-on-death beneficiary of her accounts and joint accounts of her and her husband did not amount to an encumbrance of marital property. Estate of Westfall v. Westfall, 942 P.2d 1227 (Colo. App. 1996).

Changing accounts from multi-party to sole accounts before divorce did not affect the other spouse's rights since the accounts remained part of the marital estate and either party had a legal right to deplete the joint accounts. Estate of Westfall v. Westfall, 942 P.2d 1227 (Colo. App. 1996).

It was error to receive a verdict which failed to respond to counter charge of violation of marital duties pleaded in answer. Garver v. Garver, 52 Colo. 227, 121 P. 165 (1911).

II. COMMENCEMENT OF THE PROCEEDING.

Nothing in subsection (2) requires that a dissolution petitioner who seeks to pierce the corporate veil of an entity related to the respondent must set forth in the petition a veil-piercing claim in accordance with applicable pleading standards. In re Gromicko, 2017 CO 1, 387 P.3d 58.

Domicile in the state is alone sufficient to bring an absent defendant in a divorce action within the reach of the state's jurisdiction for purposes of a personal judgment by means of appropriate substituted service. In re Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

Its adequacy so far as due process is concerned is dependent on whether or not the form of substituted service provided for such cases and employed is reasonably calculated to give him actual notice of the proceedings and an opportunity to be heard, if it is, the traditional notions of fair play and substantial justice implicit in due process are satisfied. In re Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

Fraud relative to service by publication operates to void a divorce decree. In re Wilson, 653 P.2d 85 (Colo. App. 1982).

A decree of divorce based upon constructive service is void unless the record shows a strict compliance with all the

statutory requirements. Roberts v. Roberts, 3 Colo. App. 6, 31 P. 941 (1892).

The record must show a compliance with the statute respecting the mailing of a copy of the summons to the defendant to justify the entry of a judgment. Roberts v. Roberts, 3 Colo. App. 6, 31 P. 941 (1892).

Filing of response to petition is not required. The plain language of subsection (4)(a) permits but does not require the filing of a response to a petition for dissolution of marriage. In re Vega, 2021 COA 99, 497 P.3d 1056.

Husband appeared at initial status conference, as required under C.R.C.P. 16.2(c)(1)(B), therefore, magistrate erred by entering default against him under C.R.C.P. 55(a). In re Vega, 2021 COA 99, 497 P.3d 1056.

Magistrate erred in entering default permanent orders against husband for failing to file response or enter an appearance even though husband appeared at initial status conference with court facilitator and appeared at permanent orders hearing. At permanent orders hearing, prior to entering default permanent orders, magistrate denied husband's request for time to retain an attorney and denied husband's participation in the permanent orders hearing. In re Vega, 2021 COA 99, 497 P.3d 1056.

Because husband was not in default, magistrate lacked jurisdiction to enter contested permanent orders without the consent of the parties. In re Vega, 2021 COA 99, 497 P.3d 1056.

Parole proof that the defendant had actual knowledge of the pendency of the action was not considered on the hearing of his motion to set aside the judgment, because of the failure to mail him a copy of the summons, as required by law. Roberts v. Roberts, 3 Colo. App. 6, 31 P. 941 (1892).

Where upon a service of a summons in a divorce suit in which the defendant, if served within the county in which the action was pending, was required to appear and answer the complaint within 20 days thereafter, the court was not authorized to proceed to a judgment if defendant failed to comply with such command, for it was in direct conflict with the mandatory provision which gives a defendant 30 days to appear and answer in such circumstances. Mottschall v. Mottschall, 31 Colo. 260, 72 P. 1053 (1903).

Where plaintiff had removed her child to a foreign country, a motion by her attorney for leave to withdraw as her counsel was properly denied, since such withdrawal would make service of process impossible and deprive the trial court of authority to make proper orders. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

Failure to allege 90-day residency immediately prior to proceeding not fatal. This section does not require that a petition for dissolution of marriage contain an allegation that the residency period includes the 90 days immediately prior to the commencement of the proceeding, and petitioner's failure to make her allegation in the words of § 14-10-106 was not a fatal

defect. In re Alper, 33 Colo. App. 225, 517 P.2d 404 (1973).

Theory of mutual mistake not waived by failure to raise issue in reply to petition. In a dispute over a separation agreement, a theory of mutual mistake is not waived by failure to raise the issue in the reply to the petition for dissolution of marriage, since no reply is required and averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided. In re Deines, 44 Colo. App. 98, 608 P.2d 375 (1980).

Withdrawal of marital property after dissolution proceeding commenced. In determining the total value of the marital property, trial court did not err in including the $45,000 husband, had withdrawn from the fund after the dissolution proceeding had commenced since husband, who had not obtained an order of the court or consent of his wife before using the money, failed to show that the withdrawal was done either in the usual course of business or was for the necessities of life. In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Trial court properly credited husband with the amount of funds existing prior to wife's sale of stock shares when wife cashed out shares after entry of the automatic temporary injunction. Wife's argument that the parties routinely cashed out shares to meet living expenses was rejected by the court as a rationale for not including the amount she cashed out in the division of marital shares, since the prior sales of stock took place inconsistently and was not used as income on a monthly basis. In re Huston, 967 P.2d 181 (Colo. App. 1998).

14-10-107.5. Entry of appearance and notice of withdrawal by delegate child support enforcement unit.

(1) The attorney for the delegate child support enforcement unit may file an entry of appearance on behalf of the county department of human or social services in any proceeding for dissolution of marriage or legal separation under this article 10 for purposes of establishing, modifying, and enforcing child support and medical support if any party is receiving child support services pursuant to section 26-13-106 and for purposes of establishing and enforcing reimbursement of payments for temporary assistance to needy families.

(2) The delegate child support enforcement unit, upon the filing of the entry of appearance described in subsection (1) of this section or upon the filing of a legal pleading to establish, modify, or enforce the support obligation, is from that date forward, without leave or order of court, a third-party intervenor in the action for the purposes outlined in subsection (1) of this section without the necessity of filing a motion to intervene.

(3) The delegate child support enforcement unit may withdraw as a party from a case when the case is closed without leave of the court by filing a notice pursuant to the Colorado rules of

civil procedure. Upon the filing of such notice, the delegate child support enforcement unit is no longer considered a party to the action without the necessity of filing a motion to dismiss party.

Source: L. 89: Entire section added, p. 792, § 13, effective July 1. **L. 90:** Entire section amended, p. 889, § 8, effective July 1. **L. 2007:** (1) amended, p. 1648, § 1, effective May 31. **L. 2018:** Entire section amended, (SB 18-092), ch. 38, p. 400, § 12, effective August 8; entire section amended, (HB 18-1363), ch. 389, p. 2321, § 1, effective August 8.

Editor's note: This section was amended in SB 18-092. Those amendments were superseded by the amendment of this section in HB 18-1363, effective August 8, 2018.

Cross references: For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

14-10-107.7. Required notice of involvement with state department of human services.

When filing a petition for dissolution of marriage or legal separation, a petition in support or proceedings for the allocation of parental responsibilities with respect to the children of the marriage, or any other matter pursuant to this article 10 with the court, if the parties have joint legal responsibility for a child for whom the petition seeks an order of child support, the parties are required to indicate on a form prepared by the court whether or not the parties or the dependent children of the parties have received within the last five years or are currently receiving benefits or public assistance, including child care assistance, from the state department of human services or a county department of human or social services. If the parties indicate that they have received such benefits or assistance, the court shall inform the appropriate delegate child support enforcement unit so that the unit can determine whether any support enforcement services are required. There is no penalty for failure to report as specified in this section.

Source: L. 92: Entire section added, p. 202, § 8, effective August 1. **L. 93:** Entire section amended, p. 1558, § 6, effective September 1. **L. 94:** Entire section amended, p. 2644, § 106, effective July 1. **L. 98:** Entire section amended, p. 1396, § 36, effective February 1, 1999. **L. 2018:** Entire section amended, (SB 18-092), ch. 38, p. 400, § 13, effective August 8. **L. 2022:** Entire section amended, (HB 22-1295), ch. 123, p. 828, § 30, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

14-10-107.8. Required notice of prior restraining, civil protection, or emergency protection orders to prevent domestic abuse - petitions for dissolution of marriage or legal separation.

(1) When filing a petition for dissolution of marriage or legal separation pursuant to this article 10, the filing party has a duty to disclose to the court the existence of any prior temporary or permanent restraining orders and civil protection orders issued pursuant to article 14 of title 13, any mandatory restraining order and protection orders issued pursuant to section 18-1-1001, and any emergency protection orders issued pursuant to section 13-14-103 against either party when the other spouse was the protected person, by any court, within five years prior to the filing of the petition of dissolution of marriage or legal separation. The disclosure required pursuant to this section must address the subject matter of the previous restraining, civil protection, or emergency protection orders, including the case number and jurisdiction issuing the orders.

(2) After the filing of the petition, the court shall advise the parties concerning domestic violence services and potential financial resources that may be available and shall strongly encourage the parties to obtain such services for their children, in appropriate cases. If the parties' children participate in such services, the court shall apportion the costs of such services between the parties as it deems appropriate.

(3) The parties to a domestic relations petition filed pursuant to this article shall receive information concerning domestic violence services and potential financial resources that may be available.

Source: L. 95: Entire section added, p. 83, § 1, effective July 1. **L. 99:** Entire section amended, p. 502, § 9, effective July 1. **L. 2001:** Entire section amended, p. 978, § 1, effective August 8. **L. 2004:** (1) amended, p. 554, § 10, effective July 1. **L. 2005:** (1) amended, p. 764, § 22, effective June 1. **L. 2025:** (1) amended, (SB 25-116), ch. 212, p. 961, § 3, effective August 6.

Cross references: For the legislative declaration in SB 25-116, see section 1 of chapter 212, Session Laws of Colorado 2025.

14-10-108. Temporary orders in a dissolution case.

(1) In a proceeding for dissolution of marriage, legal separation, the allocation of parental responsibilities, or declaration of invalidity of marriage or a proceeding for disposition of property, maintenance, or support following dissolution of the marriage, either party may move for temporary payment of debts, use of property, maintenance, parental responsibilities, support of a child of the marriage entitled to support, or payment of attorney fees or licensed legal paraprofessional fees. The motion may be supported by an affidavit setting forth the factual basis for the motion and the amounts requested.

(1.5) The court may consider the allocation of parental responsibilities in accordance with the best interests of the child, with particular reference to the factors specified in section 14-10-124 (1.5).

(2) As a part of a motion of such temporary orders or by an independent motion accompanied by an affidavit, either party may request the court to issue a temporary order:

(a) Restraining any party from transferring, encumbering, concealing, or in any way disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the order is issued;

(b) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result.

(2.3) and (2.5) (Deleted by amendment, L. 2004, p. 553, § 4, effective July 1, 2004.)

(3) A party to an action filed pursuant to this article may seek, and the court may issue, a temporary or permanent protection order pursuant to the provisions of part 1 of article 14 of title 13, C.R.S.

(4) (Deleted by amendment, L. 2004, p. 553, § 4, effective July 1, 2004.)

(5) A temporary order or temporary injunction:

(a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified prior to final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 14-10-122; and

(c) Terminates when the final decree is entered, unless continued by the court for good cause to a date certain, or when the petition for dissolution or legal separation is voluntarily dismissed.

(6) (Deleted by amendment, L. 2004, p. 553, § 4, effective July 1, 2004.)

(7) At the time a protection order is requested pursuant to part 1 of article 14 of title 13, the court shall inquire about, and the requesting party and the party's attorney or licensed legal paraprofessional has an independent duty to disclose, knowledge the party and the party's attorney or licensed legal paraprofessional may have concerning the existence of any prior protection orders or restraining orders of any court addressing in whole or in part the subject matter of the requested protection order.

Source: L. 71: R&RE, p. 522, § 1. **C.R.S. 1963:** § 46-1-8. **L. 73:** pp. 553, 555, §§ 3, 12. **L. 81:** (6) added, p. 903, § 1, effective May 13. **L. 83:** (1) amended, p. 644, § 1, effective April 26; (1.5) added, p. 645, § 1, effective June 10. **L. 87:** (1.5) amended, p. 575, § 4, effective July 1. **L. 94:** (2.5) and (7) added and (3) amended, p. 2008, § 4, effective January 1, 1995. **L. 98:** (2.3) added and (3) amended, p. 245, § 4, effective April 13; (1) and (2.5) amended, p. 1396, § 37, effective February 1, 1999. **L. 99:** (2.3) amended, p. 501, § 4, effective July 1. **L. 2000:** (1.5) amended, p. 1844, § 24, effective August 2. **L. 2003:** (2.3), (2.5), (3), (6), and (7) amended, p. 1010, § 14, effective July 1. **L. 2004:** IP(2), (2.3), (2.5), (3), (4), (6), and (7) amended, p. 553, § 4, effective July 1. **L. 2013:** (3) and (7) amended, (HB 13-1259), ch. 218, p. 1016, § 17, effective July 1. **L. 2024:** (1) and (7) amended, (HB 24-1291), ch. 131, p. 468, § 11, effective August 7.

ANNOTATION

I. General Consideration.

II. Temporary Orders.

III. Temporary Injunctions.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Legislative Update", see 12 Colo. Law. 1257 (1983).

Annotator's note. Since § 14-10-108 is similar to repealed § 46-1-5, C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The general rule is that courts of equity should and will in a proper case enjoin a party to a divorce or separate maintenance action from proceeding in an annulment suit in a foreign jurisdiction. Hayutin v. Hayutin, 152 Colo. 261, 381 P.2d 272 (1963).

Evidence of extreme circumstances necessitating sale of co-owned property. If there is evidence of extreme circumstances that co-owned property needs to be sold to preserve equities therein, a court may decree a sale of the property prior to a final determination of the merits of the dissolution action. In re Gavend, 781 P.2d 161 (Colo. App. 1989).

Permanent orders that substantially reduce the amount of parenting time

originally specified in the temporary orders are not subject to the endangerment standard but rather the best interests of the child standard. In re Fickling, 100 P.3d 571 (Colo. App. 2004).

Best interest standard, and not the endangerment standard, was properly applied to award father residential care despite mother's award of temporary custody, where awarding father residential custody of the children was not abuse of discretion and record supported findings. In re Monteil, 960 P.2d 717 (Colo. App. 1998).

Applied in In re Westlake, 674 P.2d 1386 (Colo. App. 1983).

II. TEMPORARY ORDERS.

Law reviews. For article, "Attorney Fees at Temporary Orders: Reality or Illusion?", see 24 Colo. Law. 2185 (1995).

An order granting a temporary change of custody following an ex parte hearing with no notice to the mother denied her due process where no evidence was presented and no finding was made that irreparable injury would result if no order were issued until the time for responding had elapsed. Olson v. Priest, 193 Colo. 222, 564 P.2d 122 (1977).

Court lost jurisdiction to enforce order. When an order dismissing a marriage dissolution action was signed, the court was divested of any further jurisdiction in that action and had no jurisdiction to hold husband in contempt for failing to pay support required by temporary order which was entered in that action. Hill v. District Court, 189 Colo. 356, 540 P.2d 1079 (1975).

The purpose of temporary alimony is to allow a wife to live in her accustomed manner during pendency of the action and to provide her with means to properly litigate the controversy, and is not definitive of her entitlement to support under permanent orders. Bieler v. Bieler, 130 Colo. 17, 272 P.2d 636 (1954); MacReynolds v. MacReynolds, 29 Colo. App. 267, 482 P.2d 407 (1971).

If she possesses independent means sufficient for these purposes the allowances should not be granted; however, she is not required first to impair the capital of her separate estate. Bieler v. Bieler, 130 Colo. 17, 272 P.2d 636 (1954).

The allowance of temporary alimony is dependent upon the existence of the marriage relation, and all necessary facts to establish such relation must be made to appear at least prima facie before such allowance is made by the court, but where a prima facie case is established alimony should be awarded. Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902).

In an action for divorce where it is clear upon the admitted facts that the marriage alleged in the complaint is void in law, or where the preponderance of the evidence tends to show that there was never a marriage in fact, temporary alimony should not be awarded, and if awarded will be set aside on review. Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902).

It appears that in a divorce proceeding, the right to apply for alimony pendente lite is dependent upon the previous filing of a complaint for a divorce, and then the

application may be made to, and acted upon, by the court in term time, or by the judge in vacation. Eickhoff v. Eickhoff, 14 Colo. App. 127, 59 P. 411 (1899).

The allowance to be made for temporary alimony, attorney fees, and suit money is within the sound discretion of the trial court, and unless that discretion has been abused the order of allowance will not be disturbed on review. Cairnes v. Cairnes, 29 Colo. 260, 68 P. 233 (1902); Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

In a divorce suit where the wife was in indigent circumstances and the husband was a man of large means, an allowance of $50 per month as temporary alimony, $250 attorney fees, and $25 suit money was not excessive, and was not an abuse of discretion by the trial court. Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902).

In determining the amount of temporary alimony to be allowed, the ability of the husband is an element to be considered, and the same element must necessarily be taken into consideration in fixing the amount of permanent alimony. Fahey v. Fahey, 43 Colo. 354, 96 P. 251 (1908).

If the evidence as to the ability of the husband to pay temporary alimony in a divorce action is conflicting, the order of the trial court based thereon is not reviewable. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

An award of temporary alimony may be modified by the supreme court. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

No appeal from temporary orders that have terminated due to entry of permanent orders. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

Temporary alimony awarded a wife cannot be modified except upon motion and sufficient showing in support thereof; thus, where no motion was made respecting the alimony, it was an abuse of discretion for the court to suspend the order for temporary alimony at a hearing on a citation for the husband to show cause why he was not in contempt of court for failure to pay alimony Wright v. Wright, 122 Colo. 179, 220 P.2d 881 (1950).

The question whether an order for temporary alimony should be modified is also within the discretion of the court. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

Orders resolving child support issue are final. In dissolution proceedings, orders which resolve the issue of child support, even on a temporary basis, are final for purposes of review. In re Henne, 620 P.2d 62 (Colo. App. 1980).

"Final decree", as used in subsection (5)(c), is not limited to a final decree of dissolution, but may also include a final order concerning child support. In re Price, 727 P.2d 1073 (Colo. 1986); In re Nussbeck, 899 P.2d 347 (Colo. App. 1995), rev'd on other grounds, 974 P.2d 493 (Colo. 1999).

Where court continued determination of permanent child support to time subsequent to entry of decree of dissolution, temporary child support order was not terminated on date of dissolution by virtue of statute

terminating temporary order or temporary injunction when final decree is entered. In re Price, 727 P.2d 1073 (Colo. 1986).

Temporary orders as to maintenance are reviewable as a final judgment even if there has not been a final judgment in the form of a decree of dissolution. In re Nussbeck, 899 P.2d 347 (Colo. App. 1995), rev'd on other grounds, 974 P.2d 493 (Colo. 1999).

If the decree of dissolution leaves the issue of maintenance to be resolved later, an order of temporary maintenance is not terminated on the date of dissolution by virtue of subsection (5)(c). When possible, however, at the time the decree is entered, the court should set a definite date for consideration of permanent orders concerning maintenance. In re Nussbeck, 899 P.2d 347 (Colo. App. 1995), rev'd on other grounds, 974 P.2d 493 (Colo. 1999).

A request for a temporary award includes attorney fees and related litigation expenses. In re Mockelmann, 944 P.2d 670 (Colo. App. 1997).

An award of attorney fees is a final judgment subject to appellate review as it establishes a financial right and obligation of the parties until the entry of permanent orders. A temporary award of attorney fees is based upon the same underlying premise as a temporary award of maintenance or child support in that it concerns the immediate financial need of the party to whom the attorney fees are awarded. In re Mockelmann, 944 P.2d 670 (Colo. App. 1997).

The duty to pay maintenance is independent and is not limited or specifically tied to the entry of a decree of dissolution. To allow a party to terminate his or her maintenance payments when a decree of dissolution is entered that is mute on the issue of maintenance would disturb the status quo, frustrate a central purpose of the statute, and allow evasion of an important stabilizing aspect of the dissolution process. In re Nussbeck, 899 P.2d 347 (Colo. App. 1995), rev'd on other grounds, 974 P.2d 493 (Colo. 1999).

Where a husband, plaintiff in a divorce suit, is unable to make reasonable provision for his wife during the pendency of the suit, the suit should be abated until he is able to do so. Cairnes v. Cairnes, 29 Colo. 260, 68 P. 233 (1902).

Where a wife, defendant in a divorce suit, is a nonresident of the state and desires to come to Colorado to defend the suit, she should be given an opportunity to do so and the plaintiff should be required to deposit in court a sufficient sum to pay to the state the expenses of the wife which shall be paid to her upon her arrival, within a reasonable time, with such additional sum as may be necessary to properly defend the suit. Cairnes v. Cairnes, 29 Colo. 260, 68 P. 233 (1902).

Where a trial court denies motions of both parties with respect to temporary alimony pending trial on the merits, a writ of error to review such action is premature. Hizel v. Hizel, 132 Colo. 379, 288 P.2d 354 (1955).

Since temporary orders are not in any way res judicata as to matters properly the subject of permanent order, a showing

of change of circumstances is not an essential element for the trial court's consideration in its establishment of permanent alimony. MacReynolds v. MacReynolds, 29 Colo. App. 267, 482 P.2d 407 (1971).

Temporary orders do not grant "parenting time rights", as that term is specified in § 14-10-129 (1)(b)(I), but simply provide for parenting time pending a final determination of permanent orders. In re Fickling, 100 P.3d 571 (Colo. App. 2004).

Temporary orders are not determinative of the permanent orders regarding allocation of parental responsibility or other matters. In re Lawson, 608 P.2d 378 (Colo. App. 1980); In re Fickling, 100 P.3d 571 (Colo. App. 2004).

There is no enforceable temporary order where the claim for spousal maintenance is based on a referee's recommendation and where the transcript is not signed and no separate order of the court is entered. In re Burke, 680 P.2d 1338 (Colo. App. 1984).

Formerly, an execution was authorized on an order for temporary alimony. Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Paul v. Marty, 72 Colo. 399, 211 P. 667 (1922).

The temporary order of the "Beth Din", or its adoption in a prior proceeding for legal separation that was later dismissed, has no legal effect in a subsequent proceeding for dissolution of marriage between the same parties. In re Popack, 998 P.2d 464 (Colo. App. 2000).

Applying the intent of the Indian Child Welfare Act of 1978, court determined that trial court improperly found that mother had abandoned child for the purpose of granting a temporary allocation of parental responsibilities to caregiver. Although mother had signed document granting caregiver guardianship, the document did not suggest the placement was to be permanent, and the mother remained in continued contact with child. A parent's placement of a child in the care of another, even if prolonged, does not constitute abandonment if the parent remains in contact and demonstrates an intent to maintain the relationship. In re S.M.J.C., 262 P.3d 955 (Colo. App. 2011).

III. TEMPORARY INJUNCTIONS.

Restraining orders should not be issued in divorce actions except in circumstances of actual emergency, and where it is clearly established that grounds exist for granting such extraordinary remedy. Simpson v. Simpson, 151 Colo. 88, 376 P.2d 55 (1962).

It is an unusual situation in which an order on one spouse to refrain from transferring property is inadequate to afford needed protection to the other who seeks to maintain the status quo pending a hearing on notice. Simpson v. Simpson, 151 Colo. 88, 376 P.2d 55 (1962).

The right of the husband in a divorce action to manage his property and carry on his business in due course is fundamental and should not be interfered with or suspended by the issuance of ex parte restraining orders without notice upon persons with whom he transacts business,

except upon a clear showing of emergency and a need therefor. Simpson v. Simpson, 151 Colo. 88, 376 P.2d 55 (1962).

The practice of bringing in third parties as defendants in a divorce action and issuing restraining orders against them without notice is not to be encouraged, it being only under extraordinary circumstances that such persons engaged in legitimate business transactions with one of the parties to the divorce action and not involved in their marital difficulties may be restrained or enjoined from continuing business activities with one of the spouses involved. Simpson v. Simpson, 151 Colo. 88, 376 P.2d 55 (1962).

Any reasons justifying permanent injunctive relief in dissolution of marriage proceeding must arise from factors independent of those with which the trial court is empowered to deal in a dissolution proceeding. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

14-10-109. Enforcement of protection orders.

The duties of peace officers enforcing orders issued pursuant to section 14-10-107 or 14-10-108 shall be in accordance with section 18-6-803.5, C.R.S., and any rules adopted by the Colorado supreme court pursuant to said section.

Source: L. 71: R&RE, p. 523, § 1. **C.R.S. 1963:** § 46-1-9. **L. 92:** Entire section amended, p. 176, § 2, effective July 1. **L. 94:** Entire section amended, p. 2009, § 5, effective January 1, 1995.

Cross references: For civil contempt, see C.R.C.P. 107.

14-10-110. Irretrievable breakdown.

(1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, there is a presumption of such fact, and, unless controverted by evidence, the court shall, after hearing, make a finding that the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation, and shall:

(a) Make a finding whether the marriage is irretrievably broken; or

(b) Continue the matter for further hearing not less than thirty-five days nor more than sixty-three days later, or as soon thereafter as the matter may be reached on the court's calendar, and

may suggest to the parties that they seek counseling. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken.

Source: L. 71: R&RE, p. 523, § 1. **C.R.S. 1963:** § 46-1-10. **L. 2012:** (2)(b) amended, (SB 12-175), ch. 208, p. 831, § 26, effective July 1.

Cross references: For marriage counseling, see article 12 of this title 14.

ANNOTATION

Law reviews. For article, "Is Residence of the Plaintiff, in Colorado, Necessary to Support a Divorce Action Based on Cruelty Within the State, If Defendant Is a Resident of Colorado?", see 24 Dicta 110 (1947). For article, "When the State Had an Interest in Marriage: Colorado's Divorce Acts, 1861-1917", see 16 Colo. Law. 1627 (1987).

Annotator's note. Some of the cases appearing under § 14-10-110 were decided under repealed § 46-1-1, C.R.S. 1963, § 46-1-1, CRS 53, CSA, C. 56, § 1, and laws antecedent thereto, which specifically enumerated the grounds for divorce.

Marriage is a contract between the parties, but it is distinguishable from the ordinary civil contract. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Marriage is the subject of a more immediate interest to the state than is the ordinary contract. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Marriage is not a "contract" within the meaning of the contract clause of the constitution. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

General assembly control of marriage is constitutional. Since marriage is not a contract within the meaning of the constitutional contract clause, the general assembly has broad control over it, the reasonable exercise of which will not run afoul of the constitutional protection of contracts. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

In attempting to increase availability of divorces to estranged spouses, the general assembly recognized that public policy does not encourage keeping two people together once the legitimate objects of matrimony have ceased to exist. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Decree not automatic. Although the dissolution of marriage statute was intended as a "no-fault" divorce act, the actual granting of the decree is not automatic or perfunctory under all circumstances. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Court's discretion to continue case sufficient safeguard against hastiness. The general assembly declined to include in the Colorado act, which is modeled on the

uniform dissolution of marriage act, the language of the uniform act allowing the court to order a conciliation conference, and thus, in effect, determined that vesting discretion in the court to continue the case from 30 to 60 days was sufficient safeguard against hasty and insensate decisions. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

"Irretrievable" breakdown is no more vague or incapable of definition than "became impotent through immoral conduct", has been "extremely and repeatedly cruel", or being an "habitual drunkard", all of which constituted, under the prior Colorado statute, grounds for divorce. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

A finding of irretrievable breakdown is one of fact and, where the allegation of the petition is denied, it must be proven as any other essential element of the cause of action. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Where the parties do not agree as to the breakdown of the marriage, it is imperative for the court to weigh all the evidence and make its own independent determination of that fact. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

The issue of whether a marriage has been irretrievably broken is a question of fact to be resolved upon consideration of the facts and circumstances of each case, and the factors underlying that determination will necessarily vary from case to case. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Finding of irretrievable breakdown must be proved when denied. While the dissolution of marriage act did eliminate all the former defenses to divorce in this state, it did not eliminate the necessity of proving an irretrievable breakdown where that basic allegation is denied in the pleadings. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

No requirement that valid goals of marriage must be unattainable. There is no requirement that for the marriage to be beyond redemption, substantial proportion of legitimate objectives of a marriage must be no longer attainable by the parties. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Elucidating valid goals of marriage which must be either lost or beyond accomplishment before the marriage can be classified as irretrievably broken would constitute an amendment to the act, and that power is reserved exclusively for the general assembly. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

The parentage of a child is not an issue in a divorce or annulment action between the parents. Devereaux v. Devereaux, 144 Colo. 31, 354 P.2d 1015 (1960).

Formerly, before a court could enter its findings in favor of a defendant, it must have necessarily found that the defendant had not been guilty of a violation of the marriage contract. Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958).

In a divorce action where a defendant pleaded grounds for divorce by way of counterclaim, the issue was the guilt or innocence of the parties on the grounds alleged against each other, and findings by a trial court that plaintiff was entitled to a divorce was necessarily a finding against the

defendant on the issues. Schleiger v. Schleiger, 137 Colo. 279 324 P.2d 370 (1958).

Formerly, the grounds for divorce in this state were purely statutory. Pleyte v. Pleyte, 1 Colo. App. 70, 28 P. 23 (1891); Redington v. Redington, 2 Colo. App. 8, 29 P. 811 (1892); Githens v. Githens, 78 Colo. 102, 239 P. 1023 (1925).

For the former ground for divorce, adultery, see Redington v. Redington, 2 Colo. App. 8, 29 P. 811 (1892); Harding v. Harding, 36 Colo. 106, 85 P. 423 (1906); Jones v. Jones, 71 Colo. 420, 207 P. 596 (1922).

For the former ground for divorce, desertion, see Stein v. Stein, 5 Colo. 55 (1879); Calvert v. Calvert, 15 Colo. 390, 24 P. 1043 (1890); Johnson v. Johnson, 22 Colo. 20, 43 P. 130, 55 Am. St. R. 113 (1895); Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922); Oates v. Oates, 72 Colo. 195, 210 P. 325 (1922); Mulhollen v. Mulhollen, 145 Colo. 479, 358 P.2d 887 (1961).

For the former ground for divorce, cruelty, see Sylvis v. Sylvis, 11 Colo. 319, 17 P. 912 (1888); Gilpin v. Gilpin, 12 Colo. 504, 21 P. 612 (1889); Williams v. Williams, 1 Colo. App. 281, 28 P. 726 (1892); Geisseman v. Geisseman, 34 Colo. 481, 83 P. 635 (1905); Harding v. Harding, 36 Colo. 106, 85 P. 423 (1906); Sedgwick v. Sedgwick, 50 Colo. 164, 114 P. 488 (1911); Shaff v. Shaff, 72 Colo. 184, 210 P. 400 (1922); Miller v. Miller, 90 Colo. 428, 9 P.2d 616 (1932); Hilburger v. Hilburger, 110 Colo. 409, 135 P.2d 138 (1943); Harms v. Harms, 120 Colo. 212, 209 P.2d 552 (1949); Mentzer v. Mentzer, 120 Colo. 412, 209 P.2d 920 (1949); Carroll v. Carroll, 135 Colo. 379, 311 P.2d 709 (1957); Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958); Reed v. Reed, 138 Colo. 74, 329 P.2d 633 (1958); Lininger v. Lininger, 138 Colo. 338, 333 P.2d 625 (1958); Poos v. Poos, 145 Colo. 334, 359 P.2d 3 (1961); Harvey v. Harvey, 150 Colo. 449, 373 P.2d 304 (1962); Cochran v. Cochran, 164 Colo. 99, 432 P.2d 752 (1967); Moats v. Moats, 168 Colo. 120, 450 P.2d 64 (1969).

For the former ground for divorce, nonsupport by the husband, see Rogers v. Rogers, 57 Colo. 132, 140 P. 193 (1914).

Applied in In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979); In re Lester, 647 P.2d 688 (Colo. App. 1982).

14-10-111. Declaration of invalidity.

(1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances.

(b) A party lacked the physical capacity to consummate the marriage by sexual intercourse, and the other party did not at the time the marriage was solemnized know of the incapacity.

(c) A party was under the age as provided by law and did not have the consent of his parents or guardian or judicial approval as provided by law.

(d) One party entered into the marriage in reliance upon a fraudulent act or representation of the other party, which fraudulent act or representation goes to the essence of the marriage.

(e) One or both parties entered into the marriage under duress exercised by the other party or a third party, whether or not such other party knew of such exercise of duress.

(f) One or both parties entered into the marriage as a jest or dare.

(g) The marriage is prohibited by law, including the following:

(I) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(II) A marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood;

(III) A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures;

(IV) A marriage which was void by the law of the place where such marriage was contracted.

(2) A declaration of invalidity under subsection (1) of this section may be sought by any of the following persons and shall be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage, except as provided in subsection (3) of this section:

(a) For the reasons set forth in either subsection (1)(a), (1)(d), (1)(e), or (1)(f) of this section, by either party to the marriage who was aggrieved by the conditions or by the legal representative of the party who lacked capacity to consent no later than six months after the petitioner obtained knowledge of the described condition;

(b) For the reason set forth in subsection (1)(b) of this section, by either party no later than one year after the petitioner obtained knowledge of the described condition;

(c) For the reason set forth in subsection (1)(c) of this section, by the underage party, his parent, or his guardian, if such action for declaration of invalidity of marriage is commenced within twenty-four months of the date the marriage was entered into.

(3) A declaration of invalidity, for the reason set forth in subsection (1)(g) of this section, may be sought by either party; by the legal spouse in case of bigamous, polygamous, or

incestuous marriages; by the appropriate state official; or by a child of either party at any time prior to the death of either party or prior to the final settlement of the estate of either party and the discharge of the personal representative, executor, or administrator of the estate or prior to six months after an estate is closed under section 15-12-1204, C.R.S.

(4) Repealed.

(5) Marriages declared invalid under this section shall be so declared as of the date of the marriage.

(6) The provisions of this article relating to the property rights of spouses, maintenance, and support of and the allocation of parental responsibilities with respect to the children on dissolution of marriage are applicable to decrees of invalidity of marriage.

(7) No decree shall be entered unless one of the parties has been domiciled in this state for thirty days next preceding the commencement of the proceeding or unless the marriage has been contracted in this state.

Source: L. 71: R&RE, p. 523, § 1. **C.R.S. 1963:** § 46-1-11. **L. 73:** pp. 553, 1647, §§ 4, 5, 6. **L. 80:** (1)(g)(II) amended, p. 794, § 47, effective June 5. **L. 98:** (6) amended, p. 1397, § 38, effective February 1, 1999. **L. 2018:** (4) repealed, (SB 18-095), ch. 96, p. 754, § 8, effective August 8.

Cross references: (1) For the effect of a declaration of invalidity on marital agreements, see § 14-2-308.

(2) For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

ANNOTATION

I. General Consideration.

II. The Invalidity of Marriage Proceeding.

III. Mental Incapacity to Consent to Marriage.

IV. Legitimacy of Children.

V. Conflict of Laws.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Ten Years of Domestic Relations in Colorado — 1940-1950", see 27 Dicta 399 (1950). For note, "The Presumption of Death and a Second Marriage", see 27 Dicta 414 (1950). For article, "A Decade of Colorado Law: Conflict of Laws, Security, Contracts and Equity", see 23 Rocky Mt. L. Rev. 247

(1951). For note, "Jurisdiction to Annul a Marriage Celebrated Without the Forum", see 26 Rocky Mt. L. Rev. 57 (1953). For article, "One Year Review of Domestic Relations", see 35 Dicta 36 (1958). For article, "Choice of the Applicable Law in Colorado", see 35 Dicta 162 (1958). For article, "One Year Review of Domestic Relations", see 39 Dicta 102 (1962). For article, "The Incestuous Marriage — Relic of the Past", see 36 U. Colo. L. Rev. 473 (1964). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Marriage, Divorce, and Annulment When One Party is Arguably Incapacitated", see 43 Colo. Law. 39 (Feb. 2014).

Annotator's note. Since § 14-10-111 is similar to repealed § 46-3-1 et seq., CRS 53, and CSA, C. 56, §§ 33 through 38, relevant cases construing those provisions have been included in the annotations to this section.

There is a wide distinction between a conventional annulment proceeding and a conventional action for divorce. An annulment proceeding is one in which the validity of a marriage is challenged from its inception on the ground that one or both of the parties was underage, on the ground that one or both of the parties was married to another person, on the ground that the proceeding was attended by fraud, or on some other fairly comparable ground. An action for divorce is one in which termination is sought of a valid marriage. Gainey v. Fleming, 279 F.2d 56 (10th Cir. 1960).

For the effect of an invalidity of marriage determination on maintenance payments which were terminated upon remarriage, see Torgan v. Torgan, 159 Colo. 93, 410 P.2d 167 (1966).

A court that declares a marriage invalid is vested with the same authority to divide the parties' property acquired during the invalid marriage as if the court had dissolved a valid marriage. Nguyen v. Lai, 2022 COA 141, 525 P.3d 1113.

Reestablishment of a support obligation following annulment of a subsequent marriage must be decided on a case-by-case basis, taking into account the facts and equities of the particular case. In re Cargill and Rollins, 843 P.2d 1335 (Colo. 1993).

The children of the deceased had no standing to challenge the validity of his marriage when it was not prohibited. Matter of Estate of Fuller, 862 P.2d 1037 (Colo. App. 1993).

Where wife fraudulently induced husband into marriage, an award of property and maintenance to the wife would be inequitable and unjust. Wife married husband to obtain a green card and left him immediately following receipt of her permanent green card. In re Joel, 2012 COA 128, 404 P.3d 1251.

Although subsection (6) states that the provisions of the Uniform Dissolution of Marriage Act (UDMA) relating to property, support, and allocation of parental responsibilities apply to invalidity actions, the purpose of that subsection is to protect innocent participants in meretricious

relationships and the children of those relationships, not to reward the party perpetrating the void marriage. In re Joel, 2012 COA 128, 404 P.3d 1251.

In dividing property and awarding maintenance, the court's equitable powers require the court to award property and maintenance as the court deems equitable and just. An award to wife of a portion of husband's retirement account, to which husband was the sole contributor, would be inequitable in light of the wife's fraud. In re Joel, 2012 COA 128, 404 P.3d 1251.

The parties' car is properly valued as of the date of the decree of invalidity and not the date of permanent orders as wife contends. In re Joel, 2012 COA 128, 404 P.3d 1251.

Applied in In re Heinzman, 198 Colo. 36, 596 P.2d 61 (1979).

II. THE INVALIDITY OF MARRIAGE PROCEEDING.

Originally, authority to grant divorces and annul marriages in England was vested solely in the ecclesiastical courts. This authority terminated around 1870, during the reign of Victoria, at which time a special court was created to hear and decide all divorces and annulments of marriage, but ecclesiastical courts and their authority never became a part of American common law. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

An annulment action is a statutory proceeding in which the court exercises equity powers. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

The severance of marital ties, the entry of custodial orders regarding children, the application of equitable principles in divorce and annulment actions, and so forth, are or have aspects of the conventional activities of a court of equity. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

This article provides that in suits for annulment the practice and proceedings shall be in accordance with the rules of civil procedure. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

In the interplay of this section and the rules of civil procedure, there is no trial by jury of an annulment suit as a matter of right. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

A cursory reading of C.R.C.P. 38(a) makes obvious the conclusion that an annulment suit does not come within the meaning of any of the enumerated actions requiring trial by jury unless waived. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

But C.R.C.P. 39(c) provides that in actions not triable by a jury, the court may upon motion or of its own initiative try any issue with an advisory jury, or when statute provides for trial without a jury, the court with the consent of both parties may order a jury trial. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Proof in an annulment case must be clear and convincing, and the court should so instruct the jury, and the preponderance rule is inapplicable. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

The giving of confusing and incompatible instructions in an annulment action is fatal error. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

III. MENTAL INCAPACITY TO CONSENT TO MARRIAGE.

Marriages are not easily annulled, and consequently, there must be clear and convincing proof that such party was mentally incompetent at the time the marriage was entered into. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

An instruction "that the husband would be incapable of giving voluntary consent if you find that at the time of the marriage ceremony he did not have sufficient mental capacity to understand the nature, obligations, and responsibilities of a marriage contract, and to appreciate the solemnity of the marriage vows" goes beyond the statutory ground for annulment which provides that if "one or both parties were mentally incapable of giving voluntary consent to the marriage", the marriage may be set aside. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

In an action for annulment of a marriage on the ground of mental incapacity, testimony of a witness to marriage ceremony that she observed plaintiff before, during, and after ceremony, conversed with him, and that in her opinion he was mentally competent, was erroneously rejected, the credibility of such witness being for the jury. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Testimony of a psychiatrist who based his opinion on the incompetency of plaintiff, and in part upon the testimony of another witness, was erroneously admitted. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

An order of adjudication of mental incompetency was properly admitted. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Evidence of forgery of a blood test certificate was immaterial and inadmissible, as not tending to prove any of the alleged grounds of annulment. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

Evidence that wife had applied for driver's license and signed a delinquency tax statement in former name, subsequent to the alleged marriage, were remote circumstances having no legitimate bearing on the issues and should have been rejected. Young v. Colo. Nat'l Bank, 148 Colo. 104, 365 P.2d 701 (1961).

IV. LEGITIMACY OF CHILDREN.

A judgment and decree annulling the marriage of the parents does not determine the parentage of a child conceived prior to the marriage, and is not res judicata in a dependency proceeding to determine the paternity of the child. Devereaux v. Devereaux, 144 Colo. 31, 354 P.2d 1015 (1960).

The parentage of a child is not an issue in an annulment action between the parents. Devereaux v. Devereaux, 144 Colo. 31, 354 P.2d 1015 (1960).

Subsection (4) refers only to cases where an annulment proceeding is brought. Valdez v. Shaw, 100 Colo. 101, 66 P.2d 325 (1937); Gainey v. Fleming, 279 F.2d 56 (10th Cir. 1960).

V. CONFLICT OF LAWS.

Marriages being lawful in other states are recognized as lawful and valid in the state of Colorado. Spencer v. People in Interest of Spencer, 133 Colo. 196, 292 P.2d 971 (1956).

It is the public policy of this state concerning foreign marriages that such marriages are valid if valid where performed. Spencer v. People in Interest of Spencer, 133 Colo. 196, 292 P.2d 971 (1956).

In an action for annulment, the marriage is held to be valid or void, according to the statutes in force and effect in the jurisdiction where the same was entered into, and if, according to these statutes, it is found to be valid, it must be so considered in this jurisdiction. Payne v. Payne, 121 Colo. 212, 214 P.2d 495 (1950).

Annulment issued in a foreign jurisdiction does not prevent Colorado courts from entering orders as to property and maintenance. In re Dickson, 983 P.2d 44 (Colo. App. 1998).

14-10-112. Separation agreement.

(1) To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the allocation of parental responsibilities, support, and parenting time of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except terms providing for the allocation of parental responsibilities, support, and parenting time of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, the court may request the parties to submit a revised separation agreement, or the court may make orders for the disposition of property, support, and maintenance.

(4) If the court finds that the separation agreement is not unconscionable as to support, maintenance, and property:

(a) Unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation, and the parties shall be ordered to perform them; or

(b) If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and shall state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt, but are no longer enforceable as contract terms.

(6) Except for terms concerning the support, the allocation of decision-making responsibility, or parenting time of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides.

Source: L. 71: R&RE, p. 525, § 1. **C.R.S. 1963:** § 46-1-12. **L. 93:** (1), (2), and (6) amended, p. 576, § 6, effective July 1. **L. 98:** (1), (2), and (6) amended, p. 1397, § 39, effective February 1, 1999.

Cross references: (1) For the "Uniform Premarital and Marital Agreements Act", see part 3 of article 2 of this title 14.

(2) For the legislative declaration contained in the 1993 act amending subsections (1), (2), and (6), see section 1 of chapter 165, Session Laws of Colorado 1993.

ANNOTATION

I. General Consideration.

II. Antenuptial Agreements.

III. Unconscionable Agreements.

IV. Incorporation of Agreement into Decree.

V. Modification.

VI. Enforcement.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Incorporation by Reference of Agreements Made by the Parties in Divorce Decrees", see 21 Rocky Mt. L. Rev. 420 (1949). For note, "The Paradoxical Separation Agreement", see 21 Rocky Mt. L. Rev. 434 (1949). For comment on Irwin v. Irwin, appearing below, see 35 U. Colo. L. Rev. 440 (1963). For note, "Effects of Reconciliation on Separation Agreements in Colorado", see 51 U. Colo. L. Rev. 399 (1980). For article, "Pre-Nuptial Agreements Revisited", see 11 Colo. Law. 1882 (1982). For article, "Mediation and the Colorado Lawyer", see 11 Colo. Law. 2315 (1982). For article, "Dischargeability of Dissolution Debts under the Bankruptcy Code", see 13 Colo. Law. 814 (1984). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Seeking

Change in Separation Agreement", see 15 Colo. Law. 806 (1986). For article, "Cohabitation Agreements in Colorado", see 15 Colo. Law. 979 (1986). For article, "Common Law Marriage in Colorado", see 15 Colo. Law. 252 (1987). For article, "Postsecondary Education Expenses after Chalat: Paying College Expenses after Divorce", see 38 Colo. Law. 19 (Jan. 2009).

Annotator's note. Although § 14-10-112 enacted in 1971 has no similar provision in previous codes and laws of Colorado, relevant cases decided under repealed §§ 46-1-1 through 46-1-11, C.R.S. 1963, §§ 46-1-1 through 46-1-15, CRS 53, CSA, C. 56, §§ 1 through 32, and laws antecedent thereto have been included in the annotations to this section. (But see In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975), concerning the precedential value of such cases.)

Purpose of the separation agreement is to enable divorcing parties to reach an amicable out-of-court settlement of their claims to the property of the other. In re Manzo, 659 P.2d 669 (Colo. 1983).

This section does not preclude a stipulated oral separation agreement; the issue is whether the parties intend to be bound by the terms of an agreement, whether oral or written. In re Chambers, 657 P.2d 458 (Colo. App. 1982).

It has been established that a husband and wife may enter into contracts which settle their differences, and the trial court, while determining division of property accumulated during the marriage, cannot disregard such a contract where it is free from fraud, collusion, compulsion, or unconscionability. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960); Irwin v. Irwin, 150 Colo. 261, 372 P.2d 440 (1962); Jekot v. Jekot, 32 Colo. App. 118, 507 P.2d 473 (1973).

While courts generally adopt stipulations between the parties, relating to alimony, they are not bound to do so. Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922).

The agreement must be in all respects fair, reasonable, and just, and it must make sufficient provision for the maintenance of the wife according to the status of the parties. Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922).

In agreements of this nature it must be made to appear that the husband has dealt fairly and equitable with his wife in the transaction. Hill v. Hill, 70 Colo. 47, 197 P. 236 (1921); Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922).

Parents may not by agreement divest the court of continuing jurisdiction over the custodial rights and duties of maintenance of children during their minority. Irwin v. Irwin, 150 Colo. 261, 372 P.2d 440 (1962).

Legal or equitable lien not created by decree. Language of dissolution decree which awarded the house to husband and his mother and ordered husband to execute a promissory note in favor of wife to become due upon the occurrence of one of several possible events did not create a legal or equitable lien on the property in favor of wife where the court did not impose any

duty on the husband to pay the note from the proceeds resulting from the sale of the property and did not order the husband to execute a deed of trust or other security instrument to secure payment of the note. Leyden v. Citicorp Indus. Bank, 762 P.2d 689 (Colo. App. 1988).

Applied in Lowery v. Lowery, 195 Colo. 86, 575 P.2d 430 (1978); In re Stedman, 632 P.2d 1048 (Colo. App. 1981).

II. ANTENUPTIAL AGREEMENTS.

Precedential value of prior decisions. In interpreting the current statute, the courts do not consider that the decisions on separation agreements incorporated in decrees in actions arising under the 1917 act (CRS 53, § 46-1-5) have any precedential value. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

This section is explicitly limited to separation agreements; antenuptial agreements cannot be challenged as unconscionable under this section. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979); In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Separation agreements and antenuptial agreements are separate and distinct legal documents. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd on other grounds, 653 P.2d 728 (Colo. 1982).

While separation agreements contemplate disposition of property interests which mature because of the marriage status, prenuptial agreements fix the property rights of the parties, regardless of the duration of the marriage. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979); In re Lemoine-Hofmann, 827 P.2d 587 (Colo. App. 1992).

Spouses-to-be have right to enter into antenuptial agreements which contemplate the possibility of dissolution. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd on other grounds, 653 P.2d 728 (Colo. 1982).

Where husband conceded that wife put him through college pursuant to their oral prenuptial agreement, such agreement is not void pursuant to statute of frauds since oral contracts otherwise unenforceable under § 38-10-101 et seq., may substitute for a writing if there is part performance of the oral contract. In re Lemoine-Hofmann, 827 P.2d 587 (Colo. App. 1992).

Standard for review compared with review of antenuptial agreement. The standard applied for court review of the division of property in a separation agreement allows the court more discretion than the standard for court review of the division of property in an antenuptial agreement. In re Manzo, 659 P.2d 669 (Colo. 1983).

Courts reviewing separation agreements prior to entry of a decree of dissolution need more latitude than is allowed for review of antenuptial agreements because of the public policy concern for safeguarding the interests of a spouse whose consent to the agreement may have been obtained under more emotionally stressful circumstances, especially if that spouse is unrepresented by

counsel. In re Manzo, 659 P.2d 669 (Colo. 1983).

Where parties to a divorce action had settled all their differences by agreement, and the only duties of husband are those set forth therein, there being no authority for the allowance of attorney fees to the wife, the court was without authority to award such fees. Irwin v. Irwin, 150 Colo. 261, 372 P.2d 440 (1962); Newey v. Newey, 161 Colo. 395, 421 P.2d 464, 422 P.2d 641 (1967).

The trial court, in determining the pecuniary provision for the wife upon granting a decree of divorce to her, has no right to disregard a previous agreement free from fraud, collusion, or compulsion, and fair to her, entered into between her and her husband in contemplation of a divorce, settling and adjusting all their property rights, including dower, alimony, and support. Newey v. Newey, 161 Colo. 395, 421 P.2d 464, 422 P.2d 641 (1967).

Where there was a self-operative trust agreement between the parties to a divorce action in settlement of their property rights, such agreement was binding upon the parties, and the court was without jurisdiction to set it aside, no showing of fraud, duress, or mistake appearing. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Formerly, an agreement between husband and wife which provided for alimony or property settlement in contemplation of divorce was presumptively fair, and the burden was on the wife to establish the contrary. Newey v. Newey, 161 Colo. 395, 421 P.2d 464, 422 P.2d 641 (1967).

An agreement between present spouses entered into "attendant upon" separation or dissolution must be considered a separation agreement, rather than a marital agreement, even if it was signed prior to filing for dissolution of marriage or legal separation. If an agreement is executed under circumstances accompanying, connected with, or surrounding a contemplated divorce or separation, it is considered a separation agreement. In re Bisque, 31 P.3d 175 (Colo. App. 2001); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

Whether an agreement is executed "attendant upon" a contemplated dissolution is a question of fact for the trial court, and the court's findings will not be set aside unless clearly erroneous. In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

Termination of a dissolution proceeding as a result of the death of one of the parties did not render the controversy over the antenuptial agreement moot. Even though the death of one spouse mooted the dissolution proceeding, because the antenuptial agreement had a practical legal effect on an ongoing probate proceeding, the trial court was in error when it ruled the agreement invalid. Schwartz v. Schwartz, 183 P.3d 552 (Colo. 2008).

III. UNCONSCIONABLE AGREEMENTS.

The court is not required to approve blindly an agreement it finds unconscionable. In re Eller, 38 Colo. App. 74, 552 P.2d 30 (1976).

Provisions of a proposed separation settlement agreement proffered for incorporation into a dissolution decree may be refused as "unconscionable" if the trial court concludes that the agreement is not fair, reasonable, and just. In re Carney, 631 P.2d 1173 (Colo. App. 1981).

Court may determine whether written separation agreement accurately expresses intent and agreement of parties and may exercise its equitable powers where necessary before this section becomes applicable. In re Deines, 44 Colo. App. 98, 608 P.2d 375 (1980).

Unconscionability has no relevance to testing of custody agreement. In re Lawson, 44 Colo. App. 105, 608 P.2d 378 (1980).

In determining whether an agreement is, or has become, unconscionable, the trial court should consider and apply the pertinent criteria set forth in the following sections: This section as to the economic circumstances of the parties; § 14-10-113 (1) as to the division of property; § 14-10-114 (1) as to maintenance; and § 14-10-115 (1) as to child support. In re Lowery, 39 Colo. App. 413, 568 P.2d 103 (1977), aff'd, 195 Colo. 86, 575 P.2d 430 (1978).

Review of provisions before incorporation into dissolution decree. Before a court incorporates property division provisions of a separation agreement into a dissolution decree, it should first review the provisions for fraud, overreaching, concealment of assets, or sharp dealing not consistent with the obligations of marital partners to deal fairly with each other, and then look at the economic circumstances of the parties which result from the agreement, including a determination whether under the totality of the circumstances the property disposition is fair, just and reasonable. In re Manzo, 659 P.2d 669 (Colo. 1983); In re Seely, 689 P.2d 1154 (Colo. App. 1984).

To set aside a property settlement agreement prior to its being incorporated in a dissolution decree, the court need not find that overreaching, inequality of bargaining power, or other elements of fraud are present. Rather, before the agreement is set forth in the decree, a court may set aside as unconscionable any agreement that is not "fair, reasonable and just". In re Wigner, 40 Colo. App. 253, 572 P.2d 495 (1977); In re Thornhill, 200 P.3d 1083 (Colo. App. 2008), aff'd in part, rev'd in part on other grounds, 232 P.3d 782 (Colo. 2010).

Appellate court was not bound by the determination of the trial court applying the unconscionability standard set forth in this section to an agreement, inasmuch as the resolution of that issue would be based upon the interpretation of the document and on uncontroverted facts. In re Lemoine-Hofmann, 827 P.2d 587 (Colo. App. 1992); In re Thornhill, 200 P.3d 1083 (Colo. App. 2008), aff'd in part, rev'd in part on other grounds, 232 P.3d 782 (Colo. 2010).

Provision for support payment increases based on salary increases allowable. A provision in a separation agreement that the amount of child support payments to be made by husband would increase in proportion to actual increases in husband's salary is allowable and creates no

presumption of unconscionability which would violate this section. In re Pratt, 651 P.2d 456 (Colo. App. 1982).

In order for agreement for binding Rabbinical arbitration to be enforceable, it must be conscionable and must be entered into by the parties voluntarily after full disclosure. In re Popack, 998 P.2d 464 (Colo. App. 2000).

Separation agreement giving wife approximately 91 percent of the marital property and entered into when husband's emotional state was adversely affected by the circumstances surrounding the execution of the agreement was unfair. In re Bisque, 31 P.3d 175 (Colo. App. 2001).

Separation agreement that did not provide wife with interest on her share of husband's business paid out over time was unconscionable. In the parties' separation agreement, husband agreed to make monthly payments to wife over a 10-year period for payment of her share of the value of the marital business. The agreement did not require the husband to pay interest on the total sum owed to wife or to secure the obligation. The lack of an interest provision in the agreement rendered the entire agreement unconscionable. In re Thornhill, 200 P.3d 1083 (Colo. App. 2008), aff'd in part, rev'd in part on other grounds, 232 P.3d 782 (Colo. 2010).

IV. INCORPORATION OF AGREEMENT INTO DECREE.

Formerly, where the stipulation and property settlement was approved by the courts, but the terms thereof were not set forth in a decree of divorce, the rights of the parties rested upon a contract, and not upon the decree, and were contractual and not decreed rights and obligations. Murphy v. Murphy, 138 Colo. 516, 335 P.2d 280 (1959); Cawley v. Cawley, 139 Colo. 439, 340 P.2d 122 (1959).

Formerly, where parties to a divorce action entered into a binding contract settling all their differences, the obligation of each to the other stemmed from the contract, and relief, if any, must have been based upon the rights of the parties under the contract. Irwin v. Irwin, 150 Colo. 261, 372 P.2d 440 (1962).

Formerly, where a trial court in a divorce action had no part in determining the property and financial rights of the parties, other than to approve and confirm an agreement purporting to settle all such financial and property rights, the incorporation of such agreement by references in the interlocutory or final decree in the action did not make the terms of such agreement an order or decree of the court, and was not a determination by the court of the respective rights of the parties, but was their voluntary adjustment of their differences, and unless the terms thereof are adopted by the court and fully and specifically set forth in the order or decree, the rights of the parties rest wholly upon the contract and not upon the decree of the court. Murphy v. Murphy, 138 Colo. 516, 335 P.2d 280 (1959).

Prior to incorporation in decree, separation agreement is contract. Prior to its incorporation in a dissolution decree, a separation agreement is a contract between

the parties to a marriage. In re Manzo, 659 P.2d 669 (Colo. 1983).

Subsection (5) is inapplicable where child support provisions of an agreement have not been incorporated into the dissolution decree. The provisions remain enforceable as contract terms. Williamson v. Williamson, 39 P.3d 1199 (Colo. App. 2001).

A reference to a separation agreement and an approval thereof by the court is sufficient to make it a part of the decree. Berglund v. Berglund, 28 Colo. App. 382, 474 P.2d 800 (1970).

There is no change in the relationship of the parties to a contract by virtue of its adoption and incorporation into a decree, nor of the force and effect of the contract's terms. The agreement, to the extent that it is incorporated, merges into the decree. The legal effect of this is that judgment remedies become available to the parties in lieu of contract remedies. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

The parties' rights and liabilities under the decree are governed by the terms of the settlement agreement. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

The terms of any agreement must have been fully and specifically set forth in a decree. Murphy v. Murphy, 138 Colo. 516, 335 P.2d 280 (1959).

Incorporation by reference allowed. The wording in subsection (4)(a) that "its terms shall be set forth in the decree" does not prohibit incorporation by reference. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

When an agreement has been incorporated by reference into the decree, it is as effectively a part thereof as if recited therein in haec verba. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

So long as it is clear what document is being referred to and that the parties intended for it to be a part of the decree, such incorporation is within the underlying purposes of this section and there is no apparent reason for requiring the recopying of the words into the court order. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

If an executed agreement for a division of property was not incorporated in or made a part of an interlocutory and final decree of divorce, and was not reserved for future action, it was not merged in the divorce proceedings. Cawley v. Cawley, 139 Colo. 439 340 P.2d 122 (1959).

If the property rights and obligations of the parties to a divorce action who had entered into a settlement agreement were to rest upon the court decree, then any such agreement as to those rights should have been fully and specifically set forth in the decree in order that the duties and rights could be definitely ascertained from the decree itself. Taylor v. Taylor, 147 Colo. 140, 362 P.2d 1027 (1961).

Failure to attach prior stipulation as to maintenance of no consequence. Where both parties clearly intended to have a copy of the stipulation regarding maintenance, child support, and division of property, "a

part and portion of the decree of dissolution", the absence of any question as to what document is being alluded to, and the agreement by the husband's lawyer, at the hearing for the decree, to the adoption by reference of the stipulation in the earlier separate maintenance case, make the failure to have a copy identified as an exhibit and attached to the decree of no consequence. In re Seymour, 36 Colo. App. 104, 536 P.2d 1172 (1975).

Incorporation of parties' agreement regarding medical insurance and expenses into permanent orders was not beyond the trial court's jurisdiction, and father's failure to pay such expenses could constitute contempt. In re Alverson, 981 P.2d 1123 (Colo. App. 1999).

V. MODIFICATION.

Formerly, where parties to a divorce action entered into an agreement settling their property rights, which agreement it incorporated in the final decree, the court was thereafter without jurisdiction — no fraud in procuring the settlement appearing — to modify the terms of the decree concerning such property rights in the absence of consent of the parties. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955); Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960); Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967); Berglund v. Berglund, 28 Colo. App. 382, 474 P.2d 800 (1970); Watson v. Watson, 29 Colo. App. 449, 485 P.2d 919 (1971); Ingels v. Ingels, 29 Colo. App. 585 487 P.2d 812 (1971).

Modification or revocation of agreement incorporated into decree. Where the parties' property settlement agreement has been incorporated into the decree of dissolution, it is subject to revocation or modification to the same extent as a property division rendered solely by the court. In re Stroud, 631 P.2d 168 (Colo. 1981).

Modification of property division provisions. Once property division provisions of a separation agreement have been incorporated into a dissolution of marriage decree, they may not be set aside or modified unless the conditions of C.R.C.P. 60 are met. In re Seely, 689 P.2d 1154 (Colo. App. 1984); Camack v. Camack, 62 P.3d 1097 (Colo. App. 2002).

When court has power to modify maintenance. A trial court has authority to test a settlement agreement on the standard of present unconscionability and for possible modification of maintenance under two circumstances: If the agreement or the decree reserves that power to the trial court, or, if the agreement and the decree are silent on the power to modify. In re Thompson, 640 P.2d 279 (Colo. App. 1982).

The court retained jurisdiction to modify the separation agreement where the agreement specifically provided that the issue of retirement benefits obtained as a result of the husband's military service shall remain open and modifiable. In re Sinkovich, 830 P.2d 1101 (Colo. App. 1992).

Restriction of court's jurisdiction to modify must be unequivocal. While subsection (6) permits the parties to restrict the jurisdiction of the court to modify the maintenance terms of a settlement

agreement, such a restriction must specifically and unequivocally preclude modification. In re Rother, 651 P.2d 457 (Colo. App. 1982).

Where maintenance provision not modifiable. Where there was no reservation in the trial court of the power to modify a maintenance provision, the court cannot do so later. In re Thompson, 640 P.2d 279 (Colo. App. 1982).

The waiver of the right to seek modification in and of itself could well be the consideration for a concession in the amount or duration of maintenance, or in the property received by a party. Thus, to permit reconsideration of the amount of maintenance contracted for, without also reopening the property division, would be inequitable. In re Thompson, 640 P.2d 279 (Colo. App. 1982).

Modification by parties' agreement not reservation to court of power. The fact that an agreement allows modification by agreement of the parties is not a reservation to the court of the power to modify; rather, it is a limitation on the court's power. In re Thompson, 640 P.2d 279 (Colo. App. 1982).

Only unequivocal language in the terms of the settlement precludes the court from modifying the support provisions. No such language existed where the settlement provided that the period for payment of maintenance could be extended by further order of the court. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

Where the parties' dissolution decree incorporated a separation agreement that stated that the husband's retirement benefits remained open and modifiable, the trial court had the authority to divide the husband's military retirement pension. In re Sinkovich, 830 P.2d 1101 (Colo. App. 1992).

Modification of agreement permitted upon showing of fraud or overreaching. Where the terms of a divorce decree specifically preclude modification, without the written consent of the parties, a court can modify the agreement only upon a showing of fraud or overreaching. In re Cohen, 44 Colo. App. 200, 610 P.2d 1092 (1980).

Where separation agreement and alimony not modifiable. Where a separation agreement was adopted and incorporated into the decree of divorce, and the agreement did not reserve to the court jurisdiction to modify the terms of the alimony provision, nor did the court in its order adopting and incorporating the agreement into the divorce decree specifically reserve the right to modify the terms thereof, the court cannot later modify the agreement or the alimony provisions. Burleson v. District Court, 196 Colo. 455, 586 P.2d 665 (1978).

Waiver clause in separation agreement is binding to bar pursuit of further spousal maintenance since promised maintenance payments were actually made despite technical default regarding the method of payment where wife acquiesced to such manner and there was no showing of fraud, collusion, or compulsion. In re Vincent, 709 P.2d 959 (Colo. App. 1985).

Modification of parenting time and the related nonmodification of child support agreement was made an order of court

and so constituted an amendment to the original order and therefore are no longer enforceable as contract terms because they were made an order of court. In re Rosenthal, 903 P.2d 1174 (Colo. App. 1995).

The promise in a separation agreement to pay postsecondary education expenses, once adopted by the court and incorporated in a decree of dissolution, is no longer enforceable as a contract term. In re Ludwig, 122 P.3d 1056 (Colo. App. 2005).

VI. ENFORCEMENT.

Property lien to enforce agreement. A court may impose a lien on a party's property in order to enforce an agreement where the party has threatened to dispose of the property and put himself beyond the court's jurisdiction. In re Valley, 633 P.2d 1104 (Colo. App. 1981).

Separation agreement is incorporated into and superceded by decree and, therefore, governed by remedies available for the enforcement of a judgment. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

The language of subsection (5) refers to "remedies, . . . including contempt," which clearly indicates that contempt is only one way to enforce an agreement obligation. It is therefore not necessary for ex-spouse to show that her enforcement actions occurred in the context of a contempt proceeding before the divorce court. In re Haddad, 639 B.R. 605 (Bankr. D. Colo. 2022).

A separation agreement that allows for child's residence to be the father's residence "for school enrollment purposes", whereas other parts of the separation agreement call for joint decision-making, relates only to the statutory provision governing how a school district may determine which children live within its boundaries; see § 22-1-102 (2)(a). It does not strip the other parent of the agreed upon right to joint decision-making regarding education. In re Thomas, 2021 COA 123, 501 P.3d 290.

Although attorney fees cannot be awarded as a punitive sanction in a contempt proceeding, attorney fees can be awarded if the case involves an agreement or contract for an award of such fees to the prevailing party. Marital agreements governing the manner in which each party's attorney fees will be paid should be enforced by the trial court, and the determination of which party succeeded or prevailed under a contractual fee-shifting provision is committed to the discretion of the trial court subject to an abuse of discretion standard of review on appeal. In re Sanchez-Vigil, 151 P.3d 621 (Colo. App. 2006).

To be a prevailing party for the purpose of an award of attorney fees pursuant to a contract, the applicant must have succeeded upon a significant issue presented by the litigation and must have achieved some of the benefits sought in the lawsuit. A party need not prevail upon the "central" issue, only upon a significant one. In re Watters, 782 P.2d 1220 (Colo. App. 1989); In re Sanchez-Vigil, 151 P.3d 621 (Colo. App. 2006).

14-10-113. Disposition of property - definitions.

(1) In a proceeding for dissolution of marriage or in a proceeding for legal separation or in a proceeding for disposition of property following the previous dissolution of marriage by a court which at the time of the prior dissolution of the marriage lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, subject to the provisions of subsection (7) of this section, shall set apart to each spouse his or her property and shall divide the marital property, without regard to marital misconduct, in such proportions as the court deems just after considering all relevant factors including:

(a) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;

(b) The value of the property set apart to each spouse;

(c) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse with whom any children reside the majority of the time; and

(d) Any increases or decreases in the value of the separate property of the spouse during the marriage or the depletion of the separate property for marital purposes.

(2) For purposes of this article only, and subject to the provisions of subsection (7) of this section, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(a) Property acquired by gift, bequest, devise, or descent;

(b) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(c) Property acquired by a spouse after a decree of legal separation; and

(d) Property excluded by valid agreement of the parties.

(3) Subject to the provisions of subsection (7) of this section, all property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of coownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property described in this subsection (3) is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

(4) Subject to the provisions of subsection (7) of this section, an asset of a spouse acquired prior to the marriage or in accordance with subsection (2)(a) or (2)(b) of this section shall be considered as marital property, for purposes of this article only, to the extent that its present value exceeds its value at the time of the marriage or at the time of acquisition if acquired after the marriage.

(5) For purposes of this section only, property shall be valued as of the date of the decree or as of the date of the hearing on disposition of property if such hearing precedes the date of the decree.

(6) (a) (I) Notwithstanding any anti-assignment, anti-alienation, or other provision of law to the contrary, all retirement benefits of any nature for public employees from a plan described in section 401 (a), 403 (b), 414 (d), or 457 of the federal "Internal Revenue Code of 1986", as amended, that is established pursuant to Colorado law shall be, in all actions for dissolution of marriage, legal separation, and declaration of invalidity of marriage, divisible directly by the plan upon written agreement of the parties to such an action pursuant to paragraph (c) of this subsection (6).

(II) The provisions of this subsection (6) shall apply to all dissolution of marriage, legal separation, and declaration of invalidity of marriage actions filed on or after January 1, 1997, and all dissolution of marriage, legal separation, or declaration of invalidity of marriage actions filed prior to January 1, 1997, in which the court did not enter a final property division order concerning the parties' public employee retirement benefits prior to January 1, 1997.

(b) As used in this subsection (6), unless the context otherwise requires:

(I) "Alternate payee" means a party to a dissolution of marriage, legal separation, or declaration of invalidity action who is not the participant of the public employee retirement plan divided or to be divided but who is married to or was married to the participant and who is to receive, is receiving, or has received all or a portion of the participant's retirement benefit by means of a written agreement as described in paragraph (c) of this subsection (6).

(II) "Defined benefit plan" means a retirement plan that is not a defined contribution plan and that usually provides benefits as a percentage of the participant's highest average salary, based on the plan's benefit formula and the participant's age and service credit at the time of retirement.

(III) "Defined contribution plan" means a retirement plan that provides for an individual retirement account for each participant and the benefits of which are based solely on the amount contributed to the participant's account and that includes any income, expenses, gains, losses, or forfeitures of accounts of other participants that may be allocated to the participant's account.

(IV) "Participant" means the person who is an active, inactive, or retired member of the public employee retirement plan.

(c) (I) The parties may enter into a marital agreement pursuant to part 3 of article 2 of this title or a separation agreement pursuant to section 14-10-112 concerning the division of a public employee retirement benefit between the parties pursuant to a written agreement. The parties shall submit such written agreement to the plan administrator within ninety days after entry of the decree and the permanent orders regarding property distribution in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage.

(II) A written agreement dividing a public employee retirement benefit shall:

(A) Specify the full legal name of the retirement plan or plans to which it applies;

(B) Specify the name, social security number, and last-known mailing address of the participant and the alternate payee as well as the alternate payee's relationship to the participant;

(C) For an agreement concerning a defined benefit plan, specify the distribution method, as described in subparagraph (III) of this paragraph (c), subject, if the plan permits, to benefit adjustments payable at the same time and in the same manner as any benefit adjustments applied to the participant's distribution;

(D) For an agreement concerning a defined contribution plan, specify the alternate payee's portion of the participant's account as a fixed lump-sum amount, or as a percentage, in either case, as of a specified date, from specific accounts of the participant and, unless the plan adopts rules and regulations pursuant to paragraph (d) of this subsection (6) permitting the plan to retain the alternate payee's portion of the participant's account, require that distribution to the alternate payee be made within one hundred twenty days after a certified court order approving the agreement has been submitted to and received by the plan;

(E) Not provide for payments to the alternate payee or to the participant for which he or she would not otherwise be eligible if there were no dissolution of marriage, legal separation, or declaration of invalidity action pending;

(F) For an agreement concerning a defined benefit plan, not require the plan to pay the alternate payee prior to the date payments commence to the participant or prior to the participant attaining age sixty-five or actual retirement date, whichever date is earlier, or at such later date as the parties may otherwise agree in writing;

(G) For an agreement concerning a defined benefit plan, provide that the alternate payee's rights to payments terminate upon the involuntary termination of benefits payable to the participant or upon the death of the alternate payee, whichever occurs first, unless the parties agree to elect, or have already elected, a benefit option under the plan that provides for a cobeneficiary benefit to the alternate payee;

(H) Provide that the manner of payment shall be in a form or type permissible under the plan. The agreement shall not require through this subsection (6) the payment of a benefit, benefit amount, or distribution option not otherwise set out in the plan document or statute.

(I) Not require the plan to pay benefits that are already required to be paid to another alternate payee or are already subject to an assignment or lien;

(J) Specify that it shall apply to successor plans;

(K) Comply with any rules or procedures promulgated pursuant to paragraph (d) of this subsection (6); and

(L) Specify that, once approved by the court, the order approving the agreement shall be certified by the clerk of the court and submitted to and received by the retirement plan at least thirty days before the plan may make its first payment.

(III) The written agreement between the parties described in subparagraph (II) of this paragraph (c) shall contain only one method or formula to be applied to divide the defined benefit plan. For purposes of sub-subparagraph (C) of subparagraph (II) of this paragraph (c), the parties may select any one of the following methods by which to divide the defined benefit plan:

(A) A fixed monetary amount;

(B) A fixed percentage of the payment to the participant;

(C) The time-rule formula determined by dividing the number of months of service credit acquired under the plan during the marriage as set forth in the court's order by the number of months of service credit in such plan at the time of the participant's retirement as determined by the plan, which quotient shall be multiplied by a percentage specified in the court's order, and the product thereof shall be further multiplied by the amount of the payment to the participant at the date of retirement;

(D) A formula determined by dividing the number of months of service credit acquired under the plan during the marriage as set forth in the court's order by the number of months of service credit in such plan as of the date of the decree as determined by the plan, regardless of when the participant is expected to retire, which quotient shall be multiplied by a percentage specified in the court's order, and the product thereof shall be further multiplied by the amount of the payment the participant would be entitled to receive as if the participant were to retire and receive an unreduced benefit on the date of the decree; or

(E) Any other method or formula mutually agreed upon by the parties that specifies a dollar amount or percentage payable to the alternate payee.

(d) The trustees or the administrator of each retirement plan may promulgate rules or procedures governing the implementation of this subsection (6) with respect to public employee retirement plans that they administer. Such rules or procedures may include the requirement that a standardized form be used by the parties and the court for an order approving the parties' agreement to be effective as well as other provisions consistent with the purpose of this subsection (6).

(e) Compliance with the provisions of this subsection (6) by a public employee retirement plan shall not subject the plan to any portions of the federal "Employee Retirement Income Security Act of 1974", as amended, that do not otherwise affect governmental plans generally. Any plan that reasonably complies with an order approving an agreement entered into pursuant to this subsection (6) shall be relieved of liability for payments made to the parties subject to such order.

(f) A court shall have no jurisdiction to enter an order dividing a public employee retirement benefit except upon written agreement of the parties pursuant to this subsection (6). A court shall have no jurisdiction to modify an order approving a written agreement of the parties dividing a public employee retirement benefit unless the parties have agreed in writing to the modification. A court may retain jurisdiction to supervise the implementation of the order dividing the retirement benefits.

(7) (a) For purposes of subsections (1) to (4) of this section only, except with respect to gifts of nonbusiness tangible personal property, gifts from one spouse to another, whether in trust or not, shall be presumed to be marital property and not separate property. This presumption may be rebutted by clear and convincing evidence.

(b) For purposes of subsections (1) to (4) of this section only, "property" and "an asset of a spouse" shall not include any interest a party may have as an heir at law of a living person or any interest under any donative third party instrument which is amendable or revocable, including but not limited to third-party wills, revocable trusts, life insurance, and retirement benefit instruments, nor shall any such interests be considered as an economic circumstance or other factor.

(c) (I) The provisions of this subsection (7) shall apply to all causes of action filed on or after July 1, 2002. The provisions of this subsection (7) shall also apply to all causes of action filed before said date in which a final property disposition order concerning matters affected by this subsection (7) was not entered prior to July 1, 2002.

(II) For purposes of this paragraph (c), "final property disposition order" means a property disposition order for which the time to appeal has expired or for which all pending appeals have been finally concluded.

Source: L. 71: R&RE, p. 525, § 1. **C.R.S. 1963:** § 46-1-13. **L. 73:** pp. 553, 555, §§ 6, 7, 12. **L. 75:** IP(1) amended, p. 210, § 25, effective July 16. **L. 96:** (6) added, p. 1457, § 1, effective January 1, 1997. **L. 97:** (6)(a) amended, p. 100, § 1, effective March 24. **L. 98:** (6)(c)(I) and (6)(c)(II)(C) amended and (6)(c)(III) added, p. 355, § 1, effective August 5; (1)(c) amended, p. 1397, § 40, effective February 1, 1999. **L. 99:** (6)(c)(I), (6)(c)(II)(L), and (6)(f) amended, p. 46, § 1, effective March 15. **L. 2002:** (6)(a)(I) amended, p. 138, § 1, effective March 27; IP(1), IP(2),

(3), and (4) amended and (7) added, p. 1054, § 1, effective June 1. **L. 2004:** (6)(a)(I) amended, p. 222, § 5, effective April 1.

Cross references: For the federal "Employee Retirement Income Security Act of 1974", see 29 U.S.C. sec. 1001 et seq.

ANNOTATION

I. General Consideration.

III. Valuation of Property.

IV. Scope of Review.

V. Enforcement.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Effects of Reconciliation on Separation Agreements in Colorado", see 51 U. Colo. L. Rev. 399 (1980). For article, "The Economy: Its Effects on Family Law", see 11 Colo. Law. 97 (1982). For article, "Pre-Nuptial Agreements Revisited", see 11 Colo. Law. 1882 (1982). For article, "Marital Property", see 13 Colo. Law. 1209 (1984). For article, "Taxation", which discusses a Tenth Circuit decision dealing with periodic payments as alimony or property settlement, see 61 Den. L.J. 392 (1984). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Division of Pension Benefits in Divorce Proceedings", see 14 Colo. Law. 378 (1985). For article, "Cohabitation Agreements in Colorado", see 15 Colo. Law. 979 (1986). For article, "Common Law Marriage in Colorado", see 16 Colo. Law. 252 (1987). For article, "Division of Civil Service Retirement Benefits in Divorce", see 17 Colo. Law. 643 (1988). For article, "Standards for Tracing Marital Property Back to Non-Marital Property", see 17 Colo. Law. 853 (1988). For article, "Determining Benefits for Former Spouses of Military Personnel", see 19 Colo. Law. 1073 (1990). For article, "Classifying Income, Rents, and Profits from Separate Property", see 24 Colo. Law. 1303 (1994). For article, "Marital or Separate Property: An Overview for Practitioners", see 24 Colo. Law. 571 (1995). For article, "Employee Stock Options and Restricted Shares: Determining and Dividing the Marital Property", see 25 Colo. 87 (Oct. 1996). For article, "Valuing Business Goodwill in a Divorce", see 26 Colo. Law. 53 (Apr. 1997). For article, "Establishing Separate Property Through Asset Tracing After Burford", see 28 Colo. Law. 55 (Jan. 1999). For article, "How Income Taxes Affect Property Settlements", see 29 Colo. Law. 55 (Jan. 2000). For article, "Divorce Considerations Relevant to an Estate Planning Practice", see 29 Colo. Law. 53 (Feb. 2000). For article, "Retirement Benefits in Divorce: Mixing, Matching, and Offsetting", see 29 Colo. Law. 67 (June 2000). For article, "Balanson: Drafting Trust to Deflect the Spousal Creditor", see 30 Colo. Law. 131 (Oct. 2001). For article, "Planning for Community Property in Colorado", see 31 Colo. Law. 79

(June 2002). For article, "Complex Financial Issues in Family Law Cases", see 37 Colo. Law. 53 (Oct. 2008). For article, "Determining When Trusts are Property for the Purpose of Equitable Division", see 39 Colo. Law. 39 (June 2010). For article, "Distributing Personal Injury Settlements and Workers' Compensation Awards in Divorce", see 45 Colo. Law. 25 (Oct. 2016). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017). For article, "How Powers of Appointment Affect Irrevocable Trust Remainder Interests in Dissolution of Marriage Proceedings", see 48 Colo. Law. 48 (Dec. 2019). For article, "Measuring the Value of Trust Interests in Dissolution of Marriage Proceedings", see 51 Colo. Law. 38 (Mar. 2022). For article, "A Primer on Executive Compensation in a Colorado Divorce — Part 1", see 51 Colo. Law. 26 (May 2022). For article, "A Primer on Executive Compensation in a Colorado Divorce — Part 2", see 51 Colo. Law. 34 (June 2022). For article, "Standard of Value for Business Appraisals in Colorado Dissolution of Marriage Proceedings", see 51 Colo. Law. 24 (Oct. 2022). For article, "The Treatment of SLATs in the Event of a Dissolution of Marriage", see 53 Colo. Law. 42 (June 2024).

Annotator's note. Since § 14-10-113 is similar to repealed § 46-1-5(2), C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Subsection (7)(b) is not unconstitutionally retrospective. In re Balanson, 107 P.3d 1037 (Colo. App. 2004).

Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations, and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

There is a distinction between maintenance awards and property settlements. Property divisions are intended to accomplish a just apportionment of marital property over time, whereas maintenance is intended be a substitute for marital support that can be used, for example, to ease a spouse's transition into the work force and prevent the spouse from becoming dependent on public assistance. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Division of property is mandatory under this section, whereas an award of maintenance is discretionary under § 14-10-114. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

This statute is a legislative recognition of preexisting Colorado law. Imel v. United States, 375 F. Supp. 1102 (D. Colo. 1973), aff'd, 523 F.2d 853 (10th Cir. 1975).

Awarding of attorney fees is discretionary with trial court and will not be disturbed on review if supported by the evidence. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo.

1982); In re Kiefer, 738 P.2d 54 (Colo. App. 1987).

Equitable lien created by decree of dissolution. Where wife was ordered to quitclaim her undivided one-third interest in the family home to husband and his mother in exchange for a promissory note representing the value of such interest, an equitable lien to prevent unjust enrichment was imposed on the property because repayment of the note was conditioned in part on events involving disposition of the property. Leyden v. Citicorp Indus. Bank, 782 P.2d 6 (Colo. 1989).

The needs of the children are of paramount importance; therefore, statutory provisions may not be modified by agreement if to do so would affect the rights of the child whom the statute is designed to protect. In re Miller, 790 P.2d 890 (Colo. App. 1990).

Attorney fees are not a non-challengeable marital debt under this section. In re Rieger, 827 P.2d 625 (Colo. App. 1992).

Partition of marital property pursuant to § 38-28-101 after the entry of the final dissolution decree is permissible, but the partition order must not conflict with explicit provisions of the decree. Wilson v. Prentiss, 140 P.3d 288 (Colo. App. 2006).

Applied in In re Mitchell, 195 Colo. 399, 579 P.2d 613 (1978); Mayer v. District Court, 198 Colo. 199, 597 P.2d 577 (1979); In re Engelman, 43 Colo. App. 531, 605 P.2d 490 (1979); In re Hartford, 44 Colo. App. 303, 612 P.2d 1163 (1980); In re Carney, 631 P.2d 1173 (Colo. 1981); In re Stewart, 632 P.2d 287 (Colo. App. 1981); In re Everhart, 636 P.2d 1321 (Colo. App. 1981); In re Manzo, 659 P.2d 669 (Colo. 1983).

II. DIVISION OF PROPERTY.

A. In General.

B. Definition of Property.

C. Discretion of Court.

D. Antenuptial Agreements.

E. Separate Property.

F. Marital Property.

G. After-acquired Property.

A. In General.

Law reviews. For article, "Property or Expectancy: The Division of Trust Assets at Dissolution of Marriage", see 30 Colo. Law. 63 (Feb. 2001). For article, "The Continuing Evolution of Balanson: Trusts as Property in Divorce", see 34 Colo. Law. 79 (June 2005). For article, "Divorce in the Land of Startups", see 43 Colo. Law. 47 (Dec. 2014).

This statute makes property division mandatory. Imel v. United States, 375 F. Supp. 1102 (D. Colo. 1973), aff'd, 523 F.2d 853 (10th Cir. 1975); In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Where the trial court has the necessary jurisdiction, over not only the subject matter but the persons as well, it is required to divide the marital property in accordance with this section. In re Quay, 647 P.2d 693 (Colo. App. 1982).

A court that declares a marriage invalid is vested with the same authority to divide the parties' property acquired during

the invalid marriage as if the court had dissolved a valid marriage. Nguyen v. Lai, 2022 COA 141, 525 P.3d 1113.

Language of subsection (1)(c) is not mandatory. In re Warrington, 44 Colo. App. 294, 616 P.2d 177 (1980).

Colorado is not a community property state. In re Ellis, 36 Colo. App. 234, 538 P.2d 1347 (1975), aff'd, 191 Colo. 317, 552 P.2d 506 (1976).

The statutory mandate to distribute property equitably does not require equality. In re Warrington, 44 Colo. App. 294, 616 P.2d 177 (1980); In re Weiss, 695 P.2d 778 (Colo. App. 1984); In re Fenimore, 782 P.2d 872 (Colo. App. 1989); In re Bookout, 833 P.2d 800 (Colo. App. 1991); In re Morehouse, 121 P.3d 264 (Colo. App. 2005).

The parties need not be accorded equal shares in the marital estate. In re Boyd, 643 P.2d 804 (Colo. App. 1982).

It has been held repeatedly that in matters of division of property the trial court is imbued with broad discretion, and that the mandate to distribute property equitably does not require equality. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975).

Facially disproportionate division of property not inequitable where economic circumstances of each spouse were properly considered. In re Sorensen, 679 P.2d 612 (Colo. App. 1984).

There is no requirement that the court divide property with precise equality in order to achieve an equitable division. In re Howard, 42 Colo. App. 457, 600 P.2d 93 (1979).

Increases in separate property or marital property do not mandate that such property be divided equally, nor does it necessarily preclude the award of substantially all of such property to only one spouse. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

A trial judge cannot in all circumstances evaluate marital property with razor-sharp exactness so that each party's share has a precise monetary value. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

The distribution of marital property must be just and equitable, but need not be necessarily equal. In re McGinnis, 778 P.2d 281 (Colo. App. 1989); In re Jaeger, 883 P.2d 577 (Colo. App. 1994); In re Goldin, 923 P.2d 376 (Colo. App. 1996); In re Stumpf, 932 P.2d 845 (Colo. App. 1996); In re Eisenhuth, 976 P.2d 896 (Colo. App. 1999).

This section authorizes the trial court to make an equitable and just division of the property of persons involved in divorce proceedings as that property is shown to exist at the time of the order entered with regard thereto. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964).

The dissolution court has jurisdiction to grant relief but only in equity and not at law. Tort claims concerning property that was the subject of the dissolution court may not be joined into an otherwise equitable dissolution proceeding. In re Mockelmann, 121 P.3d 335 (Colo. App. 2005).

Court may not become a surrogate attorney for party who has chosen not to appear before the court in order to reach an equitable division of marital property. Therefore, trial court did not abuse its discretion in failing to elicit evidence concerning husband's current earnings, the use husband made of funds he withdrew from the joint bank account, or the classification of certain property as separate or marital. In re Eisenhuth, 976 P.2d 896 (Colo. App. 1999).

The public policies to be furthered under this act include dividing of assets equitably and mitigating the harm to spouses and children. These policies take precedence over any contract arguments that may be raised by either spouse. Thus, the trial court was correct in refusing husband's indemnification argument and in interpreting the divorce decree as requiring the husband to compensate the wife for the fair market value of business property apportioned to her in the equitable distribution. In re Plesich, 881 P.2d 379 (Colo. App. 1994).

It is not objectionable that an exact dollar amount of the husband's contribution to assets cannot be determined from the testimony, as it is not a prerequisite to a fair and equitable division of property that such distribution be made in exact proportion to contribution of funds. Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971).

There is no mathematical formula for establishing a just and equitable property settlement, or alimony, or support. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

It is improper for the court to continue a joint or common tenancy between divorced spouses in marital property. Rather, in dividing the marital property, the court should leave to each party a definable portion of ownership. In re Paul, 821 P.2d 925 (Colo. App. 1991).

In dividing marital property, specific findings regarding value of assets are not required as long as basis for decision of trial court is apparent from its findings. In re Sharp, 823 P.2d 1387 (Colo. App. 1991).

This issue of property division in a divorce action is not one of marital fault, but whether the wife is entitled thereto by reason of having contributed to the accumulation or preservation of the assets sought to be divided, and whether her conduct was such as to justify her sharing in a division of such property. Liggett v. Liggett, 152 Colo. 110, 380 P.2d 673 (1963); Kraus v. Kraus, 159 Colo. 331, 411 P.2d 240 (1966); Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Although marital fault or misconduct may not be considered by the trial court when it is dividing marital assets, economic fault may be considered. Economic fault comes into play in extreme cases, such as a spouse's dissipation of marital assets in the contemplation of divorce, and it must be strictly confined so as not to circumvent the prohibition against consideration of marital fault. In re Jorgenson, 143 P.3d 1169 (Colo. App. 2006).

Formerly, it was only one of the elements to be taken into consideration, and in the absence of moral delinquency or a

complete disregard of the marriage vows, individual fault should not have acted as an obstacle to an equitable division of property. Bell v. Bell, 156 Colo. 513, 400 P.2d 440 (1965); Schrader v. Schrader, 156 Colo. 521, 400 P.2d 675 (1965).

Maintenance and property settlement must be considered together to achieve just result in dissolution proceedings. If an order dividing property cannot stand, the provision for maintenance must also be set aside to permit the trial court to consider both matters in relation to each other upon remand. In re Lord, 626 P.2d 698 (Colo. App. 1980).

Property division must precede consideration of maintenance. In re Jones, 627 P.2d 248 (Colo. 1981); In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Fact that the parties waived maintenance has no bearing on the classification of stock shares as marital property; thus, wife's argument that because the stock purchase was made through a payroll deduction it constituted her compensation and could not be divided as property or considered maintenance, since both parties waived maintenance, was misplaced. In re Huston, 967 P.2d 181 (Colo. App. 1998).

There is a qualitative difference between a maintenance award and a division of property. A property division is final and non-modifiable absent conditions justifying relief from judgment. In re Wells, 833 P.2d 797 (Colo. App. 1991).

Statutory criteria for dividing property is general in nature, and the trial court has wide discretion in dividing marital property to accomplish a just result. In re Jackson, 698 P.2d 1347 (Colo. 1985).

Division of property must be based on the situation of the parties at the time of the decree rather than that at the time of their marriage. Shapiro v. Shapiro, 115 Colo. 505, 176 P.2d 363 (1946); Stephenson v. Stephenson, 134 Colo. 96, 299 P.2d 1095 (1956); Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964).

Subsection (1)(c) requires the trial court to consider the economic circumstances of the respective spouses at the time of the hearing relating to the division of marital property. Therefore, the trial court erred as a matter of law in considering the economic circumstances of the parties at the time of the dissolution, rather than at the time of the permanent orders, which occurred in the year following the entry of the dissolution. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Every property division action depends on the particular facts of each case. Granato v. Granato, 130 Colo. 439, 277 P.2d 236 (1954).

Many factors enter into the determination of what division of property shall be made in the event of a divorce, among these are the value of the estate to be divided; the financial condition of the parties; the ability of each spouse to earn money; how the property was acquired; the age and status of the parties, and all pertinent facts and circumstances bearing on the question. Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955);

Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959); Kraus v. Kraus, 159 Colo. 331, 411 P.2d 240 (1966); Larrabee v. Larrabee, 31 Colo. App. 493 504 P.2d 358 (1972).

Spouse's earning capabilities are properly part of the "economic circumstances" the court must consider in compliance with subsection (1). In re Faulkner, 652 P.2d 572 (Colo. 1982).

Future social security benefits may be properly considered as part of the "economic circumstances" the court must consider in compliance with subsection (1). The trial court may not, however, directly distribute marital property to offset the computed value of social security benefits. In re Morehouse, 121 P.3d 264 (Colo. App. 2005).

Contribution to an increase in separate property is an important factor, but not the sole factor to consider in dividing such property. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

Value of husband's interest in corporation considered in determining division of property. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

Factors such as occupational experience, coupled with education, training, and business background should also be considered in determining what division should be made of property. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

The award of rights in property to the wife was only another factor in the determination of the interests of the parties in the realty which they owned. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

That the husband had transferred his property to his brother with fraudulent intent, and that it was reasonable to presume that he would not deal fairly, frankly, and openly with his wife and child, were facts properly to be considered by the court in making division of property. Shapiro v. Shapiro, 115 Colo. 505, 176 P.2d 363 (1946).

Where the division of property was not in the nature of alimony or support money for the minor children, but was an equitable division based upon the fact that the wife, during marriage, in addition to the usual household duties, performed services that contributed to the husband's business advantage, a division of property could be ordered in addition to alimony. Shapiro v. Shapiro, 115 Colo. 505, 176 P.2d 363 (1946).

The fact that much of the husband's property came by inheritance did not preclude the court from making an equitable division of property between a husband and a wife who had performed services contributing to her husband's business advantage, but was only one of many facts to be considered by the court. Shapiro v. Shapiro, 115 Colo. 505, 176 P.2d 363 (1946).

Inherited property was formerly not per se excluded from consideration by the court in making a determination of the property rights of the parties. Santilli v. Santilli, 169 Colo. 49, 453 P.2d 606 (1969).

Property division could be made even where a wife is not entitled to alimony. Britt v. Britt, 137 Colo. 524, 328 P.2d 947 (1958).

It is not a necessary prerequisite that a wife show that she has contributed by funds or efforts to the acquiring of any specific property awarded her. Britt v. Britt, 137 Colo. 524, 328 P.2d 947 (1958); Bell v. Bell, 156 Colo. 513, 400 P.2d 440 (1965); Santilli v. Santilli, 169 Colo. 49, 453 P.2d 606 (1969).

But whether the wife has contributed to or in some manner aided in the accumulation or preservation of the assets sought to be divided must be ascertained. Kraus v. Kraus, 159 Colo. 331, 411 P.2d 240 (1966).

Where by her services beyond the usual duties of a homemaker, a wife contributes either funds or services which enable the husband to increase his property holdings, or to preserve those already held, the wife is entitled upon divorce to an equitable award of money or property as may be justified by the circumstances of the parties. Britt v. Britt, 137 Colo. 524, 328 P.2d 947 (1958).

The pecuniary resources of the husband were not to be regarded as a basis for a division of property, which was not the purpose of an allowance for the support of the wife, but they had a bearing upon the condition in life of the parties and thus upon the necessities of the wife, for as had been recognized in considering the liability of a husband for necessaries supplied to his wife, the term "necessaries" in this connection was not confined to articles of food or clothing required to sustain life, but had a much broader meaning and included such articles for use by a wife as were suitable to maintain her and the family according to the property and condition in life of her husband. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

Where a wife advanced $8,000 from her own funds to her husband to purchase property, a finding that the husband was indebted to the wife in such amount and that she should have had a lien on property to secure repayment thereof, being amply supported by the evidence, was not erroneous. Flor v. Flor, 148 Colo. 514, 366 P.2d 664 (1961).

Where a wife in outburst of emotion, damaged or destroyed husband's personal effects, it was not error to award husband value thereof against the wife. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

It was not a prerequisite to a fair and equitable division of property that the wife must show that she had contributed by funds or effort to the acquisition of the specific property awarded to her. Schrader v. Schrader, 156 Colo. 521, 400 P.2d 675 (1965).

Where the husband was the owner of a minority stock interest and was not the owner of the home, piercing the corporate veil to determine the true value of an interest in a closely held corporation did not allow for an order that part of the corporation's property should be distributed to or used by a legal stranger, and the wife was not entitled to corporate assets, but to a sum of

money, or possibly even shares of stock, based upon the fair value of her husband's interest. Kalcevic v. Kalcevic, 156 Colo. 151, 397 P.2d 483 (1964).

A dissolution of a marriage must be effective before any court had power to decree a division of property between a husband and wife. Ikeler v. Ikeler, 84 Colo. 429, 271 P. 193 (1928); McCoy v. McCoy, 139 Colo. 105, 336 P.2d 302 (1959).

Otherwise, the parties would still be married, and while that status continues there is always the possibility of a termination of the separation, and a court is therefore without power to finally determine the property rights of the parties. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

This section does not prohibit a hearing on the parties' property settlement before the entry of the divorce decree, but merely provides that at the time of the issuance of the divorce decree, or thereafter, on application the court may make orders relating to property divisions. Kalcevic v. Kalcevic, 156 Colo. 151, 397 P.2d 483 (1964).

Personal service upon nonresident is not prerequisite to division of property. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Jurisdiction over petitioner extends to property in state. Where petitioner has possession of property located in Colorado, the property being specifically described in the petition as an asset subject to disposition, the court acquires control of the property by virtue of its jurisdiction over petitioner, and the court thereby obtains jurisdiction to determine the appropriate disposition of that property. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Where the trial court has jurisdiction to divide property of the parties by virtue of the fact that the property was located in Colorado, it can properly adjudicate the rights of the parties with respect to property owned by them in Colorado. In re Wilson, 653 P.2d 85 (Colo. App. 1982).

Where trial court had jurisdiction to divide a partnership interest equitably, wife had standing to challenge partnership's valuation of husband's partnership interest and a legally cognizable interest in its value. In re Nevarez, 170 P.3d 808 (Colo. App. 2007).

The trial court did not exceed its jurisdiction in requiring the husband to execute and deliver deeds conveying his interest in the property to the wife, because although it has generally been held that a divorce court in one state does not have the power directly to affect, by means of its decree, the title to real property situated in another state, where the decree itself does not operate as a conveyance, but was wholly an in personam decree requiring that a party under the court's jurisdiction execute the conveyance, the court did not exceed its jurisdiction. Larrabee v. Larrabee, 31 Colo. App. 493, 504 P.2d 358 (1972).

"Date of the hearing". Where the hearing on disposition of property takes more than one day and there is a substantial interval between hearing days, the "date of the hearing" referred to in subsection (5) is

the day when the last evidence was presented on this matter. In re Femmer, 39 Colo. App. 277, 568 P.2d 81 (1977).

Where the trial court had jurisdiction to divide property at the time of entry of a final decree of divorce, but did not do so, nor then reserve the matter for further consideration, it lost jurisdiction to thereafter make a valid division of such property. Triebelhorn v. Turzanski, 149 Colo. 558, 370 P.2d 757 (1962).

Because former § 46-1-5(2), C.R.S. 1963, did not contemplate or authorize the court to exercise continuing supervisory powers over the management of the property subject to division. Larrick v. Larrick, 30 Colo. App. 327, 491 P.2d 1401 (1971).

Former § 46-1-5(2), C.R.S. 1963, required that an order dividing the property of the parties to a divorce proceeding be made either at the time the divorce decree was issued, or within such "reasonable time thereafter as may be set by the court at the time of the issuance of said divorce decree". Larrick v. Larrick, 30 Colo. App. 327, 491 P.2d 1401 (1971).

Where the trial court retained the jurisdiction to award such alimony as may be just upon a proper showing, in no way altered the finality of a portion of the decree which determined the rights and interests of the parties in the real estate. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

The trial court retained jurisdiction of the controversy concerning the property settlement between these divorced parties as to matters affecting their property rights following the death of the husband. Sarno v. Sarno, 28 Colo. App. 598, 478 P.2d 711 (1970).

Trust where wife settlor and sole income beneficiary. Where wife had established a trust with herself as sole income beneficiary, the court had jurisdiction, in a subsequent divorce action, to order the trustee to make payments from the trust to the husband. In re Kaladic v. Kaladic, 41 Colo. App. 419, 589 P.2d 502 (1978).

The trial court in the absence of agreement between the parties to the divorce action could not, over the objection of the wife, order that her share in the property division be impressed with a trust. Ferguson v. Olmsted, 168 Colo. 374, 451 P.2d 746 (1969).

Reconsideration of property division to correct error unnecessary absent contest. When neither party contests a trial court's division of property it is not necessary that the court be able to reconsider the property division in order to correct error in the provisions for maintenance and attorney fees. In re Jones, 627 P.2d 248 (Colo. 1981).

Payment of interest on spouse's equity in house. The wife may be required to pay interest on the husband's share of the equity in the house which was awarded to the wife, for the period between the dissolution of marriage and payment of the equity. In re Garcia, 638 P.2d 848 (Colo. App. 1981).

Interest on portion of sale price of marital residence representing husband's share is to be calculated from date specified in decree that payment of such amount become due,

not date of sale. In re Schutte, 721 P.2d 160 (Colo. App. 1986).

Transfer is not taxable event. When, under this section, a property settlement agreement is entered into providing for a transfer of property from husband to wife in acknowledgment of the wife's contribution to the accumulation of the marital estate, or a decree of the divorce court requires such transfer because of wife's contributions to the accumulation of the family estate, and the transfer is not made in satisfaction of the husband's obligation for support, the transfer is not a taxable event giving rise to capital gains tax liability for purposes of federal income taxation. Imel v. United States, 375 F. Supp. 1102 (D. Colo. 1973), aff'd, 523 F.2d 853 (10th Cir. 1975).

Acts of depletion of marital estate are relevant considerations in making a division of property and not an imputation of marital misconduct on the part of a spouse. In re Paulsen, 677 P.2d 1389 (Colo. App. 1984).

Spouse may be required to apply future earnings against present marital debts. Subsection (2)(c) is not violated solely because the award forces the husband to apply future earnings to retire present debts of the marital estate. In re Faulkner, 652 P.2d 572 (Colo. 1982).

A spouse's contribution to the professional education and career of the other spouse must be considered in the distribution of property pursuant to this section. In re Speirs, 956 P.2d 622 (Colo. App. 1997).

Gift by a third-party donor during the marriage that increases the value of a jointly titled asset is presumably a gift to the marriage. This presumption can only be rebutted by clear and convincing evidence. In re Krejci, 2013 COA 6, 297 P.3d 1035.

Courts must follow this section when allocating a previously misstated or omitted asset under C.R.C.P. 16.2(e)(10). In re Evans, 2021 COA 141, 504 P.3d 988.

Trial court erred in classifying pre-decree but post-separation student loan debt as wife's separate debt. All debt acquired during a marriage is marital debt. However, classifying student loan debt as marital debt does not preclude court from allocating responsibility for payment of the loan to the party who incurred the loan. Because court's error affects substantial rights, order dividing property must be reversed. Court must consider parties' economic circumstances at the time of remand. In re Morton, 2016 COA 1, 369 P.3d 800.

B. Definition of Property.

This section does not define "property" but merely specifies that the "marital property" is to be divided "in such proportions as the court deems just". In re Ellis, 36 Colo. App. 234, 538 P.2d 1347 (1975), aff'd, 191 Colo. 317, 552 P.2d 506 (1976).

The legislature intended the term "property" to be broadly inclusive, as indicated by its use of the qualifying adjective "all" in subsection (2) of this section. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

There are necessary limits upon what may be considered "property", and the concept as used by the general assembly is other than that usually understood to be embodied within the term. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

An insurance policy with no cash surrender value does not represent any asset proper for consideration on the theory that it is "property" which is subject to equitable division between the parties. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964).

Degree is not property. Where a spouse provides financial support while the other spouse acquires a degree, the degree is not considered property. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977); In re Olar, 747 P.2d 676 (Colo. 1987).

At best, education is an intangible property right, the value of which, because of its character, cannot have a monetary value placed upon it for division between spouses. In re Graham, 38 Colo. App. 130, 555 P.2d 527 (1976), aff'd, 194 Colo. 429, 574 P.2d 75 (1978); In re Olar, 747 P.2d 676 (Colo. 1987).

And is not subject to division under this section. Although a litigant's education is a factor to be considered, among many others, in arriving at an equitable property division and in determining matters of maintenance and child support, it is not property subject to division under this section. In re Graham, 38 Colo. App. 130, 555 P.2d 527 (1976), aff'd, 194 Colo. 429, 574 P.2d 75 (1978); In re Olar, 747 P.2d 676 (Colo. 1987); In re Speirs, 956 P.2d 622 (Colo. App. 1997).

Husband's beneficial interest in discretionary trust is not "property" subject to division as such under this section. In re Rosenblum, 43 Colo. App. 144, 602 P.2d 892 (1979).

Husband's rights in a discretionary trust are to be considered by the court as any other "economic circumstance" of the husband in determining a just division of the marital property pursuant to subsection (1)(c) and as a "relevant factor" in making an award of maintenance under § 14-10-114 (2). In re Rosenblum, 43 Colo. App. 144, 602 P.2d 892 (1979).

Wife's remainder interest in her grandfather's irrevocable trust was a gift, vested long before her marriage to husband, and was therefore separate property. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Remainder interests in irrevocable trusts are property for purposes of the disposition of property in dissolution actions. Such interests may present only a right to future enjoyment and are subject to complete divestment or defeasance, but they are certain, fixed interests subject only to the condition of survivorship and may not be withheld by the trustee in his or her discretion. Thus, they are distinct from interests in a discretionary or revocable trust, which are viewed as mere expectancies. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Wife's interest in family trust constitutes "property" and is not a "mere expectancy", despite the fact that wife's father must pay the entire net income from

the trust to himself during his lifetime and has the discretion to invade the corpus for his own support, care, and maintenance. Because the trust was created during the marriage, wife's interest constitutes a gift that is excepted from the definition of marital property, but appreciation on wife's interest in the trust during the course of the marriage does constitute marital property. In re Balanson, 25 P.3d 28 (Colo. 2001).

Trial court properly determined that any increase in the value of wife's vested remainder interest in an irrevocable trust during the marriage was marital property subject to division under subsection (4). In re Dale, 87 P.3d 219 (Colo. App. 2003).

Court found husband's vested remainder interest in his father's trust to be a property interest, where father possessed the power to revoke the trust during his lifetime but died without exercising that power. Husband's remainder interest in his father's trust was, therefore, subject to depletion only by exercise of the trustee's right to invade the corpus of the trust for the benefit of husband's mother, which right did not convert husband's vested remainder property interest into a mere expectancy. In re Gorman, 36 P.3d 211 (Colo. App. 2001).

Court found husband's vested remainder interest in his mother's trust to be a property interest, even though the mother, still living at the time of the permanent orders, had the power to revoke the trust during her lifetime. The mother's exercise of her right to revoke is a condition subsequent, and unless the event occurs, husband's interest remains vested. In re Gorman, 36 P.3d 211 (Colo. App. 2001).

The legislative history shows that subsection (7)(b) was adopted to overturn the holding in Gorman that a vested remainder interest in a revocable or modifiable trust is a property interest subject to division. The legislative history reveals that the general assembly relied upon the plain meaning of "heir at law" and that the statute applies only to remainder interests in trusts that are revocable or amendable and not to remainder interests in irrevocable trusts. In re Dale, 87 P.3d 219 (Colo. App. 2003).

The term "heir at law" in subsection (7)(b) pertains to any interest or resource a spouse may expect to inherit from his or her parent were the parent to die intestate. As a practical consequence of that language, the trial court may not consider any such prospective inheritance as either a property interest or as an economic circumstance. By including the phrase "heir at law," the statute thus treats intestate expectancies consistently with interests under a donative third-party instrument that can be revoked or changed. In re Dale, 87 P.3d 219 (Colo. App. 2003).

"[R]evocable" within subsection (7)(b) modifies "any interest". In re Smith, 2024 COA 95, 559 P.3d 662.

"[R]evocable" means "capable of being canceled or withdrawn". In re Smith, 2024 COA 95, 559 P.3d 662.

Given this definition, subsection (7)(b) would preclude a court from considering any interest in a donative third party instrument

as an economic circumstance or property if that interest is capable of being canceled or withdrawn. In re Smith, 2024 COA 95, 559 P.3d 662.

Wife's father's power of appointment, as the primary beneficiary of an irrevocable family trust, rendered wife's discretionary trust interest revocable under subsection (7)(b), precluding wife's trust interest from the court's consideration. In re Smith, 2024 COA 95, 559 P.3d 662.

Interest in a trust cannot be classified as property until that trust becomes irrevocable under subsection (7)(b). In re Balanson, 107 P.3d 1037 (Colo. App. 2004).

A life insurance policy lacking cash surrender value is not "property" since it has not objective, tangible, or vested value that can be divided. McGovern v. Broadstreet, 720 P.2d 589 (Colo. App. 1985).

Discretionary trust corpus cannot be considered the separate property of a beneficiary for purposes of division of property. This is because the beneficiary of such trust has no contractual or enforceable right to income or principal from the trust, cannot force any action by the trustee, cannot assign an interest in the trust, and because such interest cannot be reached by either party's creditors. In re Jones, 812 P.2d 1152 (Colo. 1991).

When beneficiary has no interest in the corpus, and right to control how the corpus is invested, the income is a mere gratuity deriving from the beneficence of the settlors. In re Guinn, 93 P.3d 568 (Colo. App. 2004).

In the absence of some ownership interest in the corpus itself, even a mandatory right to unrealized future discretionary allocations of income is an expectancy arising from the largess of the settlors and does not constitute property. In re Guinn, 93 P.3d 568 (Colo. App. 2004).

Income received by the wife from the discretionary trust during the marriage is properly considered a gift and thus not divisible pursuant to subsection (2)(a). In re Jones, 812 P.2d 1152 (Colo. 1991).

Wife's expectancy interest in a discretionary trust should be considered an economic circumstance pursuant to subsection (1)(c). In re Jones, 812 P.2d 1152 (Colo. 1991).

Wife's future anticipated interest in German "social security" benefits is an economic circumstance that can be considered pursuant to subsection (1)(c) in the equitable division of the marital estate. In re Lockwood, 971 P.2d 264 (Colo. App. 1998).

Trial court did not err in concluding that an irrevocable trust of which wife was beneficiary but over which wife had no control over the principal or the income and from which wife had no right to demand or request distributions was not marital property but an "economic circumstance" to be considered in arriving at an equitable property division. In re Pooley, 996 P.2d 230 (Colo. App. 1998).

Vested and matured military retirement pay accrued during all or part of a marriage constitutes marital property subject to equitable distribution

in a marriage proceeding. In re Gallo, 752 P.2d 47 (Colo. 1988).

The key to an equitable distribution is fairness, not mathematical precision. Two possible methods of valuation are the present cash value method and the reserve jurisdiction method. In re Gallo, 752 P.2d 47 (Colo. 1988).

The rule that military retirement pay is marital property subject to equitable distribution in a marriage proceeding should be applied prospectively only. In re Wolford, 789 P.2d 459 (Colo. App. 1989).

Trial court, which had personal jurisdiction over husband but lacked the authority to divide the husband's military pension as marital property, did not retain jurisdiction to divide the pension at a later date. Even though final decree provided that trial court had continuing jurisdiction over the action and that the wife would remain entitled to any and all military benefits, the court did not have the authority to divide military pension as a result of subsequent case law declaring such pensions to be marital property. Language in final decree refers only to the court's continuing authority to divide property as such court had on the date of the final decree. In re Booker, 833 P.2d 734 (Colo. 1992).

Federal act specifying whether the court has jurisdiction over a military member's pension preempts state rules of procedure governing jurisdiction. In re Booker, 833 P.2d 734 (Colo. 1992).

Military retirement benefits subject to distribution as marital property in dissolution of marriage cases are limited to disposable retired pay which, under federal law, excludes disability pay. The exclusion also applies to that portion of a veteran's retirement pay that is computed using the percentage of disability on the date the veteran is placed on the temporary disability retirement list (TDRL). In re Williamson, 205 P.3d 538 (Colo. App. 2009).

Because husband was not entitled to a longevity retirement at the time he was placed on the TDRL, no portion of his retirement benefit that is based upon his disability status is distributable to wife pursuant to the parties' separation agreement that required the parties to divide the husband's pension equally according to the time rule formula. In re Williamson, 205 P.3d 538 (Colo. App. 2009).

In case where service member had attained twenty or more years of service and was eligible for a longevity retirement when placed on the TDRL, an amount equal to the amount of TDRL pay, as calculated based on husband's percentage of disability when he was placed on the TDRL, must be excluded from the marital property. Any amounts in excess of that amount may be divided as marital property. In re Poland, 264 P.3d 647 (Colo. App. 2011).

Trial court did not err in its conclusion that military voluntary separation incentive payments constitute marital property subject to distribution. Compensation that is deferred until after the dissolution of marriage, but fully earned during the marriage, is marital property. In re Shevlin, 903 P.2d 1227 (Colo. App. 1995).

Cash received during the marriage pursuant to an employment contract which provides for payments in installments in advance of work is cash on hand and therefore marital property subject to division and not future income. In re Anderson, 811 P.2d 419 (Colo. App. 1990).

Compensation deferred until after the dissolution, but earned fully during the marriage, is marital property. Wife's performance award for her performance as an employee during the marriage was marital property, subject to equitable division. In re Huston, 967 P.2d 181 (Colo. App. 1998).

Although the interest of the policy owner of a life insurance policy constitutes marital property, the interest of the named beneficiary is only an expectancy and vests no present property interest in the beneficiary. Gorman-English v. Estate of English, 849 P.2d 840 (Colo. App. 1992).

A life insurance policy lacking cash surrender value is not "property" since it has no objective, tangible, or vested value that can be divided in a dissolution action. In re Foottit, 903 P.2d 1209 (Colo. App. 1995).

Spouse's disability pension payments do not constitute marital property and are not subject to distribution in a dissolution of marriage action. Such a distribution would contravene the legislative intent that only the beneficiary receive the disability benefits. In re Peterson, 870 P.2d 630 (Colo. App. 1994).

However, income received during the marriage from disability benefits becomes a marital asset when it is commingled with marital funds. Disability payments themselves are not marital property, but they lose their exempt character when commingled with marital assets. In re Green, 169 P.3d 202 (Colo. App. 2007).

Public employees' retirement association (PERA) disability benefit prior to age 65 replaces future earnings and does not constitute marital property. In re Hansen, 62 P.3d 1066 (Colo. App. 2002).

When disabled employee reaches the age of 65, the portion of PERA benefits attributable to years of service before disability constitutes marital property, and the balance remains separate property. Regardless of employee's recovery or work status, the benefits, excluding the unearned service credit projected until age 65, are more akin to retirement benefits. In re Hansen, 62 P.3d 1066 (Colo. App. 2002).

A stock option that is not vested does not constitute property. Only a vested stock option is "property" subjection to a determination of whether it was granted in consideration of past or future services for purpose of ascertaining its marital or separate nature. In re Huston, 967 P.2d 181 (Colo. App. 1998).

Employee stock option constitutes property for purposes of dissolution only when employee has enforceable right to options. Whether the stock option is "vested" is not determinative. When an employee has a presently enforceable right under the contract, the stock option is property and not a mere expectancy,

regardless of whether the options are presently exercisable. In re Powell, 220 P.3d 952 (Colo. App. 2009).

Parents' promise to give property to husband in their will does not make the property marital property. Any interest in a donative third-party instrument that is amendable or revocable, is not marital property subject to division. In re Schmedeman, 190 P.3d 788 (Colo. App. 2008).

Wife's objection to husband's valid gift of property during the marriage, absent evidence that gift was made in contemplation of divorce, did not preserve wife's right to have property classified as marital property upon dissolution. Classification and valuation of marital property takes place upon dissolution. Absent dissipation, "marital" property that no longer exists cannot be valued. In re Schmedeman, 190 P.3d 788 (Colo. App. 2008).

Gifts made from one spouse to the other during the course of the marriage cannot be presumed to be gifts, nor do they necessarily constitute marital property. To qualify as a "gift", a transfer of property must involve a simultaneous intention to make a gift, delivery of the gift, and acceptance of the gift. In re Balanson, 25 P.3d 28 (Colo. 2001); In re Amich, 192 P.3d 422 (Colo. App. 2007).

Accrued vacation and sick leave is marital property where employee spouse has an enforceable right to be paid for the leave. Where the value of the leave at the time of dissolution can be reasonably ascertained, it is subject to equitable division under the UDMA. Where the value of such leave cannot be reasonably ascertained, the court should consider the employee spouse's right to the leave as an economic circumstance of the parties when equitably dividing the marital estate. In re Cardona, 2014 CO 3, 316 P.3d 626.

In dissolution proceedings, a couple's cryogenically frozen pre-embryos constitute marital property of a special character. In re Rooks, 2018 CO 85, 429 P.3d 579.

In determining the disposition of pre-embryos, the court should first look to any existing agreement between the parties regarding the disposition of their remaining pre-embryos in the event of divorce. In the absence of any such agreement, the court should balance the parties' interests by considering the following: (1) how the party who wishes to preserve the pre-embryos intends to use them; (2) the demonstrated physical ability or inability of the party seeking to use the pre-embryos for in vitro fertilization (IVF) to have biological children through other means; (3) the parties' original reasons for undertaking IVF; (4) the potential hardship on the party that wishes to avoid becoming a genetic parent, including emotional, financial, or logistical factors; (5) either party's demonstrated bad faith or attempt to use the pre-embryos as unfair leverage in divorce proceedings; and (6) other factors relevant to the parties' specific situation. The court should not consider: (1) the ability of the party seeking to use the pre-embryos to afford a child; (2) standing alone, the

number of a party's existing children; and (3) the ability of the party seeking to use the pre-embryos to adopt or otherwise parent non-biological children. In re Rooks, 2018 CO 85, 429 P.3d 579.

District court misapplied Rooks by considering wife's religious beliefs as part of the first Rooks factor. First, contrary to Rooks, the court weighted wife's desire to donate pre-embryos as equivalent to a desire to implant them to become a genetic parent. Second, the court considered wife's subjective beliefs regarding the morality of preserving the pre-embryos. The first Rooks factor simply asks what the party seeking to preserve the pre-embryos intends to do with them. The first factor is not concerned with why the party prefers to preserve the pre-embryos over discarding them. In re Olsen, 2022 COA 66, 518 P.3d 297.

A party's desire to implant pre-embryos to achieve genetic parenthood and a party's desire to avoid genetic parenthood likewise are equivalently important. And, because a party's desire to donate pre-embryos is entitled to less weight than a party's desire to implant them, a party's desire to donate must also be entitled to less weight than a party's desire to avoid genetic parenthood. In re Olsen, 2022 COA 66, 518 P.3d 297.

Instead of considering wife's religious beliefs as part of the first Rooks factor, which erroneously caused the district court to weigh that factor substantially in wife's favor, the court should have considered wife's beliefs as an additional factor beyond those articulated in Rooks. In re Olsen, 2022 COA 66, 518 P.3d 297.

It was proper for the district court to consider wife's religiously grounded beliefs and husband's secularly grounded beliefs as part of the Rooks balancing framework. In re Olsen, 2022 COA 66, 518 P.3d 297.

The district court misapplied the second Rooks factor by weighing it slightly in favor of wife when wife wanted to donate rather than implant the pre-embryos. Wife was not a party seeking to implant the disputed pre-embryos, so wife's ability or inability to have biological children through other means is irrelevant for purposes of the second Rooks factor. In re Olsen, 2022 COA 66, 518 P.3d 297.

Accordingly, the case does not present the rare circumstance where a party wanting to donate pre-embryos can prevail against a party wanting to avoid procreating. In re Olsen, 2022 COA 66, 518 P.3d 297.

C. Discretion of Court.

The division of property in a divorce action is a matter within the sound discretion of the trial court, and its judgment will not be disturbed on review unless it is shown that the division made was an abuse of discretion. Granato v. Granato, 130 Colo. 439, 277 P.2d 236 (1954); Todd v. Todd, 133 Colo. 1, 291 P.2d 386 (1955); Britt v. Britt, 137 Colo. 524, 328 P.2d 947 (1958); Drake v. Drake, 138 Colo. 388, 33 P.2d 1038 (1959); Bell v. Bell, 150 Colo. 174, 371 P.2d 773 (1962); Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962); Harvey v. Harvey, 150 Colo. 449, 373 P.2d 304 (1962); Liggett v. Liggett, 152 Colo. 110, 380 P.2d 673 (1963); Bell v. Bell, 156 Colo. 513, 400 P.2d 440 (1965); Larrick v. Larrick,

30 Colo. App. 327, 491 P.2d 1401 (1971); Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Jekot v. Jekot, 32 Colo. App. 118, 507 P.2d 473 (1973); Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973); In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974); Harrod v. Harrod, 34 Colo. App. 172, 526 P.2d 666 (1974); In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975); Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976); In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977); In re Carruthers, 40 Colo. App. 278, 577 P.2d 773 (1977); In re Schulke, 40 Colo. App. 473, 579 P.2d 90 (1978); In re Howard, 42 Colo. App. 457, 600 P.2d 93 (1979); In re Garcia, 638 P.2d 848 (Colo. App. 1981); In re Hoffman, 650 P.2d 1344 (Colo. App. 1982); In re Faulkner, 652 P.2d 572 (Colo. 1982); In re Mann, 655 P.2d 814 (Colo. 1982); In re Lester, 647 P.2d 668 (Colo. App. 1982); In re Seely, 689 P.2d 1154 (Colo. App. 1984); In re Sarvis, 695 P.2d 772 (Colo. App. 1984); In re Hulse, 727 P.2d 876 (Colo. App. 1986); In re Price, 727 P.2d 1073 (Colo. 1986); In re McGinnis, 778 P.2d 281 (Colo. App. 1989); In re Stumpf, 932 P.2d 845 (Colo. App. 1996); In re Dale, 87 P.3d 219 (Colo. App. 2003).

The division of marital property is committed to the sound discretion of the trial court and there is no rigid mathematical formula that the court must adhere to. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

Judiciary not to interfere with "division" of property. Whatever the role of judicial solicitude in the division of property, it will not be permitted to interfere with the statutory command that the property be literally and effectively "divided". In re Gehret, 41 Colo. App. 162, 580 P.2d 1275 (1978).

Property division hearings are equitable in nature and trial courts have broad discretion to fashion an equitable division of the parties' property in a dissolution proceeding. In re Wells, 850 P.2d 694 (Colo. 1993).

Under the authority of this section, the trial court is clearly limited in adjusting and dividing the assets of the husband and wife as between them alone. Giambrocco v. Giambrocco, 161 Colo. 510, 423 P.2d 328 (1967).

Trial court lacks authority to award marital property to the children of the marriage or to compel a parent to make such a conveyance. In re Mohrlang, 85 P.3d 561 (Colo. App. 2003).

Under this section authorizing a "division of property" in a divorce action, the court may decree a transfer from the wife to the husband, in a proper case, even of property which he has conveyed to her. Ikeler v. Ikeler, 84 Colo. 429, 271 P. 193 (1928).

It was proper for the trial court to consider contributions of parties to the increase in or accumulation of assets by means other than direct contribution of capital. Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971).

Where the parties to a divorce action agreed to submit the partition of real property issue to the court, rather than incur the expense of a formal statutory

partition proceeding, the court, under its broad powers, could have declined to partition at that point, and, in the absence of a final agreement concerning the property, it could either have sold the property and divided the proceeds, or it could have declared that each party would henceforth be a tenant in common. Either course would have been a fair and equitable division of the property. Jekot v. Jekot, 32 Colo. App. 118, 507 P.2d 473 (1973).

Judicial notice of general economic trends, such as the inflationary trend since the time of the marriage, was proper in considering the disposition of property. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

A decree of a trial court permitting a wife to keep her separate inherited property and awarding her a division of property acquired through the joint efforts of the parties, where no alimony is requested or awarded, does not constitute an abuse of discretion. Green v. Green, 139 Colo. 551, 342 P.2d 659 (1959).

Where stocks and securities acquired solely by a defendant's mother out of her inheritance, and earnings were held in joint tenancy with defendant, it was error for the trial court to allot one half of the value thereof to defendant in making a division of property as between husband and wife. Stephenson v. Stephenson, 134 Colo. 96, 299 P.2d 1095 (1956).

Non-marital disability pension payments may be considered as an economic circumstance in determining maintenance. In re Peterson, 870 P.2d 630 (Colo. App. 1994).

In a property settlement proceedings in a divorce action, where the evidence disclosed that the wife had contributed substantially to the family income over a period of years, which enabled the husband to devote virtually all of his earnings to assisting his mother in preserving a valuable piece of business property, through whom he received a substantial inheritance, which he would not have received but for the wife's efforts and contributions during the period, it was error for the court to fail to take such inheritance into consideration in determining the property settlement between the parties. Lee v. Lee, 133 Colo. 128, 293 P.2d 293 (1956).

A court order empowering the wife to make the selection of the husband's stocks was erroneous because the division is a function requiring the exercise of judicial discretion, and the danger in delegating full discretion to the wife was that her selection could work to an unfair advantage for her and a decided detriment to the husband's holdings. Santilli v. Santilli, 169 Colo. 49, 453 P.2d 606 (1969).

Where properties awarded to the husband were heavily encumbered, and the businesses awarded financially involved, and in addition he was required to pay off a large indebtedness on property awarded to wife plus substantial support for children, evidence offered was insufficient to support such burdensome order. Bell v. Bell, 150 Colo. 174, 371 P.2d 773 (1962).

Where under facts disclosed, order of division of property in divorce action was so manifestly unfair, inequitable, and unconscionable as to amount to an abuse of discretion, it will be ordered vacated and set aside. Bell v. Bell, 150 Colo. 174, 371 P.2d 773 (1962).

No abuse of discretion. In and of itself, the award of 35 percent of the marital assets is not an abuse of discretion. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975).

And although distribution was not equal, it certainly was equitable, and thus well within the court's discretion. In re Gercken, 706 P.2d 809 (Colo. App. 1985).

Award of interest within trial court's discretion. Whether interest should be allowed on a promissory note which represents a property division award upon dissolution of marriage is a matter which lies within the discretion of the trial court based on all of attendant circumstances. In re Lucas, 631 P.2d 1175 (Colo. App. 1981).

Trial court is required to consider the economic circumstances of the spouses at the time of any hearing relating to the division of marital property. In re Wells, 850 P.2d 694 (Colo. 1993).

Marital partnership interest made subject to "charging order" pursuant to § 7-60-128 as part of property division is not an abuse of discretion, nor was it error to leave the actual amount recoverable to determination in a separate action, although property division had to be set aside because it could be unconscionable. In re Weiss, 695 P.2d 778 (Colo. App. 1984).

Where a wife was awarded a final divorce decree without alimony and given control of a jointly owned taxicab business, it was held that there was ample evidence in the record to support the finding of fact by the trial court that wife did contribute to and was entitled to a one-half interest in the business since it appeared that the operations, continued under her guidance and later under a receiver with her assistance, owed their successful outcome to these efforts. Shreyer v. Shreyer, 112 Colo. 281, 148 P.2d 1003 (1944).

Award of a share of benefits of husband's vested pension plan through the use of installment payments when lump-sum distribution at the time of decree was impractical is within the discretion of court. In re Blake, 807 P.2d 1211 (Colo. App. 1990).

Trial court's use of two different methods to distribute the parties' two pensions, was within the sound discretion of the trial court. In re Kelm, 912 P.2d 545 (Colo. 1996).

The trial court did not abuse its discretion in awarding the property and the proceeds therefrom to plaintiff where evidence showed that he furnished substantially all the purchase money, but allowed title to be taken in his wife's name. Bieber v. Bieber, 112 Colo. 229, 148 P.2d 369 (1944).

Where the husband asserted the court abused its discretion in awarding the real property to the wife without having first determined its value, there was no abuse of discretion, because before value becomes

important the court must first determine whether the property is subject to division. Larrabee v. Larrabee, 31 Colo. App. 493, 504 P.2d 358 (1972).

Where the husband was on active duty as a petty officer in the Navy during the five year duration of the marriage, and the court found that his participation, if any, in the management of the land given to the wife prior to the marriage was adequately compensated by the income received therefrom, and the court further found that the gift from the wife's mother was intended primarily as a gift to her own children and that the husband was not entitled to retain any interest in the land under the circumstances of this case, the award of the property to the wife, based on these findings was not an abuse of discretion. Larrabee v. Larrabee, 31 Colo. App. 493, 504 P.2d 358 (1972).

Court abused its discretion when it acknowledged the parties' relatively equal contributions to the marriage and marital property, yet awarded the wife only the benefits of the increased value of the property without any responsibilities for its burdens. Under these circumstances, equity requires that the wife share a part of the debt incurred on the home during the marriage as well as a part of the increase in the home's value. In re Kiefer, 738 P.2d 54 (Colo. App. 1987).

It was an abuse of discretion to give the wife ownership of the couple's percentage of a partnership, granting one-third to the husband only upon full or partial distribution and holding the husband responsible for payment of his share of capital calls and any debt related to the partnership interest. In re Paul, 821 P.2d 925 (Colo. App. 1991).

Once initial order is entered, subsequent hearings are not merely corrections of errors committed by the trial court in the first proceeding. In re Wells, 850 P.2d 694 (Colo. 1993).

D. Antenuptial Agreements.

Separation agreements and antenuptial agreements are separate and distinct legal documents. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

Antenuptial contracts may be rescinded or modified by the mutual consent of the parties and whether such a contract has been rescinded by mutual consent is a question of fact. In re Young, 682 P.2d 1233 (Colo. App. 1984).

Spouses-to-be have right to enter into antenuptial agreements which contemplate the possibility of dissolution. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

Agreement not bar to claim for maintenance unless expressly relinquished. In the absence of any reference in an antenuptial agreement to a relinquishment of the right to maintenance, the agreement does not bar the wife's claim for maintenance. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

As a general principle, antenuptial agreements will be given effect in this

state. In re Thompson, 39 Colo. App. 400, 568 P.2d 98 (1977).

Antenuptial agreements, as a matter of law, do not violate public policy and are not void ab initio in Colorado. In re Newman, 653 P.2d 728 (Colo. 1982).

Antenuptial agreements, absent fraud, are binding on the parties according to their terms, and the judiciary cannot relieve the parties from the obligations thereof. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

Otherwise legislative provisions control. When an antenuptial agreement does not provide for the distribution of marital property upon the dissolution of the marriage, then the applicable legislative provisions are controlling. In re Thompson, 39 Colo. App. 400, 568 P.2d 98 (1977).

Section 14-10-112 conscionability review not extended to antenuptial agreements. The conscionability review of separation agreements, pursuant to § 14-10-112, does not extend to antenuptial agreements. In re Newman, 653 P.2d 728 (Colo. 1982).

Burden of proof is on party seeking to avoid antenuptial contract. In re Ingels, 42 Colo. App. 245, 596 P.2d 1211 (1979); In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

The burden of proving failure to disclose is upon the party contesting the validity of the antenuptial agreement. In re Ross, 670 P.2d 26 (Colo. App. 1983).

Failure to provide wife with independent counsel does not render antenuptial agreement void per se. In re Ingels, 42 Colo. App. 245, 596 P.2d 1211 (1979).

Agreement not set aside solely because bulk of marital assets go to husband. In re Ingels, 42 Colo. App. 245, 596 P.2d 1211 (1979).

Itemized property list not necessary for agreement. Where the amount of the husband's assets was not materially misstated, his failure to supply an itemized list was not fatal to the validity of an antenuptial agreement. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

While it would have been preferable for the trial court to have entered specific values for each item in a property division, reversal was not required where it could determine that the property division made was not an abuse of discretion. In re Warrington, 44 Colo. App. 294, 616 P.2d 177 (1980).

Where antenuptial agreement is unambiguous as to treatment of increases in value of separate property, the court is required to enforce the agreement according to its terms. In re Vickers, 686 P.2d 1370 (Colo. App. 1984).

Where antenuptial agreement was silent on matter of attorney fees, the awarding of such fees was controlled by § 14-10-119. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

For holding as to enforceability of prenuptial agreement which conceived

disposition of property, see Franks v. Wilson, 369 F. Supp. 304 (D. Colo. 1973).

E. Separate Property.

Property must be classified as separate or marital. Under the requirements of this section, it is essential for the court to classify the property of the parties as either separate or marital. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

This section mandates that separate property remain separate, subject to the narrow exception that any increase in value during marriage is marital property. In re Campbell, 43 Colo. App. 72, 599 P.2d 275 (1979).

Property acquired by either spouse during the marriage is presumed marital as is the appreciation in the value of separate property and any income produced by separate assets during the marriage. In re Dale, 87 P.3d 219 (Colo. App. 2003).

However, the marital property presumption can be overcome by evidence establishing that the property in question was acquired by a method listed in subsection (2), which excludes, among other things, property from the marital estate that was acquired in exchange for premarital property. To claim separate ownership successfully under the exchange provision, a spouse must trace the property by proving a series of exchanges back to an original asset. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Court must determine the separate properties' appreciation in value and the part of the increase that is marital property and take those values into consideration when determining the property division. In re Martinez, 77 P.3d 827 (Colo. App. 2003).

In order to obtain status of separate property under this section, it must appear that the property was acquired prior to marriage with the intent that it become the separate property of husband. In re Altman, 35 Colo. App. 183, 530 P.2d 1012 (1974).

Property not "separate" because of spouse's lack of interest or concern. Property titled in the name of one spouse that was acquired during the parties' marriage cannot be considered nonmarital property merely because of a course of conduct by the other spouse showing a lack of interest or concern for property. In re Heim, 43 Colo. App. 511, 605 P.2d 485 (1979).

The classification of increases in separate property as marital property is a substantial departure from prior law wherein such increases were generally classed as separate property. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

When award of increases in separate property to be made. The award of increases in separate property is to be made after considering all of the factors stated in subsection (1)(a) through (1)(d), and not just contribution. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977); In re Seewald, 22 P.3d 580 (Colo. App. 2001).

It is proper for a court to consider the depletion of separate property for marital purposes pursuant to subsection (1)(d); however, the statute does not require that the depletion of separate property for nonmarital

purposes be considered and the trial court's failure to make findings as to this factor was harmless error. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Where court without authority to order sale of home. Where home was separate property of husband before marriage and after dissolution of marriage, the court was without authority to order sale of home despite fact that increase in the value of home during marriage was marital property. In re Campbell, 43 Colo. App. 72, 599 P.2d 275 (1979).

Income received by a spouse that is generated from the property of a third party is not marital property. In re Guinn, 93 P.3d 568 (Colo. App. 2004).

Money accumulated in pension fund prior to marriage should be considered "separate property". In re Rogers, 709 P.2d 1383 (Colo. App. 1985).

Husband's worker's compensation settlement is separate property to the extent it compensates for post-dissolution loss of income or earning capacity. In re Breckenridge, 973 P.2d 1290 (Colo. App. 1999).

Insurance proceeds acquired by husband during marriage constituted a gift and was properly classified as separate property. In re Sharp, 823 P.2d 1387 (Colo. App. 1991).

Shares of stock owned by husband at the time of the marriage that were later involved in a stock split during the marriage were properly considered husband's separate property except to the extent the shares appreciated during the marriage. In re Renier, 854 P.2d 1382 (Colo. App. 1993).

In order for premarital property to retain its separate character, the property must be traceable to specific assets. In the absence of evidence tracing shares of stock obtained in a stock split during the marriage to the shares husband owned at the time of the marriage, the additional shares should not have been set apart as husband's separate property where husband combined the additional shares with other shares acquired during the marriage and many of the combined shares were sold. In re Renier, 854 P.2d 1382 (Colo. App. 1993).

Trial court did not abuse its discretion when it awarded the wife 50 percent of the husband's disposable retirement pay where the ruling was rationally based on considerations of the wife's marital contributions during the husband's military career and the fact that the wife had no survivor benefits in the event of the husband's death. In re Sinkovich, 830 P.2d 1101 (Colo. App. 1992).

Trial court erred in setting apart to wife as her separate property the portions of investment traceable to income generated from trust. In re Foottit, 903 P.2d 1209 (Colo. App. 1995).

Requiring a party to execute a noncompete agreement is within court's authority where agreement is necessary to protect goodwill of business awarded to other party and agreement is otherwise valid under § 8-2-113. In re Fischer, 834 P.2d 270 (Colo. App. 1992).

Gifts made from one spouse to the other during the course of the marriage cannot be presumed to be gifts, nor do they necessarily constitute marital property. To qualify as a "gift", a transfer of property must involve a simultaneous intention to make a gift, delivery of the gift, and acceptance of the gift. In re Balanson, 25 P.3d 28 (Colo. 2001); In re Amich, 192 P.3d 422 (Colo. App. 2007).

To qualify as a gift, a transfer of property must involve a simultaneous intention to make a gift, delivery of the gift, and acceptance of the gift. That determination hinges fundamentally on the intent and acts of the donor and recipient, which, in turn, are questions of fact for the trial court to resolve. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Finding that home and car were wife's separate property upheld. In re Bartolo, 971 P.2d 699 (Colo. App. 1998).

The portion of husband's railroad retirement benefits that are equivalent to those an employee would have received if covered by the Social Security Act was husband's separate property, not subject to division, and court erred in treating it as marital property along with the portion of the railroad retirement benefits that are supplemental annuities. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

Bailment allowed between spouses. Subsection (1) does not prohibit a court from assigning liability to one spouse for the loss of separate property belonging to the other spouse upon a finding of negligence on the part of the spouse in possession of the property. In re Amich, 192 P.3d 422 (Colo. App. 2007).

Separate property pledged as collateral does not become marital property. The parties secured a line of credit for marital purposes using husband's separate property. Loan payments were made when due; the husband and wife did not default; and the lender did not foreclose on the property to satisfy the debt. In re Corak, 2014 COA 147, 412 P.3d 642.

F. Marital Property.

The purpose of the division of marital property is to allocate to each spouse what equitably belongs to him or her. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

Weighing of factors set forth in this section is within the sound discretion of the trial court. In re Casias, 962 P.2d 999 (Colo. App. 1998).

The court had the discretion to enter an equitable division of property where the court had retained jurisdiction and a period had expired for meeting certain conditions set forth in an agreement between the parties and such conditions had not been met. In re Ebel, 874 P.2d 406 (Colo. App. 1993).

State courts are preempted from crafting equitable remedies to reimburse a former spouse for payments she otherwise would have received from the division of a veteran's military retirement pay. The federal Uniformed Services Former Spouses' Protection Act does not allow disability retirement benefits to be divided as marital property, and former husband's military retirement consisted only of

disability retirement benefits. In re Tozer, 2017 COA 151, 410 P.3d 835.

Division gives each party some attributes of ownership. The efficacy of a division of property in a dissolution of marriage action results from placing in the hands of each party a definable or ascertainable portion of at least some of the attributes of ownership. In re Cehret, 41 Colo. App. 162, 580 P.2d 1275 (1978).

Right to property division inchoate. In dissolution of marriage proceedings, a wife may be entitled to a division of the husband's property, and that right, prior to the dissolution action and possibly subject to an exception or two, is completely inchoate. In re Questions Submitted by United States Dist. Court, 184 Colo. 1, 517 P.2d 1331 (1974).

Property to be transferred is not determined at time of filing. At the time of the filing of the dissolution of marriage action in which the division of property will be later determined, a vesting takes place, and this interest which has vested is inchoate only in the sense that, prior to the division, the property to be transferred to the wife has not yet been determined. In re Questions Submitted by United States Dist. Court, 184 Colo. 1, 517 P.2d 1331 (1974).

At time divorce action is filed there vests in wife her interest in property in name of husband. In re Questions Submitted by United States Dist. Court, 184 Colo. 1, 517 P.2d 1331 (1974).

Justice requires that the joint accumulations of a husband and wife, or property which was acquired during marriage or added to through the joint efforts of both spouses, should be considered for equitable division on termination of the marriage. Kalcevic v. Kalcevic, 156 Colo. 151, 397 P.2d 483 (1964).

Specific circumstances and feelings of each party are appropriate considerations in determining which specific items of property should be sold, or alternatively, distributed to a particular party. In re Woodrum, 618 P.2d 732 (Colo. App. 1980).

Highly relevant factor to be considered by court in effecting just division of marital property is the extent to which the division will promote the objective of providing for each party's financial needs without maintenance. In re Jones, 627 P.2d 248 (Colo. 1981).

Value of separate property considered. The court must consider all of the many relevant facets of the situation of the parties, including the value of property set apart to each spouse. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975).

Upon remand to redistribute marital property, trial court may consider the economic circumstances of each spouse. In re Wells, 850 P.2d 694 (Colo. 1993).

Award of additional $6,000 for "recreational opportunities" for children was fairly embraced within the factors to be considered by court in dividing the marital property and did not create a separate "recreational fund" for the needs of the children. In re Jackson, 698 P.2d 1347 (Colo. 1985).

Contribution of spouse to acquisition of specific property is not a factor to be considered in determining whether that property is part of the marital estate, but this may be considered in determining the shares allocated to each spouse. In re Carruthers, 40 Colo. App. 278, 577 P.2d 773 (1977).

Decrease in value of separate property. Under subsection (1)(d), the court may consider as a relevant factor in dividing marital property the decrease in the value of separate property. In re Talarico, 36 Colo. App. 389, 540 P.2d 1147 (1975).

When applying subsection (1)(d), the court must consider an increase in the value of separate property without reference to the fact that the increase has just previously been classified as marital property under subsection (4). The trial court did not err in finding that there was an increase in the value of the husband's separate property during the marriage despite the fact that there was an aggregate decrease in the value of such property. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Value of retirement account considered. The public employees' retirement association's interest of the husband or his estate is not subject to divestment by death or discharge. At some time, he or his estate must receive, at the very minimum, the amount of accumulated deductions in his individual account. His rights have a presently determinable cash surrender value equal to his salary deductions which otherwise would have been available for the use of the parties during the marriage. Even though the husband's interest in the fund is, by its very nature, incapable of division in kind, the value of that interest was properly taken into account in a marital property division. In re Pope, 37 Colo. App. 237, 544 P.2d 639 (1975).

Because a 401(k) account is a defined contribution plan, the court must determine the marital interest; but unlike a defined benefit plan, it need not consider future appreciation. In re Casias, 962 P.2d 999 (Colo. App. 1998).

When one spouse causes title to be placed jointly with the other spouse, a gift is presumed, and the burden to show otherwise is upon the donor. In re Moncrief v. Moncrief, 36 Colo. App. 140, 535 P.2d 1137 (1975); In re Capparelli, 2024 COA 103M, 561 P.3d 417.

Transfer during the marriage by one spouse to both spouses is understood to evidence a transfer to the marital estate in the absence of appropriate evidence that the property was excluded from being marital property by a valid agreement of the parties. The exception from the definition of marital property for any property acquired by gift does not apply to such transfer. In re Stumpf, 932 P.2d 845 (Colo. App. 1996).

Gift by a third-party donor during the marriage that increases the value of a jointly titled asset is presumably a gift to the marriage. This presumption can only be rebutted by clear and convincing evidence. In re Krejci, 2013 COA 6, 297 P.3d 1035.

Where separation agreement has been set aside, property transferred in accordance with the agreement was not excluded from the division of the marital

property. In re Bisque, 31 P.3d 175 (Colo. App. 2001).

Presumption of gift not overcome. Parties' explanation that title to their home was placed in joint tenancy so as to avoid inheritance taxes does not overcome the presumption that a gift occurred; it merely expresses a reason why the gift was made. In re Moncrief v. Moncrief, 36 Colo. App. 140, 535 P.2d 1137 (1975).

Resembles division of property by co-owners rather than conveyance. Transfer of property by husband to his former wife in fulfillment of a property settlement agreement entered into by the parties and approved by the court granting the divorce is a recognition of a "species of common ownership" of the marital estate by the wife resembling a division of property between co-owners and is not a transfer which resembles a conveyance by the husband for the release of an independent obligation owed by him to the wife. Imel v. United States, 375 F. Supp. 1102 (D. Colo. 1973), aff'd, 523 F.2d 853 (10th Cir. 1975); In re Questions Submitted by United States Dist. Court, 184 Colo. 1, 517 P.2d 1331 (1974).

Property acquired before legal separation deemed marital. Property acquired subsequent to a marriage but after the parties have separated without a decree of legal separation is not excepted from "marital property" by subsection (2). In re Carruthers, 40 Colo. App. 278, 577 P.2d 773 (1977); In re Huff, 834 P.2d 244 (Colo. 1992).

Where parties lived apart for over eleven years without a decree of legal separation or a valid agreement for exclusion of property, property acquired during that period was marital property. In re Huff, 834 P.2d 244 (Colo. 1992).

The presumption that property acquired by either spouse after marriage is marital property may be overcome by establishing that the property in question was acquired by a method listed in subsection (2). Assets not falling with the specific definition of separate property are deemed to be marital in nature subject to equitable division by the court. In re McCadam, 910 P.2d 98 (Colo. App. 1995); In re Seewald, 22 P.3d 580 (Colo. App. 2001).

Marital agreements must be in writing and signed by both parties. Although subsection (2)(d) does not require a "valid agreement" to be in writing, the more specific language of the Uniform Premarital and Marital Agreement Act prevails over the general language in this section. Therefore, parties' oral agreement during marriage to exclude the parties' respective retirement accounts and inheritances from the marital estate was not a valid agreement. In re Zander, 2019 COA 149, 486 P.3d 352, aff'd, 2021 CO 12, 480 P.3d 676.

Further, parties' conduct after entering into oral agreement could not be treated as partial performance that satisfied the writing and signature requirements of the Colorado Marital Agreement Act in effect at the time. In re Zander, 2021 CO 12, 480 P.3d 676.

Where a spouse takes title to property under circumstances that give rise to a resulting trust, that property has not been

"acquired" for purposes of subsection (3), and, therefore, the trust property is not part of the marital estate. In re Martinez, 77 P.3d 827 (Colo. App. 2003).

Appreciation of separate property during the course of the marriage is considered marital property and such increase is subject to division under conditions set forth in this section. In re Fleet, 701 P.2d 1245 (Colo. App. 1985).

Appreciation accrued during period of reconciliation to be shared. The husband is entitled to an equitable share in the total amount of appreciation that accrued during a period of reconciliation after the wife became sole owner of the family home. In re Reeser, 635 P.2d 930 (Colo. App. 1981).

Where trial court failed to determine if there had been commingling of husband's premarital assets or if any marital appreciation in any of the trust assets had occurred and should have been included in the estate, property division could not be evaluated to determine whether it was inequitable. In re Seewald, 22 P.3d 580 (Colo. App. 2001).

Value of marital property sold by a spouse prior to filing of divorce action where spouse kept proceeds for himself is properly considered in dividing marital estate. In re Paulsen, 677 P.2d 1389 (Colo. App. 1984).

Partnership property divided according to spouse's contribution. A trial court's division of partnership property can be based upon the contribution made by each party to the purchase of the property. In re Howard, 42 Colo. App. 457, 600 P.2d 93 (1979).

In order for partnership property to be considered as other than marital property under subsection (2)(d), the parties must have expressly agreed that the partnership assets would not become marital property. Otherwise, the question is one of intent of the parties, to be found as a fact by the trial court. In re Howard, 42 Colo. App. 457, 600 P.2d 93 (1979).

Interspousal transfer deed by husband to wife as her separate property did not create a new presumption excluding the home from marital property. Court erred in creating an exception to the four statutory presumptions in subsection (2). On remand, trial court must consider whether the interspousal transfer deed was evidence of one of the statutory exceptions to the marital property presumption. In re Blaine, 2021 CO 13, 480 P.3d 691.

Holding title as tenants in common did not preclude the court from finding that husband intended to gift his separate property interest to the marriage. While tenants in common own separate fractional shares, they still receive joint ownership of the property. And the presumption that a spouse's transfer of title renders the property marital applies to any form of legal title that gives both spouses joint ownership in the property, including tenancy in common. In re Smith, 2024 COA 95, 559 P.3d 662.

Because husband's partnership interest was vested and mature and not subject to future contingencies, trial court erred when it valued that interest by projecting the value

of the partnership to the date of husband's expected retirement rather than the date of the parties' legal separation. In re Nevarez, 170 P.3d 808 (Colo. App. 2007).

Court can award any rights party may have resulting from existence of corporate assets. Although the court cannot award corporate assets to individual parties in a dissolution proceeding, the court can award to a party any rights he may have because of the existence of corporate assets. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

Where husband's rights to commissions arose prior to the date of hearing, they constituted "marital property" and were subject to division. In re Johnson, 40 Colo. App. 250, 576 P.2d 188 (1977).

Money husband received in lieu of retirement benefits upon mandatory separation from Army constituted marital property subject to distribution under the terms of this section. In re Moore, 35 Colo. App. 280, 531 P.2d 995 (1975).

Residence acquired in anticipation of marriage is marital property. Where a family residence is selected and acquired within a few days of the parties' marriage in contemplation of that marriage, and the equity accumulated therein results from contributions by both parties, the court does not err in treating the residence and all equity obtained therein as marital property. In re Altman, 35 Colo. App. 183, 530 P.2d 1012 (1974).

Home purchased with wife's proceeds from sale of home owned prior to marriage is not. In view of evidence that the family home was purchased by the wife with the proceeds of the sale of a home which she owned prior to the marriage, the home was not "marital property" within the meaning of this statute. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

Value of good will of spouse's business deemed marital property. In a division of marital property, the value of good will incident to husband's dental practice, which is an asset acquired during his marriage, must be considered as marital property. In re Nichols, 43 Colo. App. 383, 606 P.2d 1314 (1979).

Funds withdrawn by husband from joint bank account prior to wife's filing of petition for dissolution are "marital property" and should have been taken into account by trial court in making its property distribution, notwithstanding that the wife could not trace the funds after the withdrawal. In re Posinoff, 683 P.2d 377 (Colo. App. 1984).

Personal injury settlement offer, even if just for pain and suffering, is marital property if it arises from an accident which occurred during marriage. In re Fjeldheim, 676 P.2d 1234 (Colo. App. 1983).

Trial court erred in classifying a claim for personal injury protection (PIP) benefits as a marital asset where a claim had not been submitted to the insurance company as of the date of the hearing. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part, rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

Accounts receivable constituted marital property. In re Bayer, 687 P.2d 537 (Colo. App. 1984).

Appreciation of premarital property which is realized during marriage is subject to division upon dissolution of marriage. In re Van Genderen, 720 P.2d 593 (Colo. App. 1985).

Reorganization under chapter 11 of bankruptcy code does not necessarily establish a business held premaritally by husband as worthless, so that entire sum received from sale of business's subsidiary stock and liquidation of business constituted marital property for purposes of division of property pursuant to dissolution. In re Van Genderen, 720 P.2d 593 (Colo. App. 1985).

Shares in mutual fund were "marital property" subject to equitable division, notwithstanding that funds used to purchase shares may have originally been husband's separate property, where evidence established that husband's intent in purchasing shares was to make a joint investment with wife and that he intended that shares should pass to wife upon his death. In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Full increase in value of parties' separate property was properly treated as marital property. In re Young, 682 P.2d 1233 (Colo. App. 1984).

Property acquired during first marriage not marital property. Absent evidence of a contrary intent, property acquired during a first marriage between the parties and before their remarriage may not be declared marital property. In re Stedman, 632 P.2d 1048 (Colo. App. 1981).

Spouse's interest in a vested but unmatured employer-supported pension plan is marital property to the extent such plan has been funded by either employee or employer contributions during the marriage and is, therefore, subject to equitable distribution in dissolution proceeding. In re Grubb, 745 P.2d 661 (Colo. 1987); In re Blake, 807 P.2d 1211 (Colo. App. 1990).

Marital property subject to division does not include property acquired after the dissolution; however, compensation that is deferred until after the dissolution, but fully earned during the marriage, is marital property. In re Vogt, 773 P.2d 631 (Colo. App. 1989); In re Anderson, 811 P.2d 419 (Colo. App. 1990); In re Miller, 888 P.2d 317 (Colo. App. 1994).

Before a trial court can make an equitable distribution of pension rights, it must first determine the present value of such rights. In re Gavito, 794 P.2d 1377 (Colo. App. 1990).

Husband's vested, employer-supported pension plan held to be "marital property". In re Nelson, 746 P.2d 1346 (Colo. 1987); In re Blake, 807 P.2d 1211 (Colo. App. 1990).

Husband's nonvested military pension held to be marital property. In re Beckman, 800 P.2d 1376 (Colo. App. 1990).

Trial court did not err in ruling that it had no authority to distribute the military retirement pay that husband received during the year that the parties were

separated where there was no evidence presented concerning the amount received during that period nor any evidence that either party had dissipated any funds that had been received. In re Riley-Cunningham, 7 P.3d 992 (Colo. App. 1998).

Under the federal Uniformed Services Former Spouses' Protection Act, the portion of a military retirement pension that constitutes veterans' disability retirement benefits may not be divided as marital property. In re Lodeski, 107 P.3d 1097 (Colo. App. 2004); In re Warkocz, 141 P.3d 926 (Colo. App. 2006).

In case where service member had attained twenty or more years of service and was eligible for a longevity retirement when placed on the TDRL, an amount equal to the amount of TDRL pay, as calculated based on husband's percentage of disability when he was placed on the TDRL, must be excluded from the marital property. Any amounts in excess of that amount may be divided as marital property. In re Poland, 264 P.3d 647 (Colo. App. 2011).

Colorado state courts are not prohibited from dividing a military pension consisting of nondisability and disability retirement benefits as long as the portion of nondisability benefits is large enough to satisfy the other party's fractional share of the division. In re Lodeski, 107 P.3d 1097 (Colo. App. 2004).

Military retirement benefits subject to distribution as marital property in dissolution of marriage cases are limited to disposable retired pay which, under federal law, excludes disability pay. The exclusion also applies to that portion of a veteran's retirement pay that is computed using the percentage of disability on the date the veteran is placed on the TDRL. In re Williamson, 205 P.3d 538 (Colo. App. 2009).

Because husband was not entitled to a longevity retirement at the time he was placed on the TDRL, no portion of his retirement benefits that is based upon his disability status is distributable to wife pursuant to the parties' separation agreement that required the parties to divide the husband's pension equally according to the time rule formula. In re Williamson, 205 P.3d 538 (Colo. App. 2009).

Husband's total pay based and computed on his disability is excluded from distribution to wife as marital property, not solely the husband's specific VA benefits. Further, because the husband was not entitled to any retirement benefits but for his disability benefits, it is immaterial that he waived a portion of his disability benefits to receive VA benefits. In re Williamson, 205 P.3d 538 (Colo. App. 2009).

The nature of husband's disability retirement benefits as marital or nonmarital does not depend on whether the benefits are subject to taxation. Benefits based and computed on husband's disability are nonmarital, even if taxable. In re Williamson, 205 P.3d 538 (Colo. App. 2009).

Trial court was not preempted by federal law from characterizing special separation benefits (SSB) received by

former husband upon his voluntary discharge from the Air Force as marital property and from awarding a portion of them to wife. The SSB had more of the characteristics of a deferred compensation plan than a severance payment, and, therefore, constituted marital property subject to distribution. In re McElroy, 905 P.2d 1016 (Colo. App. 1995); In re Heupel, 936 P.2d 561 (Colo. 1997).

SSB benefit paid out after entry of the decree held not to be a "post-decree benefit". Hence, trial court's action in awarding a portion of the benefit to wife as marital property did not constitute a reopening of the decree, but rather an appropriate action to enforce the decree which incorporated the parties' separation agreement. In re Heupel, 936 P.2d 561 (Colo. 1997).

Spouse's election under federal law to receive indivisible veterans' disability benefits and waive divisible military retirement after entry of permanent orders does not divest trial court of jurisdiction in subsequent contempt action to enforce permanent orders. In re Lodeski, 107 P.3d 1097 (Colo. App. 2004); In re Warkocz, 141 P.3d 926 (Colo. App. 2006).

For public policy reasons, military spouse should not be allowed to unilaterally defeat the other spouse's interest in military retirement pay by voluntarily waiving retirement pay in order to receive disability pay. In re Warkocz, 141 P.3d 926 (Colo. App. 2006).

A specific dollar amount need not be set forth in the dissolution decree in order to give the nonmilitary spouse a vested interest in military spouse's retirement benefit. In re Warkocz, 141 P.3d 926 (Colo. App. 2006).

Husband's interest in contingency attorney fees which were earned during the marriage constitutes marital property subject to division. However, any portion of the fees earned after dissolution should be subject to the "reserve jurisdiction method" whereby the trial court retains jurisdiction to distribute payments when the contingent funds are received. In re Vogt, 773 P.2d 631 (Colo. App. 1989).

An unliquidated personal injury claim is marital property within the meaning of this section. The trial court should consider the actual effect that personal injury had on the marital estate in determining what the equitable share of the claim should be, and the court is required to make specific findings supporting the division of such claim. In re Fields, 779 P.2d 1371 (Colo. App. 1989).

Assets which consist of amounts received in settlement of husband's personal injury claim and wife's loss of consortium claim are marital property and should be distributed by the court after consideration of the needs and circumstances of the parties. In re Simon, 856 P.2d 47 (Colo. App. 1993).

Stock options owned by husband at the time of marriage but exercised during the marriage using marital funds are presumed to be marital property in the

absence of a showing that husband used separate property, such as money he received from an inheritance, to exercise the options. In re Renier, 854 P.2d 1382 (Colo. App. 1993).

Husband's right to severance pay as a substitute for a loss of future wages does not constitute marital property. In re Holmes, 841 P.2d 388 (Colo. App. 1992).

To the extent an employee stock option is granted in consideration of past services, the option may constitute marital property when granted. On the other hand, an employee stock option granted in consideration of future services does not constitute marital property until the employee has performed those future services. In re Miller, 915 P.2d 1314 (Colo. 1996).

Restricted stock options constitute marital property in their entirety where they represent a form of deferred compensation because husband had already earned the right to receive those shares. That husband's full enjoyment of the benefit is conditioned on his remaining an employee affects the present value of the restricted stock shares, not their marital nature. In re Miller, 915 P.2d 1314 (Colo. 1996).

A trial court has discretion to apply the "time rule" formula to the division of stock options acquired during the marriage or to reserve jurisdiction to distribute the stock options if and when they are exercised. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part, rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

Employee stock options constitute property only when the employee has a presently enforceable right to the options, regardless of whether the options are presently exercisable. In re Balanson, 25 P.3d 28 (Colo. 2001); In re Powell, 220 P.3d 952 (Colo. App. 2009).

Issue of "vesting" of employee stock options not determinative in ascertaining whether interest in employee stock options constitutes marital property. Rather, an employee stock option constitutes marital property for purposes of dissolution proceedings when an employee has an enforceable right to the options, regardless of whether the options are presently exercisable. In re Powell, 220 P.3d 952 (Colo. App. 2009).

Although wife's employment the year prior to issuance of the stock options may have been an eligibility requirement for the stock options, such employment did not, without more, confer any enforceable property right under the stock option plan. Wife had a mere expectancy and no property right in the stock options prior to the actual grant of the stock options after the date of the marriage. Therefore, no portion of the employee stock options were the wife's separate property, and wife did not "earn" any portion of the stock options prior to marriage. In re Powell, 220 P.3d 952 (Colo. App. 2009).

Because wife did not have an enforceable right to potential employer bonuses at the time of the permanent orders hearing, the district court did not err by excluding wife's potential bonuses from the division of marital property and,

therefore, such potential bonuses were not marital property subject to division. In re Turner, 2022 COA 39, 513 P.3d 407.

Public employees' retirement association (PERA) disability benefit prior to age 65 replaces future earnings and does not constitute marital property. In re Hansen, 62 P.3d 1066 (Colo. App. 2002).

When disabled employee reaches the age of 65, the portion of PERA benefits attributable to years of service before disability constitutes marital property, and the balance remains separate property. Regardless of employee's recovery or work status, the benefits, excluding the unearned service credit projected until age 65, are more akin to retirement benefits. In re Hansen, 62 P.3d 1066 (Colo. App. 2002).

Future disability income of husband based upon disability insurance purchased during marriage with marital funds is marital property. In re Simon, 856 P.2d 47 (Colo. App. 1993).

Trial court erred in setting apart to wife as her separate property the portions of investment traceable to income generated from trust. In re Foottit, 903 P.2d 1209 (Colo. App. 1995).

Mechanism employed by the court for dividing the marital estate is a matter within the trial court's discretion. In re Dickey, 658 P.2d 276 (Colo. App. 1982).

Property order not terminable upon remarriage. Court order constituting an adjustment of property rights between a former husband and wife did not terminate upon remarriage of wife. Greer v. Greer, 32 Colo. App. 196, 510 P.2d 905 (1973).

Share of marital estate contingent on remaining alive. Court cannot make a portion of husband's share of the marital estate contingent on his remaining alive. In re Paulsen, 677 P.2d 1389 (Colo. App. 1984).

Home to spouse with child custody. Subsection (1)(c) makes it clear that it is desirable to award the family home to the spouse having custody of the children. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

Subsection (3) provides that possession of title is not dispositive of the method of distribution of marital property. In re Thompson, 39 Colo. App. 400, 568 P.2d 98 (1977).

Intent evidenced that property no longer in joint tenancy. An order for the sale of marital property and distribution of the proceeds evidences an intent that the property is no longer to be held in joint tenancy. Gaskie v. Hugins, 640 P.2d 248 (Colo. App. 1981).

Order charging husband with selling property within one year effectively divided the marital property as of the date of the decree. In re Weaver, 39 Colo. App. 523, 571 P.2d 307 (1977).

Court ordered conveyance of separate property to wife or sale of both non-marital and marital property is violative of statute unless there is no other way to value and divide the property equitably. In re Sarvis, 695 P.2d 772 (Colo. App. 1984).

Where the husband's expenditures and labor enabled the wife to invest a considerable percentage of her income, they should be considered as contributions to the increase in their joint, and her several, property. Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971).

Promissory note between the husband and wife and the principal due thereunder, being property acquired in exchange for property acquired prior to the marriage, were correctly treated as wife's separate property. Accrued interest should be treated as marital property and the interest payable as a marital debt, while interest accruing after the date of the decree is the wife's separate property. In re McCadam, 910 P.2d 98 (Colo. App. 1995).

Unless promissory notes demonstrate an intent that interest be treated as separate property, the interest accruing during the marriage is a marital asset, and any interest due at the time of the dissolution of the marriage is a marital debt. In re Lewis, 66 P.3d 204 (Colo. App. 2003).

In dissolution proceedings, a couple's cryogenically frozen pre-embryos constitute marital property of a special character. In re Rooks, 2018 CO 85, 429 P.3d 579.

In determining the disposition of pre-embryos, the court should first look to any existing agreement between the parties regarding the disposition of their remaining pre-embryos in the event of divorce. In the absence of any such agreement, the court should balance the parties' interests by considering the following: (1) how the party who wishes to preserve the pre-embryos intends to use them; (2) the demonstrated physical ability or inability of the party seeking to use the pre-embryos for in vitro fertilization (IVF) to have biological children through other means; (3) the parties' original reasons for undertaking IVF; (4) the potential hardship for the party that wishes to avoid becoming a genetic parent, including emotional, financial, or logistical factors; (5) either party's demonstrated bad faith or attempt to use the pre-embryos as unfair leverage in divorce proceedings; and (6) other factors relevant to the parties' specific situation. The court should not consider: (1) the ability of the party seeking to use the pre-embryos to afford a child; (2) standing alone, the number of a party's existing children; and (3) the ability of the party seeking to use the pre-embryos to adopt or otherwise parent non-biological children. In re Rooks, 2018 CO 85, 429 P.3d 579.

District court misapplied Rooks by considering wife's religious beliefs as part of the first Rooks factor. First, contrary to Rooks, the court weighted wife's desire to donate pre-embryos as equivalent to a desire to implant them to become a genetic parent. Second, the court considered wife's subjective beliefs regarding the morality of preserving the pre-embryos. The first Rooks factor simply asks what the party seeking to preserve the pre-embryos intends to do with them. The first factor is not concerned with why the party prefers to preserve the pre-embryos over discarding them. In re Olsen, 2022 COA 66, 518 P.3d 297.

A party's desire to implant pre-embryos to achieve genetic parenthood and a party's desire to avoid genetic parenthood likewise are equivalently important. And, because a party's desire to donate pre-embryos is entitled to less weight than a party's desire to implant them, a party's desire to donate must also be entitled to less weight than a party's desire to avoid genetic parenthood. In re Olsen, 2022 COA 66, 518 P.3d 297.

Instead of considering wife's religious beliefs as part of the first Rooks factor, which erroneously caused the district court to weigh that factor substantially in wife's favor, the court should have considered wife's beliefs as an additional factor beyond those articulated in Rooks. In re Olsen, 2022 COA 66, 518 P.3d 297.

It was proper for the district court to consider wife's religiously grounded beliefs and husband's secularly grounded beliefs as part of the Rooks balancing framework. In re Olsen, 2022 COA 66, 518 P.3d 297.

The district court misapplied the second Rooks factor by weighing it slightly in favor of wife when wife wanted to donate rather than implant the pre-embryos. Wife was not a party seeking to implant the disputed pre-embryos, so wife's ability or inability to have biological children through other means is irrelevant for purposes of the second Rooks factor. In re Olsen, 2022 COA 66, 518 P.3d 297.

Accordingly, the case does not present the rare circumstance where a party wanting to donate pre-embryos can prevail against a party wanting to avoid procreating. In re Olsen, 2022 COA 66, 518 P.3d 297.

Trial court lacked jurisdiction over the securities owned by the parties' children. However, trial court may consider the securities as a factor in determining how to allocate between the parties any marital debt related to the children's education. In re Gorman, 36 P.3d 211 (Colo. App. 2001).

Colorado Uniform Transfers to Minors Act account is not marital property. Money properly transferred to an account created in the parties' child's name in compliance with the act is the child's property and not marital property. In re Nevedrova, 2024 COA 112, 562 P.3d 445.

G. After-acquired Property.

A trial court, in ordering a division of property, cannot award to the divorced wife a share in property which might be acquired by the ex-husband after the order for a division of property has been made. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964).

Courts cannot divide property acquired after hearing or decree. Although courts must divide property on the basis of conditions existing at the date of the hearing or decree, they cannot consider the division of property which the parties may acquire afterwards. In re Johnson, 40 Colo. App. 250, 576 P.2d 188 (1977).

A trial court cannot award to one spouse in a dissolution a share in property which might be acquired by the other spouse after the order for division of property has been made. In re Ward, 657 P.2d 979 (Colo. App. 1982).

Court can allow wife to use husband's separate property if husband waived or intentionally relinquished the right to sole ownership of that separate property. Court, however, could not convey any ownership attributes of that property to wife. In re Ikeler, 148 P.3d 347 (Colo. App. 2006), rev'd on other grounds, 161 P.3d 663 (Colo. 2007).

III. VALUATION OF PROPERTY.

Law reviews. For article, "Valuation of Businesses in Colorado Divorces", see 32 Colo. Law. 73 (June 2003). For article, "Business Valuations in Light of Thornhill", see 38 Colo. Law. 77 (Aug. 2009). For article, "Recent Changes to Military Retirement Division in Divorce", see 47 Colo. Law. 34 (Apr. 2018).

Market value of real property in dispute is standard adopted by the general assembly. In re Lord, 626 P.2d 698 (Colo. App. 1980).

Necessity of finding current value of all property. Generally, in making a division of property, the court must find the approximate current value of all property owned by the parties, as well as the value of separate property at the time of the marriage or at the time of acquisition, if after marriage. However, where the court determines the percentage ownership each party has in the marital property, and that percentage is not an issue on appeal, the failure to make such findings of current value is not necessarily erroneous. In re Weaver, 39 Colo. App. 523, 571 P.2d 307 (1977).

This section expressly requires that property be valued as of the date of the dissolution of the marriage or as of the date of the hearing on disposition of the property if such hearing precedes the date of dissolution. This provision is mandatory, and the only exception is that the marital property dissipated before dissolution of the marriage can be valued as of the date the property last existed. In re Hunt, 909 P.2d 525 (Colo. 1995); In re Finer, 920 P.2d 325 (Colo. App. 1996); In re Lockwood, 971 P.2d 264 (Colo. App. 1998).

The trial court did not have discretion to create, for equitable purposes, a fictitious date of dissolution for purposes of calculating the wife's share of the husband's military pension. In re Lockwood, 971 P.2d 264 (Colo. App. 1998).

Court's discretion in determining property valuation date. This section gives the trial court broad discretion in matters of property division, including determination of the property valuation date for division of marital property. Gaskie v. Hugins, 640 P.2d 248 (Colo. App. 1981).

Court's valuation was sufficiently supported by evidence of parties' agreement as to value of lot, wife's response to husband's request for admission of current market value of property, and verified financial statements and proposed final orders submitted by both parties. In re Price, 727 P.2d 1073 (Colo. 1986).

Valuation on the date of dissolution based on an earlier agreement does not abuse court's discretion, where trial court was fully appraised of its duty to value the

disputed lot as of the date of dissolution. In re Price, 727 P.2d 1073 (Colo. 1986).

Subsequent testimony to the valuation as of the date of dissolution which concerned the value of the disputed lot was not sufficient as a matter of law to overcome documentary evidence to the contrary. In re Price, 727 P.2d 1073 (Colo. 1986).

Stipulated values not binding. Where the trial court has determined that fairness and equity require that the division be an equal one, the stipulated values set 10 years before are neither binding nor relevant. Gaskie v. Hugins, 640 P.2d 248 (Colo. App. 1981).

However, parties' agreement as to the value nine months before the date of dissolution was not outdated and irrelevant to court's determination of real estate's value. In re Price, 727 P.2d 1073 (Colo. 1986).

Trial court is not bound by partnership agreement in determining value of law practice. Where partnership agreement was designed to discourage partners from leaving firm and it appeared husband intended to stay with firm, court was free to use an alternate valuation method such as the excess earnings method. In re Huff, 834 P.2d 244 (Colo. 1992).

Because husband's partnership interest was vested and mature and not subject to future contingencies, trial court erred when it valued that interest by projecting the value of the partnership to the date of husband's expected retirement rather than the date of the parties' legal separation. In re Nevarez, 170 P.3d 308 (Colo. App. 2007).

Excess earnings method is a generally accepted method for determining the present value of a person's interest in a business, representing both tangible assets and goodwill. In re Huff, 834 P.2d 244 (Colo. 1992).

Excess earnings method did not result in "double dipping" by wife awarded maintenance as well as a portion of present value of husband's interest in law practice. In re Huff, 834 P.2d 244 (Colo. 1992).

Weight to be accorded to the valuation techniques of an expert is for the trial court's determination, depending upon the court's assessment of the reliability of the data in a particular case. In re Bookout, 833 P.2d 800 (Colo. App. 1991); In re Antuna, 8 P.3d 589 (Colo. App. 2000).

Decision as to which valuation method to rely on is a factual determination to be made by the trial court. In re Huff, 834 P.2d 244 (Colo. 1992); In re Page, 70 P.3d 579 (Colo. App. 2003).

Marketability discount may be applied in determining value of husband's business where court determines that failure to do so would unfairly penalize husband for ownership of shares that cannot be readily sold or liquidated. The court must make a clear record of the reasons for applying a given discount rate. In re Thornhill, 200 P.3d 1083 (Colo. App. 2008), aff'd, 232 P.3d 782 (Colo. 2010).

It was within the trial court's discretion to accept wife's opinion of value as an owner of the marital residence, which opinion was partially based upon her extensive knowledge of the property, a

heightened awareness of its value, and the valuations provided to her. In re Lewis, 66 P.3d 204 (Colo. App. 2003).

Goodwill is a property or asset which supplements the earning capacity of another asset, business, or a profession, and, therefore, is not the earning capacity itself. In re Bookout, 833 P.2d 800 (Colo. App. 1991).

The value of goodwill in an ongoing physical therapy practice is properly measured by arriving at a present value based upon past results and not by accounting for the postmarital efforts of the professional spouse. In re Bookout, 833 P.2d 800 (Colo. App. 1991).

Identification, valuation, and division of husband's "good will" as a portion of his physical therapy practice did not divide husband's future income. In re Bookout, 833 P.2d 800 (Colo. App. 1991).

Trial court erred in failing to credit wife with the value of her interest in a medical practice as a marital asset. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

The conservation of the principal of an estate is, in itself, a valuable contribution which should be considered. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

When determining the present value of a vested interest in a trust that is subject to divestment based on a condition subsequent, a variety of circumstances should be considered, including actuarial information concerning the life expectancy of the life estate beneficiary and information concerning the future distributions to that beneficiary. In re Dale, 87 P.3d 219 (Colo. App. 2003).

In disposing of a vested but unmatured pension plan, the principles of fairness and equity must attend the valuation process, and the contingencies underlying the particular pension plan must be taken into account. In re McGinnis, 778 P.2d 282 (Colo. App. 1989).

Valuation of undisclosed assets. Once property has been divided pursuant to this section, such property becomes akin to separate property, and any increase in the valve of ownership interest therein should be considered when determining valuation. The failure to do so constitutes a confiscatory taking. In re Hiner, 710 P.2d 488 (Colo. 1985).

Increase in value of separate property after dissolution of marriage is necessarily separate. In re Campbell, 43 Colo. App. 72, 599 P.2d 275 (1979).

The amount by which the present value of an asset of a spouse acquired before the marriage exceeds its value at the time of the marriage constitutes a marital asset. In re Burford, 950 P.2d 682 (Colo. App. 1997).

In carrying out the division of the marital estate, the dissolution court should first add to the marital estate the amount of increase during the course of the marriage, if any, in each asset that was owned by each party before marriage. If an asset suffered a decrease in value, it should be disregarded in calculating the overall value of a spouse's separate property. Then the court should consider whether the overall value of the spouse's entire separate

property has increased or decreased for the purpose of dividing the marital estate. In re Burford, 950 P.2d 682 (Colo. App. 1997).

Although the assets paid off by husband may not have increased in fair market value, husband's use of marital funds to pay off his separate debts substantially increased his equity in his separate property and must be considered in the property division. It is not necessary that the spouse produce a marital "asset" capable of being divided when marital funds are used to pay off one spouse's premarital debts. It is sufficient that the spouse paying off or paying down the separate property received a benefit from the marital income such as increased equity in its own property. The court should consider the benefit as an economic circumstance. In re Burford, 26 P.3d 550 (Colo. App. 2001).

When debts have already been paid, they may be allocated in the property division through reimbursement. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Debts incurred during the marriage but which are dissolution litigation costs should be allocated pursuant to § 14-10-119. In re Burford, 26 P.3d 550 (Colo. App. 2001).

In the case of a pension plan inaccessible prior to the employee's distant retirement and terminable upon the employee's death, the risk of forfeiture is an important factor for the trial court to consider. In such a case it would be inequitable to require an immediate, lump-sum payment unless the present value included the risk of forfeiture as a factor. In re McGinnis, 778 P.2d 281 (Colo. App. 1989).

Vested but unmatured pension benefits are marital property not subject to inflexible rules of property valuation. Combination of deferred distribution and reserve jurisdiction valuation based on earliest possible retirement date for husband with full benefits proper where husband was not currently entitled to retirement benefits. In re Kelm, 878 P.2d 34 (Colo. App. 1994), aff'd in part, rev'd in part on other grounds, 912 P.2d 545 (Colo. 1996).

No basis for reversal despite court error in valuing wife's vested but unmatured PERA retirement fund. Because PERA combines elements of defined benefit and defined contribution plans, it was error for the court to base the present value of the wife's PERA account purely upon her contributions as of the date of dissolution. A proper determination of present value required the application of a series of actuarial and investment assumptions relating to the wife's life expectancy and probable retirement age to the contractual or statutorily awarded benefit. However, because husband acquiesced in this error and failed to present any evidence at trial as to the value of wife's PERA pension and because he made no objection or argument challenging wife's valuation during the permanent orders hearing, there is no basis for reversal. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

Unvested, unmatured, noncontributory defined benefit pension plans are affected by different contingencies from those

where plans are vested. In re Hunt, 909 P.2d 525 (Colo. 1995).

Three methods of distribution are at court's disposal in order to divide a pension plan upon dissolution: (1) net present value; (2) deferred distribution; and (3) reserve jurisdiction. In re Hunt, 909 P.2d 525 (Colo. 1995).

"Time rule" formula, used to apportion pension benefits under the net present value and deferred distribution methods, described in In re Hunt, 909 P.2d 525 (Colo. 1995).

"Subtraction method" disapproved. Under the net present value method of distributing a pension plan, trial court's procedure of subtracting the present value of the husband's pension at the time of the marriage from the present value of the husband's pension at the time of the dissolution represented an abuse of discretion because, under the circumstances, this procedure grossly overstated the wife's share. In re James, 950 P.2d 624 (Colo. App. 1997).

Trial court had discretion to use subtraction method instead of the time-rule formula where the value of the trust was unrelated to any efforts taken by wife or husband, post-dissolution enhancements were irrelevant, and the wife failed to explain why the time-rule formula would produce a more accurate and fair apportionment of the trust interest. In re Dale, 87 P.3d 219 (Colo. App. 2003).

Trial court is not preempted from using the net present value method to distribute an unmatured military pension. In re Riley-Cunningham, 7 P.3d 992 (Colo. App. 1998).

Trial court did not abuse its discretion in offsetting the net present values of the parties' military pensions and making a present distribution of the respective pensions, even though husband was retired from active duty while wife was not entitled to retire immediately and was still on active reserve. In re Riley-Cunningham, 7 P.3d 992 (Colo. App. 1998).

Court did not err by distributing husband's railroad retirement benefits using the net present value method. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

However, trial court is required to apply the coverture fraction, the accepted means of calculating the marital share of a pension, by multiplying the present value of the pension by the number of years or months that benefits accumulated during the marriage and dividing by the total number of years or months that benefits accumulated. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

Court should have considered actuarial information concerning the life expectancy of husband's parents and relevant information concerning the likelihood that trustee would invade the trust corpus in the future in determining the net present value of a vested interest in a trust that is subject to divestment on a condition subsequent. In re Mohrlang, 85 P.3d 561 (Colo. App. 2003).

Post-divorce pension enhancements are not necessarily separate property. Although post-divorce earnings are

undisputably separate property, pension enhancements are subject to application of the "time rule" formula and may be apportioned. In re Hunt, 909 P.2d 525 (Colo. 1995).

Economic fault may be considered by the trial court when it is dividing marital assets. In re Jorgenson, 143 P.3d 1169 (Colo. App. 2006).

"Economic fault" concept rejected as a factor in distribution of post-divorce pension enhancements. In re Hunt, 909 P.2d 525 (Colo. 1995).

Court is not required to value or divide the parties' respective retirement plans by any set method so long as the division is equitable. No error in awarding wife the entire contribution she had made to a Public Employee Retirement Account where the benefits from such contribution were significantly less than husband's retirement benefits. In re Kelm, 878 P.2d 34 (Colo. App. 1994), aff'd in part, rev'd in part on other grounds, 912 P.2d 545 (Colo. 1996).

Court may retain jurisdiction over the distribution and valuation of stock options so that each party will "share in the risk of the fate of each of the options." In re Huston, 967 P.2d 181 (Colo. App. 1998).

Wife entitled to amount of husband's retirement funds, in the event of his death, only to extent of contributions made as of the date of dissolution. In re Kelm, 878 P.2d 34 (Colo. App. 1994), aff'd in part, rev'd in part on other grounds, 912 P.2d 545 (Colo. 1996).

An obligation to guarantee the debt of another should not be considered in a property valuation when the chance of liability is so small as to be speculative. If there is a quantifiable likelihood of liability, the obligation should be valued at its face amount times the percentage chance of liability. In re Jorgenson, 143 P.3d 1169 (Colo. App. 2006).

Just as a court is required to allocate the contingent value of assets in pensions and trusts, it must similarly determine the value of a contingent marital debt. It may do so in one of two ways: (1) Determine, on the basis of testimony, the potential obligation, discounted to reflect the percentage of liability; or (2) otherwise divide the marital assets and debts, reserving jurisdiction to allocate the contingent marital debt until such time as the amount of such contingent debt has been determined. In re Jorgenson, 143 P.3d 1169 (Colo. App. 2006).

"Seller's costs". The trial court did not err in not deducting normal seller's costs from the value of the home when it purported to split between the parties the remaining equity in the home because "seller's costs" were speculative at best. Rhoades v. Rhoades, 188 Colo. 423, 535 P.2d 1122 (1975).

Husband not entitled to share in the future appreciation of the home because property is valued at the dissolution hearing or property division hearing. In re Wornell, 697 P.2d 812 (Colo. App. 1985).

Loss apportioned. The trial court may apportion a loss in value of separate

property between the parties. In re Talarico, 36 Colo. App. 389, 540 P.2d 1147 (1975).

Post-decree loss not allocable. After the court dissolves the marriage, the marital assets allocated to each spouse become that spouse's separate property. In re Collins, 2023 COA 116M, 544 P.3d 1258.

Conclusion that parties did not contribute to enhancement of stock proper. Since investment patterns of persons in a situation similar to a particular married couple is not a matter of common knowledge, and therefore, comparisons of the investments in the wife's portfolio to those of some hypothetical average investor or a skilled investment counselor were merely speculation, it was proper for the trial court to conclude on the basis of such observations that neither party contributed to enhancement of the value of the stocks. In re Wildin, 39 Colo. App. 189, 563 P.2d 384 (1977).

Valuation of intangible assets of husband's business. In determining the intangible value of husband's business, the important consideration is whether husband's business has a value to him above and beyond the tangible assets. In re Martin, 707 P.2d 1035 (Colo. App. 1985); In re Huff, 834 P.2d 244 (Colo. 1992).

Spouse was not entitled to any increase in value of assets awarded to her from the date of the decree to the date the permanent orders were entered where the decree was entered prior to the date of the hearing on disposition of property. In re Graff, 902 P.2d 402 (Colo. App. 1994).

Specific determination of the nature and elements of goodwill may be required when court orders one party to execute a covenant not to compete for protection of the goodwill of a business awarded to the other party. In re Fischer, 834 P.2d 270 (Colo. App. 1992).

Central to the valuation of property is the determination whether the property will actually be sold, thereby resulting in a net equity. The court should consider husband's intentions as to whether he will sell the property at issue, and if the property is to be sold, the finding of net equity must comport with the evidence. In re Finer, 920 P.2d 325 (Colo. App. 1996).

In case of dissipation of property, trial court's alternative ruling that stock shares could be valued at the time when they were sold, if that value was higher than the value on the date of the decree, was proper. In re Huston, 967 P.2d 181 (Colo. App. 1998).

Trial court did not err in valuing a leased automobile at $13,500, where husband had recently prepaid $13,500 on the lease of the leased vehicle. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part, rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

Subsection (5) makes no provision regarding the date on which interest should begin to accrue on any sum ordered to be paid as part of the division of marital property. In re Rodrick, 176 P.3d 806 (Colo. App. 2007).

Applied in In re Thompson, 706 P.2d 428 (Colo. App. 1985).

IV. SCOPE OF REVIEW.

Scope of review. Division of property in dissolution of marriage proceedings may only be overturned upon a finding that the trial court abused its discretion. In re Talarico, 36 Colo. App. 389, 540 P.2d 1147 (1975); In re Sharp, 823 P.2d 1387 (Colo. App. 1991).

An appellate court will alter a division of property only if the trial court abuses its discretion. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977).

One who has accepted benefits of judgment may not seek reversal of that judgment on appeal. In re Jones, 627 P.2d 248 (Colo. 1981).

Acceptance of the benefits of a judgment constitutes a waiver of appeal rights only if such action is inconsistent with the basis for the appeal. It is when the appeal, if successful, will again put into issue the right of the party to receive the benefits already accepted that a waiver of the right to appeal has been found. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

Husband is not barred from appealing portion of the property division where he had previously received his share of the retirement funds pursuant to the parties' agreement before the hearing on permanent orders. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

A trial court having reached its conclusions and entered its order and judgment on documentary evidence alone, the supreme court was as well qualified to determine the equities involved in a divorce action concerning a division of the property of the parties as was the trial court, and under such circumstances, presumptions in favor of the correctness of the order and judgment were not conclusive. Stephenson v. Stephenson, 134 Colo. 96, 299 P.2d 1095 (1956).

In an action for divorce, where the questions presented to the appellate court for review concern only the property rights of the parties, matters relating to the divorce were not considered. Wigton v. Wigton, 73 Colo. 337, 216 P. 1055 (1923).

Where the reporter's transcript of the testimony taken at a hearing on division of property in a divorce action was not included in the record on error, the supreme court assumed that the trial court had before it the entire situation of the parties, that the evidence before the court fully supported the determination made, and that all conflicting claims of the parties were properly resolved. Gier v. Gier, 139 Colo. 289, 339 P.2d 677 (1959).

Where a decree ordering the title to property to remain in joint tenancy and granting the rights of possession and income in the property to the wife was not challenged, and had long since become final, the supreme court could not review it. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

Under the law of the case doctrine, conclusions of an appellate court on issues presented to it, as well as rulings logically necessary to sustain such conclusions, become the law of the case and generally must be followed in subsequent proceedings

in that case. However, application of the law of the case by a trial court to its property division rulings entered prior to an appeal is a discretionary rule of practice. The trial court's original permanent orders lose any binding effect or precedential value when they are reversed on appeal. In re Burford, 26 P.3d 550 (Colo. App. 2001).

V. ENFORCEMENT.

Enforcement of property settlement. Ordering the payment of an amount due pursuant to the terms of the property settlement, together with interest, is an enforcement of the original decree and not a modification of the property settlement. In re Schutte, 721 P.2d 160 (Colo. App. 1986).

14-10-114. Spousal maintenance - advisory guidelines - legislative declaration - definitions.

(1) **Legislative declaration.**

(a) The general assembly hereby finds that:

(I) The economic lives of spouses are frequently closely intertwined in marriage and that it is often impossible to later segregate the respective decisions and contributions of the spouses; and

(II) Consequently, awarding spousal maintenance may be appropriate if a spouse needs support and the other spouse has the ability to pay support.

(b) The general assembly further finds that:

(I) Because the statutes provide little guidance to the court concerning maintenance awards, there has been inconsistency in the amount and term of maintenance awarded in different judicial districts across the state in cases that involve similar factual circumstances; and

(II) Courts and litigants would benefit from the establishment of a more detailed statutory framework that includes advisory guidelines to be considered as a starting point for the determination of fair and equitable maintenance awards.

(c) Therefore, the general assembly declares that it is appropriate to create a statutory framework for the determination of maintenance awards, including advisory guidelines for the amount and term of maintenance in certain cases, that will assist the court and the parties in crafting maintenance awards that are fair, equitable, and more consistent across judicial districts and in their application to both parties.

(2) At the time of permanent orders in dissolution of marriage, legal separation, or declaration of invalidity proceedings, and upon the request of either party, the court may order the payment of maintenance from one spouse to the other pursuant to the provisions of this section. An award of maintenance shall be in an amount and for a term that is fair and equitable to both parties and shall be made without regard to marital misconduct.

(3) (a) (I) **Determination of maintenance.** When a party has requested maintenance in a dissolution of marriage, legal separation, or declaration of invalidity proceeding, prior to granting or denying an award of maintenance, the court shall make initial written or oral findings concerning:

(A) The amount of each party's gross income;

(B) The marital property apportioned to each party;

(C) The financial resources of each party, including but not limited to the actual or potential income from separate or marital property;

(D) Reasonable financial need as established during the marriage; and

(E) Whether maintenance awarded pursuant to this section would be deductible for federal income tax purposes by the payor and taxable income to the recipient.

(II) After making the initial findings described in subparagraph (I) of this paragraph (a), the court shall determine the amount and term of the maintenance award, if any, that is fair and equitable to both parties after considering:

(A) The guideline amount and term of maintenance set forth in paragraph (b) of this subsection (3), if applicable, based upon the duration of the marriage and the combined gross incomes of the parties;

(B) The factors relating to the amount and term of maintenance set forth in paragraph (c) of this subsection (3); and

(C) Whether the party seeking maintenance has met the requirement for a maintenance award pursuant to paragraph (d) of this subsection (3).

(b) **Advisory guideline amount and term of maintenance.** If the duration of the parties' marriage is at least three years and the parties' combined annual adjusted gross income does not exceed two hundred forty thousand dollars, the court shall make additional oral or written findings concerning the duration of the marriage in whole months and the advisory guideline amount and term of maintenance, calculated as follows:

(I) (A) If the maintenance award is deductible for federal income tax purposes by the payor and taxable income to the recipient, the amount of maintenance under the advisory guidelines is equal to forty percent of the parties' combined monthly adjusted gross income minus the lower income party's monthly adjusted gross income. If the calculation results in a negative number, the amount of maintenance is zero.

(B) If the maintenance award is not deductible for federal income tax purposes by the payor and not taxable income to the recipient, the amount of maintenance under the advisory guidelines for parties with a combined monthly adjusted gross income of ten thousand dollars or less is

equal to eighty percent of the amount calculated pursuant to subsection (3)(b)(I)(A) of this section.

(C) If the maintenance award is not deductible for federal income tax purposes by the payor spouse and not taxable income to the recipient spouse, the amount of maintenance under the advisory guidelines for parties with a combined monthly adjusted gross income of more than ten thousand dollars but not more than twenty thousand dollars is equal to seventy-five percent of the amount calculated pursuant to subsection (3)(b)(I)(A) of this section.

(II) (A) The advisory term of maintenance under the guidelines, calculated in whole months, for marriages of at least three years but not more than twenty years, is set forth in the table contained in subsection (3)(b)(II)(B) of this section. When the duration of the parties' marriage exceeds twenty years, the court may award maintenance for a specified term of years or for an indefinite term, but the court shall not specify a maintenance term that is less than the maintenance term under the guidelines for a twenty-year marriage without making specific findings that support a reduced term of maintenance.

(B) **Table of guideline maintenance term (in whole months)**

Months of Marriage	**Percentage**	**Guideline Term of Maintenance**
36	31.00%	11
37	31.17%	12
38	31.33%	12
39	31.50%	12
40	31.67%	13
41	31.83%	13
42	32.00%	13
43	32.17%	14
44	32.33%	14
45	32.50%	15
46	32.67%	15
47	32.83%	15

Months of Marriage	Percentage	Guideline Term of Maintenance
48	33.00%	16
49	33.17%	16
50	33.33%	17
51	33.50%	17
52	33.67%	18
53	33.83%	18
54	34.00%	18
55	34.17%	19
56	34.33%	19
57	34.50%	20
58	34.67%	20
59	34.83%	21
60	35.00%	21
61	35.17%	21
62	35.33%	22
63	35.50%	22
64	35.67%	23
65	35.83%	23
66	36.00%	24
67	36.17%	24
68	36.33%	25
69	36.50%	25
70	36.67%	26

Months of Marriage	Percentage	Guideline Term of Maintenance
71	36.83%	26
72	37.00%	27
73	37.17%	27
74	37.33%	28
75	37.50%	28
76	37.67%	29
77	37.83%	29
78	38.00%	30
79	38.17%	30
80	38.33%	31
81	38.50%	31
82	38.67%	32
83	38.83%	32
84	39.00%	33
85	39.17%	33
86	39.33%	34
87	39.50%	34
88	39.67%	35
89	39.83%	35
90	40.00%	36
91	40.17%	37
92	40.33%	37
93	40.50%	38

Months of Marriage	Percentage	Guideline Term of Maintenance
94	40.67%	38
95	40.83%	39
96	41.00%	39
97	41.17%	40
98	41.33%	41
99	41.50%	41
100	41.67%	42
101	41.83%	42
102	42.00%	43
103	42.17%	43
104	42.33%	44
105	42.50%	45
106	42.67%	45
107	42.83%	46
108	43.00%	46
109	43.17%	47
110	43.33%	48
111	43.50%	48
112	43.67%	49
113	43.83%	50
114	44.00%	50
115	44.17%	51
116	44.33%	51

Months of Marriage	Percentage	Guideline Term of Maintenance
117	44.50%	52
118	44.67%	53
119	44.83%	53
120	45.00%	54
121	45.17%	55
122	45.33%	55
123	45.50%	56
124	45.67%	57
125	45.83%	57
126	46.00%	58
127	46.17%	59
128	46.33%	59
129	46.50%	60
130	46.67%	61
131	46.83%	61
132	47.00%	62
133	47.17%	63
134	47.33%	63
135	47.50%	64
136	47.67%	65
137	47.83%	66
138	48.00%	66
139	48.17%	67

Months of Marriage	Percentage	Guideline Term of Maintenance
140	48.33%	68
141	48.50%	68
142	48.67%	69
143	48.83%	70
144	49.00%	71
145	49.17%	71
146	49.33%	72
147	49.50%	73
148	49.67%	74
149	49.83%	74
150	50.00%	75
151	50.00%	76
152	50.00%	76
153	50.00%	77
154	50.00%	77
155	50.00%	78
156	50.00%	78
157	50.00%	79
158	50.00%	79
159	50.00%	80
160	50.00%	80
161	50.00%	81
162	50.00%	81

Months of Marriage	Percentage	Guideline Term of Maintenance
163	50.00%	82
164	50.00%	82
165	50.00%	83
166	50.00%	83
167	50.00%	84
168	50.00%	84
169	50.00%	85
170	50.00%	85
171	50.00%	86
172	50.00%	86
173	50.00%	87
174	50.00%	87
175	50.00%	88
176	50.00%	88
177	50.00%	89
178	50.00%	89
179	50.00%	90
180	50.00%	90
181	50.00%	91
182	50.00%	91
183	50.00%	92
184	50.00%	92
185	50.00%	93

Months of Marriage	Percentage	Guideline Term of Maintenance
186	50.00%	93
187	50.00%	94
188	50.00%	94
189	50.00%	95
190	50.00%	95
191	50.00%	96
192	50.00%	96
193	50.00%	97
194	50.00%	97
195	50.00%	98
196	50.00%	98
197	50.00%	99
198	50.00%	99
199	50.00%	100
200	50.00%	100
201	50.00%	101
202	50.00%	101
203	50.00%	102
204	50.00%	102
205	50.00%	103
206	50.00%	103
207	50.00%	104
208	50.00%	104

Months of Marriage	Percentage	Guideline Term of Maintenance
209	50.00%	105
210	50.00%	105
211	50.00%	106
212	50.00%	106
213	50.00%	107
214	50.00%	107
215	50.00%	108
216	50.00%	108
217	50.00%	109
218	50.00%	109
219	50.00%	110
220	50.00%	110
221	50.00%	111
222	50.00%	111
223	50.00%	112
224	50.00%	112
225	50.00%	113
226	50.00%	113
227	50.00%	114
228	50.00%	114
229	50.00%	115
230	50.00%	115
231	50.00%	116

Months of Marriage	Percentage	Guideline Term of Maintenance
232	50.00%	116
233	50.00%	117
234	50.00%	117
235	50.00%	118
236	50.00%	118
237	50.00%	119
238	50.00%	119
239	50.00%	120
240	50.00%	120

(c) **Factors affecting the amount and term of maintenance.** In any proceeding for maintenance, the court shall consider all relevant factors, including but not limited to:

(I) The financial resources of the recipient spouse, including the actual or potential income from separate or marital property or any other source and the ability of the recipient spouse to meet his or her needs independently;

(II) The financial resources of the payor spouse, including the actual or potential income from separate or marital property or any other source and the ability of the payor spouse to meet his or her reasonable needs while paying maintenance;

(III) The lifestyle during the marriage;

(IV) The distribution of marital property, including whether additional marital property may be awarded to reduce or alleviate the need for maintenance;

(V) Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, if necessary, and any necessary reduction in employment due to the needs of an unemancipated child of the marriage or the circumstances of the parties;

(VI) Whether one party has historically earned higher or lower income than the income reflected at the time of permanent orders and the duration and consistency of income from overtime or secondary employment;

(VII) The duration of the marriage;

(VIII) The amount of temporary maintenance and the number of months that temporary maintenance was paid to the recipient spouse;

(IX) The age and health of the parties, including consideration of significant health-care needs or uninsured or unreimbursed health-care expenses;

(X) Significant economic or noneconomic contribution to the marriage or to the economic, educational, or occupational advancement of a party, including but not limited to completing an education or job training, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property;

(XI) Whether the circumstances of the parties at the time of permanent orders warrant the award of a nominal amount of maintenance in order to preserve a claim of maintenance in the future;

(XII) Whether the maintenance is deductible for federal income tax purposes by the payor and taxable income to the recipient, and any adjustments to the amount of maintenance to equitably allocate the tax burden between the parties;

(XII.5) Whether a spouse has engaged in domestic violence, coercive control, economic abuse, litigation abuse, emotional abuse, physical abuse, or unlawful sexual behavior against the other spouse; and

(XIII) Any other factor that the court deems relevant.

(d) After considering the provisions of this section and making the required findings of fact, the court shall award maintenance only if it finds that the spouse seeking maintenance lacks sufficient property, including marital property apportioned to him or her, to provide for his or her reasonable needs and is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition or circumstances make it inappropriate for the spouse to be required to seek employment outside the home.

(e) The maintenance guidelines set forth in paragraph (b) of this subsection (3) do not create a presumptive amount or term of maintenance. The court has discretion to determine the award of maintenance that is fair and equitable to both parties based upon the totality of the circumstances. The court shall make specific written or oral findings in support of the amount and term of maintenance awarded pursuant to this section or an order denying maintenance.

(f) The court may award additional marital property to the recipient spouse or otherwise adjust the distribution of marital property or debt to alleviate the need for maintenance or to reduce the amount or term of maintenance awarded.

(g) The court may reserve jurisdiction to establish, review, or modify an award of maintenance at a later date pursuant to the provisions of this section by setting forth:

(I) The reasons for reserving jurisdiction;

(II) The ascertainable future event that forms the basis for reserving jurisdiction; and

(III) A reasonably specific time within which maintenance may be considered pursuant to this section.

(h) The court may award maintenance in short-term marriages, including marriages of less than three years in duration, when, given the circumstances of the parties, the distribution of marital property is insufficient to achieve an equitable result. In determining the award of maintenance, the court may consider the maintenance guidelines and the relevant factors affecting the amount and term of maintenance set forth in this subsection (3). The court shall make written or oral findings pursuant to paragraph (e) of this subsection (3).

(i) Nothing in this section prohibits an award of maintenance in gross.

(3.5) **Combined annual adjusted gross income in excess of advisory guideline amount.** If the parties' combined annual adjusted gross income exceeds two hundred forty thousand dollars, the calculation methodology described in subsection (3)(b)(I) of this section for determining the advisory guideline amount of maintenance does not apply, and the court shall instead consider the factors set forth in subsection (3)(c) of this section in determining the amount of maintenance. The court may consider the advisory guideline term of maintenance set forth in subsection (3)(b)(II) of this section.

(4) **Temporary maintenance.**

(a) (I) In every proceeding for dissolution of marriage, legal separation, or declaration of invalidity where temporary maintenance is requested by a party, the court may award a monthly amount of temporary maintenance pursuant to the provisions of subsection (3) of this section that are relevant to a determination of temporary maintenance.

(II) The guideline term of maintenance set forth in subparagraph (II) of paragraph (b) of subsection (3) of this section does not apply to temporary maintenance orders. The court shall determine the term for payment of temporary maintenance.

(III) In addition to the relevant factors set forth in paragraph (c) of subsection (3) of this section, the court shall consider any additional factors specific to the determination of temporary maintenance, including the payment of family expenses and debts.

(b) After determining the amount of temporary maintenance pursuant to this subsection (4) and the amount of temporary child support pursuant to section 14-10-115, the court shall consider the respective financial resources of each party and determine the temporary payment of marital debt and the temporary allocation of marital property.

(c) A determination of temporary maintenance does not prejudice the rights of either party at permanent orders.

(5) **Modification or termination of maintenance.**

(a) Except upon written agreement of the parties, an award of maintenance entered pursuant to this section may be modified or terminated pursuant to the provisions of section 14-10-122. The court may consider the guideline amount and term of maintenance and the statutory factors set forth in subsection (3) of this section only in a modification or termination proceeding concerning a maintenance award entered on or after January 1, 2014.

(b) The enactment of this section does not constitute a substantial and continuing change of circumstance for purposes of modifying maintenance orders entered before January 1, 2014.

(c) The enactment of the December 2017 "Tax Cuts and Jobs Act", Pub.L. 115-97, federal tax legislation, does not constitute a substantial and continuing change of circumstance for purposes of modifying maintenance orders entered prior to the effective date of that law.

(6) **Security for the payment of maintenance.**

(a) The court may require the payor spouse to provide reasonable security for the payment of maintenance in the event of the payor spouse's death prior to the end of the maintenance term.

(b) Reasonable security may include, but need not be limited to, maintenance of life insurance for the benefit of the recipient spouse. In entering an order to maintain life insurance, the court shall consider:

(I) The age and insurability of the payor spouse;

(II) The cost of the life insurance;

(III) The amount and term of the maintenance;

(IV) Whether the parties carried life insurance during the marriage;

(V) Prevailing interest rates at the time of the order; and

(VI) Other obligations of the payor spouse.

(c) Orders to maintain security may be modified or terminated pursuant to section 14-10-122.

(7) **Maintenance agreements - waiver - unrepresented parties.**

(a) Either or both of the parties may agree in writing or orally in court to waive maintenance consistent with the provisions of section 14-10-112. The parties may also agree to waive maintenance in a premarital agreement or marital agreement consistent with the provisions of the "Uniform Premarital and Marital Agreements Act", created in part 3 of article 2 of this title. The enforceability of maintenance provisions in a premarital agreement or marital agreement is determined pursuant to the provisions of section 14-2-309.

(b) In any proceeding that falls within the maintenance guidelines set forth in subsection (3) of this section, at the time of either temporary orders or permanent orders, if either party is not

represented by an attorney or a licensed legal paraprofessional, the court shall not approve an agreement waiving maintenance or agreeing to an amount or term of maintenance that does not follow the maintenance guidelines unless the unrepresented party has indicated that the party is aware of the maintenance guidelines pursuant to this section.

(8) **Definitions.** As used in this section, unless the context otherwise requires:

(a) (I) "Adjusted gross income" means gross income as defined in subsection (8)(c) of this section, less preexisting court-ordered child support obligations actually paid by a party, preexisting court-ordered alimony or maintenance obligations actually paid by a party, as adjusted, if applicable, pursuant to subsection (8)(a)(III) of this section, and the adjustment to a party's income as determined pursuant to section 14-10-115 (6)(b) for any children who are not children of the marriage for whom the party has a legal responsibility to support.

(II) For purposes of this subsection (8)(a), "income" means the actual gross income of a party, if employed to full capacity, or potential income, if unemployed or underemployed.

(III) (A) For purposes of this subsection (8)(a), if the preexisting court-ordered alimony or maintenance obligations actually paid by a party are deductible for federal income tax purposes by that party, then the full amount of alimony or maintenance actually paid must be deducted from that party's gross income.

(B) If the preexisting court-ordered alimony or maintenance obligations actually paid by a party are not deductible for federal income tax purposes by that party, then the amount of preexisting court-ordered alimony or maintenance that is deducted from that party's gross income is the amount actually paid by that party multiplied by 1.25.

(b) "Duration of marriage" means the number of whole months, beginning from the first day of the month following the date of the parties' marriage until the date of decree or the date of the hearing on disposition of property if such hearing precedes the date of the decree.

(c) (I) "Gross income" means income from any source and includes, but is not limited to:

(A) Income from salaries;

(B) 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;

(C) Commissions;

(D) Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment;

(E) Bonuses;

(F) Dividends;

(G) Severance pay;

(H) Pension payments and retirement benefits actually received that have not previously been divided as property in this action, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and article 30 of title 31, C.R.S.;

(I) Royalties;

(J) Rents;

(K) Interest;

(L) Trust income and distributions;

(M) Annuity payments;

(N) Capital gains;

(O) Any moneys drawn by a self-employed individual for personal use that are deducted as a business expense, which moneys must be considered income from self-employment;

(P) Social security benefits, including social security benefits actually received by a party as a result of the disability of that party;

(Q) Workers' compensation benefits;

(R) Unemployment insurance benefits;

(S) Disability insurance benefits;

(T) 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;

(U) Monetary gifts;

(V) Monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office;

(W) Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies; except that, if a party is a passive investor, has a minority interest in the company, and does not have any managerial duties or input, then the income to be recognized may be limited to actual cash distributions received;

(X) Expense reimbursements or in-kind payments received by a party in the course of employment, self-employment, or operation of a business if they are significant and reduce personal living expenses;

(Y) Alimony or maintenance received pursuant to a preexisting court order with a payor who is not a party to the action, as adjusted, if applicable, pursuant to subsection (8)(c)(VI) of this section; and

(Z) Overtime pay, only if the overtime is required by the employer as a condition of employment.

(II) "Gross income" does not include:

(A) Child support payments received;

(B) 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) 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;

(D) Social security benefits received by a parent on behalf of a minor child as a result of the death or disability of a parent or stepparent; and

(E) Earnings or gains on retirement accounts, including individual retirement accounts; except that such earnings or gains shall not be included as income unless a party takes a distribution from the account. If a party may take a distribution from the account without being subject to a federal tax penalty for early distribution and the party chooses not to take a distribution, the court may consider the distribution that could have been taken in determining the party's gross income.

(III) (A) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" equals gross receipts minus ordinary and necessary expenses, as defined in sub-subparagraph (B) of this subparagraph (III), required to produce such income.

(B) "Ordinary and necessary expenses", as used in sub-subparagraph (A) of this subparagraph (III), 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 maintenance.

(IV) If a party is voluntarily unemployed or underemployed, maintenance must be calculated based on a determination of potential income; except that a determination of potential income must not be made for a party who is physically or mentally incapacitated or is caring for a child under the age of twenty-four months for whom the parties owe a joint legal responsibility or for an incarcerated parent sentenced to one hundred eighty days or more.

(V) For the purposes of this section, a party 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; or

(C) The party is enrolled in an educational program that is reasonably intended to result in a degree or certification within a reasonable period of time and that will result in a higher income, so long as the educational program is a good faith career choice.

(VI) For purposes of subsection (8)(c)(I)(Y) of this section, if alimony or maintenance received by a party pursuant to a preexisting court order is taxable income to that party for federal income tax purposes, then the actual amount of alimony or maintenance received is included in that party's gross income. If the alimony or maintenance received by a party pursuant to a preexisting court order is not taxable income to that party for federal income tax purposes, then the amount of alimony or maintenance that is included in that party's gross income is the amount of alimony or maintenance received multiplied by 1.25.

(9) **Application.** The provisions of this section apply only to actions in which a petition for dissolution of marriage, legal separation, or declaration of invalidity, or an action for the initial establishment of maintenance is filed on or after January 1, 2014. Actions filed before January 1, 2014, are determined pursuant to the provisions of this section as it existed at the time of the filing of the action.

Source: L. 71: R&RE, p. 526, § 1. **C.R.S. 1963:** § 46-1-14. **L. 79:** (2)(b) amended, p. 644, § 1, effective July 1. **L. 98:** (2)(a) amended, p. 1397, § 41, effective February 1, 1999. **L. 2001:** Entire section amended, p. 481, § 1, effective July 1. **L. 2007:** (2)(b)(IV)(A) amended, p. 107, § 2, effective March 16. **L. 2013:** Entire section R&RE, (HB 13-1058), ch. 176, p. 639, § 1, effective January 1, 2014. **L. 2014:** (9) amended, (HB 14-1379), ch. 307, p. 1300, § 1, effective May 31. **L. 2015:** (7)(a) amended, (SB 15-264), ch. 259, p. 951, § 36, effective August 5. **L. 2016:** (8)(a)(I) amended, (HB 16-1165), ch. 157, p. 497, § 10, effective January 1, 2017. **L. 2018:** (1)(c), (3)(a)(I)(C), (3)(a)(I)(D), IP(3)(b), (3)(b)(I), (3)(b)(II)(A), (3)(c)(XI), (3)(c)(XII), (8)(a), and (8)(c)(I)(Y) amended and (3)(a)(I)(E), (3)(c)(XIII), (3.5), (5)(c), and (8)(c)(VI) added, (HB 18-1385), ch. 251, p. 1543, § 1, effective August 8. **L. 2024:** (7)(b) amended, (HB 24-1291), ch. 131, p. 469, § 12, effective August 7. **L. 2025:** (8)(c)(IV) amended, (HB 25-1159), ch. 334, p. 1731, § 1, effective May 31; (3)(c)(XII) amended and (3)(c)(XII.5) added, (SB 25-116), ch. 212, p. 961, § 4, effective August 6.

Editor's note: For purposes of subsection (3)(b), the uppermost limits of the schedule of basic child support obligations were changed by House Bill 13-1209 from an annual combined

adjusted gross income of $240,000 to an annual combined adjusted gross income of $360,000, effective January 1, 2014. (See § 14-10-115 (7).)

Cross references: For the legislative declaration in SB 25-116, see section 1 of chapter 212, Session Laws of Colorado 2025.

ANNOTATION

I. General Consideration.

III. Separate Maintenance.

IV. Antenuptial Agreements.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Legislation Which Should Interest the Bar", see 20 Dicta 217 (1943). For article, "Forms Committee Presents Standard Pleading Samples to Be Used in Divorce Litigation", see 29 Dicta 94 (1952). For note, "The Effect of a Divorce Decree on a Subsequent Claim for Alimony", see 35 U. Colo. L. Rev. 402 (1963). For note on divorce, separation, and the federal income tax, see 39 U. Colo. L. Rev. 544 (1967). For note, "Legislation: Domestic Relations — New Colorado Statutes Govern Procedure in Contested Child Custody Cases", see 40 U. Colo. L. Rev. 485 (1968). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Pre-Nuptial Agreements Revisited", see 11 Colo. Law. 1882 (1982). For article, "Automatic Escalation Clauses Relating to Maintenance and Child Support", see 12 Colo. Law. 1083 (1983). For article, "The Continued Jurisdiction of the Court to Modify Maintenance", see 13 Colo. Law. 62 (1984). For article, "Taxation", which discusses a Tenth Circuit decision dealing with periodic payments as alimony or property settlement, see 61 Den. L.J. 392 (1984). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Marital Agreements", see 18 Colo. Law. 31 (1989). For article, "The Case For Maintenance Reform", see 23 Colo. Law. 53 (1994). For article, "Voluntary Early Retirement as a Factor in Modifying Maintenance", see 25 Colo. Law. 43 (Apr. 1996). For article, "Post-dissolution Maintenance Review in Trial Court Under CRS §§ 14-10-114 or -122", see 26 Colo. Law. 93 (July 1997). For article, "New Temporary Formulaic Spousal Maintenance in Colorado: An Overview", see 30 Colo. Law. 87 (Aug. 2001). For article, "Complex Financial Issues in Family Law Cases", see 37 Colo. Law. 53 (Oct. 2008). For article, "Emerging Spousal Support and Parenting Issues", see 41 Colo. Law. 45 (Oct. 2012). For article, "Maintenance Revisited The New Act", see 42 Colo. Law. 69 (Nov. 2013). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017). For article, "How the Tax Cuts and Jobs Act of 2017 Affects Divorce", see 47 Colo. Law. 26 (June 2018). For article, "Leap of Faith: Retiring while

Paying Spousal Maintenance", see 48 Colo. Law. 28 (Oct. 2019). For article, "A Primer on Executive Compensation in a Colorado Divorce — Part 2", see 51 Colo. Law. 34 (June 2022). For article, "The Treatment of SLATs in the Event of a Dissolution of Marriage", see 53 Colo. Law. 42 (June 2024).

Annotator's note. Since § 14-10-114, effective January 1, 2014, is similar to § 14-10-114 as it existed prior to its 2013 repeal and reenactment, relevant cases construing that provision and former provisions similar to that section have been included in the annotations to this section.

Any award of maintenance to a spouse in Colorado is a personal statutory right and not a property right. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001), aff'd, 285 B.R. 8 (Bankr. D. Colo. 2002), aff'd, 346 F.3d 1239 (10th Cir. 2003).

The spirit of this section was comprehensive enough to cover a case where there might be some question as to whether a marriage was one de jure, provided there was a marriage de facto. Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902).

Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

There is a distinction between maintenance awards and property settlements. Property divisions are intended to accomplish a just apportionment of marital property over time, whereas maintenance is intended be a substitute for marital support that can be used, for example, to ease a spouse's transition into the work force and prevent the spouse from becoming dependent on public assistance. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Division of property is mandatory under § 14-10-113, whereas an award of maintenance is discretionary under this section. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Maintenance used to balance equities. A trial court may use an award of maintenance as a tool to balance equities and compensate a spouse whose work has enabled the other spouse to obtain an education; however, this tool is available for use only where the spouse seeking maintenance meets the statutory threshold requirements of need. In re McVey, 641 P.2d 300 (Colo. App. 1981).

Trial court did not abuse its discretion in determining that it would be equitable in view of the division of property for the income of husband and wife to be relatively equal. In re Martin, 707 P.2d 1035 (Colo. App. 1985).

Reading section as a whole illustrates that the general assembly intended the guidelines to be advisory in nature and did not intend to cap or restrict a court's

maintenance determination. In re Vittetoe, 2016 COA 71, 488 P.3d 103.

This section does not preclude courts from entering retroactive temporary maintenance awards for a term commencing before the filing of a dissolution petition. In re Stradtmann, 2021 COA 145, 506 P.3d 77.

The divorce decree was the principal thing and the judgment for alimony was incidental, and whether they were entered separately or together, they were treated as part of the same decree. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954).

Matters of maintenance and property division are inextricably interwoven. In re McVey, 641 P.2d 300 (Colo. App. 1981).

It was well-established in Colorado that the courts viewed the testimony in alimony and property settlement matters in the light most favorable to the prevailing party. Gleason v. Gleason, 162 Colo. 212, 425 P.2d 688 (1967).

Alimony was defined generally as payments necessary for food, clothing, habitation, and other necessities for the support of the wife. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960).

Insurance policies and the premiums necessary to maintain them in full force were not in any sense to provide for food, clothing, habitation, or other necessities for the support of the wife. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960).

An award to the wife of the use, possession, and income of the real estate did not constitute an award of alimony, because the right to use and possession and the income of real property were but incidents of the ownership of that property. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

When parties availed themselves of the good offices of the court to fix the amounts of alimony to be paid from time to time and themselves changed the action from one for separate maintenance to one for divorce, it was assumed that they submitted themselves to the jurisdiction of the court for the entry of such orders as it deemed just and fair in accordance. Gavette v. Gavette, 104 Colo. 71, 88 P.2d 964 (1939).

Where the parties made a good faith although unsuccessful attempt at reconciliation and where the husband supported the family during this time, the support paid and contributed by the husband constituted payment of the maintenance installments accruing during the period they were living together. In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977).

For the effect of an invalidity of marriage determination on maintenance payments which were terminated upon remarriage, see Torgan v. Torgan, 159 Colo. 93, 410 P.2d 167 (1966).

Laches is recognized as a defense to the collection of maintenance arrearages or interest or both. Trial court must consider whether wife's twenty-six-year delay in enforcing the maintenance order was unreasonable given the circumstances and whether husband suffered prejudice as a

result of not paying for that period of time. The concepts of delay and prejudice are interrelated and must be considered together. In re Kann, 2017 COA 94, 488 P.3d 245.

Applied in In re Thompson, 39 Colo. App. 400, 568 P.2d 98 (1977); In re Mitchell, 195 Colo. 399, 579 P.2d 613 (1978); In re Wagner, 44 Colo. App. 114, 612 P.2d 1147 (1980); In re Angerman, 44 Colo. App. 298, 612 P.2d 1166 (1980); In re Hartford, 44 Colo. App. 303, 612 P.2d 1163 (1980); In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980); In re Carney, 631 P.2d 1173 (Colo. 1981); Faris v. Rothenberg, 648 P.2d 1089 (Colo. 1982); In re Dickey, 658 P.2d 276 (Colo. App. 1982); In re Manzo, 659 P.2d 669 (Colo. 1983); In re Westlake, 674 P.2d 1386 (Colo. App. 1983); In re Dixon, 683 P.2d 803, (Colo. App. 1983); In re Wormell, 697 P.2d 812 (Colo. App. 1985); In re Thompson, 706 P.2d 428 (Colo. App. 1985); In re Martin, 707 P.2d 1035 (Colo. App. 1985); People in Interest of V.H., 749 P.2d 460 (Colo. App. 1987); In re Micaletti, 796 P.2d 54 (Colo. App. 1990); In re Sim, 939 P.2d 504 (Colo. App. 1997); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

II. AWARD OF MAINTENANCE.

A. Prerequisites.

B. Determination of Right or Need for Maintenance.

C. Amount and Form of Maintenance.

D. Discretion of Court.

E. Modification and Scope of Review.

A. Prerequisites.

Maintenance must be requested in petition. Under the uniform act, maintenance must be requested in the petition for dissolution. In re Boyd, 643 P.2d 804 (Colo. App. 1982).

Property division must precede consideration of maintenance. In re Jones, 627 P.2d 248 (Colo. 1981). In re Huff, 834 P.2d 244 (Colo. 1992).

Application of subsection (1)(a) presupposes dividing marital property after setting apart separate property. The application of subsection (1)(a) presupposes that the court has first set apart to each spouse his or her respective separate property and has divided the marital property. In re Jones, 627 P.2d 248 (Colo. 1981).

Alimony being consequent upon obtaining a divorce, there could be no judgment for alimony without a divorce decree, though they may have been and generally were entered together, the incident could not exist without the principal. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954).

Where no cause of action was stated in a complaint for divorce, no allowance of alimony or attorney fees could have been made. Oates v. Oates, 72 Colo. 195, 210 P. 325 (1922).

No personal judgment for alimony could be entered against the husband where service was by publication, but such alimony could be made a charge on land over which the court acquired jurisdiction by

such service. Fowler v. Fowler, 74 Colo. 231, 220 P. 988 (1923).

Awards of maintenance are nondischargeable in bankruptcy and the question of whether a domestic obligation is in the nature of maintenance must be determined based on federal bankruptcy standards, taking into account the substance of the obligation and the intent of the parties at the time of dissolution. In re Wilson, 888 P.2d 365 (Colo. App. 1994).

Debtor's obligation to pay part of mortgage on ex-wife's house was a domestic support obligation and thus a nondischargeable debt in bankruptcy. The state court clearly intended that debtor's mortgage obligation was in the nature of support. And the bankruptcy court relied on several facts in the record that indicated the debt was substantively in the nature of support, making that court's conclusion not clearly erroneous. In re Siegfried, 320 B.R. 159 (D. Colo. 2020).

The parties' designation of a debt in the decree of dissolution as either a maintenance award that is non-dischargeable in bankruptcy or a property settlement that is dischargeable is not dispositive and in determining the intent of the parties and the substance of the obligation, the trial court must look beyond the language of the decree and may consider extrinsic evidence. In re Wilson, 888 P.2d 365 (Colo. App. 1994).

Trial court improperly found that husband's obligation to pay a street improvement debt was a nondischargeable lump sum maintenance obligation since, although an obligation to pay such a debt can be in the nature of maintenance, there was no evidence in the record that the parties intended that the obligation be in the nature of maintenance. In re Wilson, 888 P.2d 365 (Colo. App. 1994).

B. Determination of Right or Need for Maintenance.

This section leaves to the trial court the determination under the particular facts of each case whether to award alimony. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

This section does not compel a court to grant alimony in a divorce case; it is merely permissive. Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958); Int'l Trust Co. v. Liebhardt, 111 Colo. 208, 139 P.2d 264 (1943).

Alimony could be waived, and the right to seek alimony could be surrendered for a valuable consideration. Newey v. Newey, 161 Colo. 395, 421 P.2d 464, 422 P.2d 641 (1966).

Court must make findings of fact which demonstrate the basis of its award of maintenance. In re Laychak, 704 P.2d 874 (Colo. App. 1985).

Evidence relevant to issue of "need". While evidence that husband allegedly inflicted the injuries which resulted in wife's medical expenses and decreased her earning capacity is irrelevant, evidence of wife's medical expenses and earning capacity are relevant to establishing statutory requirements of need and trial court's exclusion of such evidence adversely

affected wife's rights regarding maintenance. In re Hulse, 727 P.2d 876 (Colo. App. 1986).

Determination of spouse's reasonable needs depends on the particular facts and circumstances of the parties' marriage, and court should consider the reasonable expectations of the parties in determining whether the a party should be granted maintenance. In re Marshall, 781 P.2d 177 (Colo. App. 1989).

The wife is not required to consume her portion of the marital property before being entitled to maintenance. In re Eller, 38 Colo. App. 74, 552 P.2d 30 (1976); In re Sewell, 817 P.2d 594 (Colo. App. 1991); In re Nordahl, 834 P.2d 838 (Colo. App. 1992); In re Bartolo, 971 P.2d 699 (Colo. App. 1998).

A court awarding maintenance need not make explicit findings that the wife has insufficient property to meet reasonable needs or is unable to support herself through appropriate employment. In re Lee, 781 P.2d 102 (Colo. App. 1989).

All that is required is that the court consider the wife's share of the marital property in arriving at its maintenance award. In re Eller, 38 Colo. App. 74, 552 P.2d 30 (1976).

In determining whether to award maintenance, the court must make a threshold determination that the spouse requesting it lacks sufficient property, including marital property, to provide for her reasonable needs and is unable to support herself through appropriate employment. In re Renier, 854 P.2d 1382 (Colo. App. 1993); In re Fisher, 931 P.2d 558 (Colo. App. 1996); In re Bartolo, 971 P.2d 699 (Colo. App. 1998); In re Rose, 134 P.3d 559 (Colo. App. 2006).

In making threshold inquiry into a party's entitlement to temporary maintenance, trial court may consider the parties' standard of living during the marriage. The ability of a party to meet his or her reasonable needs through appropriate employment is dependent upon the particular facts and circumstances of the marriage and the expectations established during the marriage. In re Thornhill, 232 P.3d 782 (Colo. 2010).

The trial court properly determined questions of alimony and support basing its findings on the financial conditions, abilities, and needs of the parties as they appeared at the time of the hearing rather than on what those conditions might have been in the past or may be in the future. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

Because an award of permanent alimony must be based upon the circumstances existing at the time of the hearing thereon, including, but not limited to, the duration of the marriage, the financial condition of the parties, their needs and their abilities. Boyer v. Boyer, 148 Colo. 535, 366 P.2d 661 (1961).

Highly relevant factor to be considered by court in effecting just division of marital property is the extent to which the division will promote the objective of providing for each party's financial needs without maintenance. In re Jones, 627 P.2d 248 (Colo. 1981).

Fact that parties are in debt and having serious financial problems at time of dissolution does not preclude a nominal award of maintenance, if there is reason to believe that one party may rebound financially and may again be in the position to assist the other spouse in obtaining a standard of living nearer to that enjoyed during their marriage. In re Fernstrum, 820 P.2d 1149 (Colo. App. 1991).

Under subsection (1)(a) propriety of award of maintenance depends upon the inadequacy of the property and earning capacity possessed by the party seeking the award. In re Jones, 627 P.2d 248 (Colo. 1981); In re Olar, 747 P.2d 676 (Colo. 1987).

Husband's rights in discretionary trust are to be considered as "economic circumstance" of the husband in determining a just division of the marital property pursuant to § 14-10-113 (1)(c) and as a "relevant factor" in making an award of maintenance under subsection (2). In re Rosenblum, 43 Colo. App. 144, 602 P.2d 892 (1979).

Contribution to education of spouse. Among the relevant factors to be considered in a division of marital property is the contribution of the spouse seeking maintenance to the education of the other spouse from whom the maintenance is sought. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977); In re Olar, 747 P.2d 676 (Colo. 1987).

Voluntary financial contributions to wife by adult children, which are not based upon any legal obligation, are not appropriate factors for the trial court to consider in determining the amount of a maintenance award. In re Serdinsky, 740 P.2d 521 (Colo. 1987).

Limited consideration of a third party's resources, such as a current spouse's income, is not absolutely prohibited if the existence or use of such assets is directly relevant to an allegation by the payor spouse of a substantial and continuing change of circumstances. In re Bowles, 916 P.2d 615 (Colo. App. 1995).

The conduct of the party seeking alimony was formerly to be examined closely by the trial court, and evidence of moral delinquency or complete disregard of the marital vows and duties would be viewed as a bar to alimony. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

In Colorado, fault was not the sole standard in determining whether alimony would be awarded. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

Permanent alimony could be awarded the divorced wife although the decree may have been granted the husband for her fault. Neander v. Neander, 35 Colo. 495, 84 P. 69 (1906); Vigil v. Vigil, 49 Colo. 156, 111 P. 833 (1910); Bock v. Bock, 154 Colo. 408, 390 P.2d 956 (1964).

The fact that a person is without funds and without profitable employment has been held not to preclude the allowance of reasonable alimony and support where nothing but a disinclination to work, regardless of the motive therefor, interferes with his ability to earn a reasonable living. Rapson v. Rapson, 165 Colo. 188, 437 P.2d

780 (1968); Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, 189 Colo. 103, 536 P.2d 1135 (1975).

The fact that defendant decided to quit his employment and return to college did not preclude the allowance of a reasonable support order based on his demonstrated earning capacity. Rapson v. Rapson, 165 Colo. 188, 437 P.2d 780 (1968).

Even though husband was out of work through no fault of his own and despite his good faith efforts to obtain work, award of monthly maintenance to wife was not an abuse of discretion because the husband retained a significant earning capacity. In re Gray, 813 P.2d 819 (Colo. App. 1991).

"Appropriate employment" means the employment is suited to the individual, including the individual's expectations and intentions as expressed during marriage. In re Olar, 747 P.2d 676 (Colo. 1987).

What constitutes "appropriate employment" requires consideration of the party's economic circumstances and reasonable expectations established during the marriage. The terms "reasonable needs" and "appropriate employment" should not be interpreted narrowly. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

The determination of what constitutes "appropriate employment" and "reasonable needs" under subsection (1) is dependent upon the particular facts and circumstances of each case. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

It is a defense to an action by a wife for alimony, support, maintenance, or separate maintenance that the husband already is making her a suitable and regular allowance, provided that allowance is a sufficient one. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

A claim that a trial court failed to rule on the issue of granting or denying alimony in a divorce action was not supported by a record which showed an interlocutory decree providing for monthly support payments for a minor child until further order of the court, together with fees for defendant's counsel. Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958).

A spouse who accepts maintenance payments or an attorney fee award is not precluded from appealing such order. In re Lee, 781 P.2d 102 (Colo. App. 1989).

Court must reconsider the amount and duration of maintenance awarded upon correcting the property division. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

For the purpose of determining maintenance, student loan proceeds that have to be repaid are not financial resources available to a party to reduce unmet need. Considering student loan proceeds as either financial resources or income for purposes of determining an award of maintenance would thwart the purpose of the maintenance statute. In re Morton, 2016 COA 1, 369 P.3d 800.

Court did not err in failing to include husband's GI bill tuition assistance and stipend for books and supplies in

husband's income for purposes of calculating maintenance. The tuition payment was not available for husband's discretionary use or to reduce living expenses and would in no discernable way assist him in paying maintenance or child support. In re Tooker, 2019 COA 83, 444 P.3d 856.

C. Amount and Form of Maintenance.

There is no mathematical formula for establishing a just and equitable property settlement or alimony or support. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Reading section as a whole illustrates that the general assembly intended the guidelines to be advisory in nature and did not intend to cap or restrict a court's maintenance determination. In re Vittetoe, 2016 COA 71, 488 P.3d 103.

In the absence of special circumstances, an order for the support of a wife in a divorce case should be a reasonable sum, based on the necessities of the wife and the husband's ability to pay. Elmer v. Elmer, 132 Colo. 57, 285 P.2d 601 (1955); Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

Alimony in gross will not normally be awarded unless special circumstances are present which support such award. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

While the needs of a divorced wife remaining unmarried are not controlling on the amount of alimony to be awarded, they are deserving of careful consideration. Rodgers v. Rodgers, 102 Colo. 94, 76 P.2d 1104 (1938).

A personal judgment against a husband in a divorce action for alimony in a sum not justified by the record should not be entered simply on the ground of possible indefinite future increase in income, because if his financial situation improves so as to justify an increase in alimony, the power of the court to make additional appropriate orders may be invoked at the wife's pleasure. Gourley v. Gourley, 101 Colo. 430, 73 P.2d 1375 (1937).

In the absence of special circumstances which require or make a lump-sum award of alimony proper, or a compelling reason that necessitates the desirability for such an award, a lump-sum or gross award of alimony should not be made. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Absent extraordinary circumstances, court may not order one party to use property awarded in a dissolution proceeding to pay maintenance to the other party. In re Gray, 813 P.2d 819 (Colo. App. 1991).

Each case depends on own facts. As to the determination as to whether to make a lump-sum award of alimony, each case depends upon its own peculiar facts and circumstances. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

Alimony in gross is not unacceptable per se. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

While maintenance in gross is not favored, nevertheless, in a proper case in may be awarded. In re McVey, 641 P.2d 300 (Colo. App. 1981).

Since the granting of alimony in gross, or lump-sum alimony, as it is sometimes called, provides a definite and final judgment which the court cannot later modify, periodic payments are preferred, because such payments can be modified if a change in circumstances occurs. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Whether the court should award periodic alimony or alimony in gross is generally held to be a matter within the sound discretion of the court. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973); Moss v. Moss, 35 Colo. App. 53, 531 P.2d 635 (1974), aff'd, 190 Colo. 491, 549 P.2d 404 (1976); In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975).

The trial court has broad discretion in determining the amount of alimony and the form of the award, i.e., periodic payments or alimony in gross. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

Although alimony could consist of periodic payments, indefinite in time and certain in amount, it was not necessarily true that all such payments in fixed amounts constituted alimony. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960).

Periodic alimony is generally favored because the court retains jurisdiction of the matter and may later modify the award. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Awards of periodic payments of alimony are preferred over awards of alimony in gross because an award of alimony in gross is a final judgment which is not modifiable at a later time while an award of periodic payments may be modified to adjust for changes in the circumstances of the parties. Moss v. Moss, 190 Colo. 491, 549 P.2d 404 (1976).

A decree giving land as alimony was not ipso facto erroneous, because entered after the interlocutory and before the final decree of divorce, there being a prayer for alimony. Wigton v. Wigton, 73 Colo. 337, 216 P. 1055 (1923); Fowler v. Fowler, 74 Colo. 231, 220 P. 988 (1923).

In awarding permanent alimony, care should be taken that it does not amount to an appropriation of the entire estate of the husband. Elmer v. Elmer, 132 Colo. 57, 285 P.2d 601 (1955).

An order for "permanent alimony" cannot amount to confiscation of the assets of the husband. Elmer v. Elmer. 132 Colo. 57, 285 P.2d 601 (1955).

Moreover, a court cannot make an award which will impoverish the husband. Santilli v. Santilli, 169 Colo. 49, 453 P.2d 606 (1969).

In setting the amount of maintenance to be awarded, the court must consider all relevant factors including the ability of the spouse paying maintenance to meet his own needs and the needs of the spouse receiving

maintenance. The court may also consider the future earning potential of the spouse. In re Gray, 813 P.2d 819 (Colo. App. 1991).

Trial court was required to balance all of the factors of subsection (4), including the mother's needs and abilities, her future earning capacity, the duration of the marriage and standard of living established throughout, and the parties' financial restrictions, and absent an abuse of discretion, court's award will not be reversed and, when the order is supported by competent evidence, it should not be disturbed on review. In re Atencio, 47 P.3d 718 (Colo. App. 2002).

No income is imputed to the wife for choice of a retirement option that resulted in a smaller payment, for delaying payment in another plan, or for requesting that the court ignore the equity in her home. A decision that income should be imputed to the wife for not choosing differing retirement options or for not using equity in the house for living expenses would be tantamount to requiring her to exhaust her portion of the marital property before she is entitled to maintenance. In re Folwell, 910 P.2d 91 (Colo. App. 1995).

Unrealized capital gains in an investment account do not constitute income for purposes of calculating spousal maintenance. In re Schaefer, 2022 COA 112, 522 P.3d 732.

District court may consider social security retirement benefits as included in the payor's gross income when determining maintenance. An exception to the federal Social Security Act's anti-assignment provision allows an award of maintenance that indirectly results in the reallocation of social security benefits to a former spouse. In re McClure, 2024 COA 70, 557 P.3d 392.

Court may not incorporate attorney fees into maintenance award. While award of attorney fees must be reviewed in light of parties' resources following property division and award of maintenance, standards for the different elements of the order are separate and distinct; tax consequences also may differ. In re Huff, 834 P.2d 244 (Colo. 1992).

Unliquidated workers' compensation award held to be different from pension. Whether award is marital property depends on extent to which award compensates for loss of earning capacity and medical expenses incurred during the marriage. If award compensates the spouse for post-dissolution loss of earning capacity, it is not marital property even if the compensable injury occurred during the marriage. If workers' compensation claim is pending on date of dissolution and will likely include indemnification for loss of marital earnings or medical expenses, trial court may reserve jurisdiction to apportion marital interest upon receipt of award. In re Smith, 817 P.2d 641 (Colo. App. 1991).

Debtor's property settlement debt to pay his ex-wife a share of his business's value does not constitute a business debt for purposes of 11 U.S.C. § 101(51D) of the federal bankruptcy code. In re Sullivan, 626 B.R. 326 (Bankr. D. Colo. 2021).

Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its maintenance award in light of its new property division and in light of the significant decrease in the value of one of the parties' investment accounts. In re Balanson, 25 P.3d 28 (Colo. 2001).

Court may rely on a previous allowance paid and other expenses paid by one party as evidence of the other party's reasonable needs for purposes of calculating the amount of temporary orders. In re Rose, 134 P.3d 559 (Colo. App. 2006).

Court could consider husband's income from second job in determination of wife's motion to modify maintenance. While this section references the child support guidelines, the child support guidelines require a determination of income for purposes of applying a mathematical formula. Conversely, maintenance is determined by a discretionary balancing of factors. The court did not err in failing to recalculate husband's income according to the child support guidelines and could properly consider husband's income from his second job as indicative of his ability to meet his own needs while meeting the needs of the payee-spouse. In re Nelson, 2012 COA 205, 292 P.3d 1214.

To avoid termination of maintenance by operation of law under § 14-10-122 (2)(a)(III), a separation agreement or decree must include an "express provision" that maintenance will continue even if the recipient spouse remarries. Parties must be clear that they have "otherwise agreed" under the statute. In re Cerrone, 2021 COA 116, 499 P.3d 1064.

The court declined to follow the holding in In re Parsons, 30 P.3d 868 (Colo. App. 2001), to the extent that it holds that the mere presence of a nonmodification clause alone is sufficient to continue a maintenance under the statute after the recipient spouse's remarriage. In re Cerrone, 2021 COA 116, 499 P.3d 1064.

D. Discretion of Court.

The awarding of alimony and fixing the amount thereof rested in the sound discretion of the trial court and unless an abuse of discretion was shown its judgment in such cases was not disturbed. Rodgers v. Rodgers, 102 Colo. 94, 76 P.2d 1104 (1938); Kleiger v. Kleiger, 127 Colo. 86, 254 P.2d 426 (1953); Bieler v. Bieler, 130 Colo. 17, 272 P.2d 636 (1954); Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955); Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958); Green v. Green, 139 Colo. 551, 342 P.2d 659 (1959); Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959); Lanz v. Lanz, 143 Colo. 73, 351 P.2d 845 (1960); Brownfield v. Brownfield, 143 Colo. 262, 352 P.2d 674 (1960); Walden v. Walden, 147 Colo. 221, 363 P.2d 168 (1961); Flor v. Flor, 148 Colo. 514, 366 P.2d 664 (1961); McMichael v. McMichael, 152 Colo. 65, 380 P.2d 233 (1963); Hayutin v. Hayutin, 152 Colo. 261, 381 P.2d 272 (1963); Alden v. Alden, 155 Colo. 51, 393 P.2d 5 (1964); Kraus v. Kraus, 159 Colo. 331, 411 P.2d 240 (1966); MacReynolds v. MacReynolds, 29 Colo. App. 267, 482 P.2d

407 (1971); Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971); Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Jekot v. Jekot, 32 Colo. App. 118, 507 P.2d 473 (1973); In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975); In re Martin, 707 P.2d 1035 (Colo. App. 1985); In re Gray, 813 P.2d 819 (Colo. App. 1991); In re Bartolo, 971 P.2d 699 (Colo. App. 1998); In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part, rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

Awards of child support and maintenance are matters generally within the sound discretion of the trial court and will not be set aside on appellate review in the absence of an abuse of discretion. In re Krise, 660 P.2d 920 (Colo. App. 1983).

Reading section as a whole illustrates that the general assembly intended the guidelines to be advisory in nature and did not intend to cap or restrict a court's maintenance determination. In re Vittetoe, 2016 COA 71, 488 P.3d 103.

Although a wife did not request alimony in her answer, once the trial court decided the issue of divorce, it was within its power under this section to determine whether the circumstances required additional orders for alimony and support. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

A trial court certainly could, if so inclined, consider the effect of state and federal income taxes on its contemplated award. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

The task of a trial court in a divorce action was to make a fair and equitable award of alimony and support, letting the taxes, and tax deductions, fall where they may. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

The supreme court cannot say as matter of law that a trial court abuses its discretion in limiting the period of time during which alimony should be paid by the husband where the trial court awards alimony in a definite sum payable in monthly installments based on the finding that the award meets the reasonable needs of the wife in light of her present condition. Liggett v. Liggett, 152 Colo. 110, 380 P.2d 673 (1963).

Trial court erred in determining that it did not have discretion to determine the duration of maintenance and that it was therefore required to provide for maintenance for an unspecified period of time. In re Fisher, 931 P.2d 558 (Colo. App. 1996).

Alimony, support, and property settlement issues were formally considered together to determine whether the court had abused its discretion, and in making the determination, the court would consider a variety of factors, including whether the property was acquired before or after marriage, the efforts and attitudes of the parties toward its accumulation, the respective ages and earning abilities of the parties, the conduct of the parties during the marriage, the duration of the marriage, their

stations in life, their health and physical condition, the necessities of the parties, their financial condition, and all other relevant circumstances. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

In determining whether the trial court abused its discretion in awarding maintenance, the property and maintenance awards must be considered together. In re Huff, 834 P.2d 244 (Colo. 1992).

Where the maintenance award reflected a thorough consideration of the family's standard of living, the length of the marriage, the husband's ability to pay, the wife's age and earning capacity, and the wife's responsibilities as residential custodian of five children, the award was amply supported by the evidence and would not be overturned. In re Hunt, 868 P.2d 1140 (Colo. App. 1993).

The age of the parties, in conjunction with the relative earning potential each of the parties can reasonably anticipate, and also their relative wealth will be considered in determining whether the trial judge abused his discretion in the alimony award. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Consideration of maintenance and attorney fees to determine whether court abused its discretion. In cases where an appeal has been taken from the property division, maintenance, and attorney fee provisions of a dissolution of marriage decree as a whole, they must be considered together to determine whether the trial court abused its discretion. In re Jones, 627 P.2d 248 (Colo. 1981); In re Seewald, 22 P.3d 580 (Colo. App. 2001).

Finding as to earning capacity not confiscatory. Where the evidence supported the court's finding that the husband was capable of earning sums greatly in excess of his present net salary, although it appeared that the court based its order on the present net income of the husband, the orders were not confiscatory. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

Where the amount of property the trial court ordered the defendant to pay the plaintiff restored the plaintiff substantially to the same asset position she had occupied prior to the marriage, since the plaintiff's ability to support herself was substantially the same as it had been prior to the marriage, the trial court did not abuse its discretion. Cohan v. Cohan, 172 Colo. 563, 474 P.2d 792 (1970).

Where former husband's business expenses were offset by in-kind payments from his girlfriend's construction company, district court did not abuse its discretion in calculating his self-employment income. In re Gibbs, 2019 COA 104, 446 P.3d 968.

Where the husband's income was not stable but fluctuated from month to month, the trial court did not abuse its discretion in directing payments of support and alimony on a percentage of the husbands's income. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

Where the wife had contributed her own funds to the purchase of the family home, and there was a comparatively small

amount of property owned by the parties, and the wife was left without any right to receive alimony payments, the trial court did not abuse its discretion in awarding the jointly owned home to the wife in its order amended after the husband's death. Sarno v. Sarno, 28 Colo. App. 598, 478 P.2d 711 (1970).

Where a party has not historically earned rental income from his or her primary residence, potential rental income from that asset cannot be imputed to the party for purposes of calculating maintenance. In re Gibbs, 2019 COA 104, 446 P.3d 968.

Awarding maintenance to wife on decreasing schedule held abuse of discretion. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975).

Trial court has discretion to award maintenance that decreases incrementally on a future date when wife's earning potential is expected to increase and again on a future date when wife is expected to begin receiving pension benefits. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part, rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

Within court's discretion to award retroactive temporary maintenance. Court may also include in the time for retroactive temporary maintenance any time during which the spouses continued to reside in the same home after dissolution proceedings were initiated. In re Herold, 2021 COA 16, 484 P.3d 782.

E. Modification and Scope of Review.

That the court has continuing jurisdiction over the payment of alimony may be assumed as the settled law of this state. Zlaten v. Zlaten, 117 Colo. 296, 186 P.2d 583 (1947).

A trial court may expressly reserve jurisdiction to review, adjust, or extend a maintenance award if: (1) An important contingency exists, the outcome of which may significantly affect the amount or duration of the maintenance award; (2) the contingency is based upon an ascertainable, future event or events; (3) the contingency can be resolved within a reasonable and specific period of time. In re Caufman, 829 P.2d 501 (Colo. App. 1992).

If a trial court intends to reserve jurisdiction over maintenance pursuant to this section it should: (1) State its intent to do so on the record; (2) briefly outline its reasons for doing so, stating what the ascertainable future event upon which the reservation of maintenance jurisdiction is based; and (3) set forth a reasonably specific future time within which maintenance may be reconsidered under this section. In re Caufman, 829 P.2d 501 (Colo. App. 1992).

A trial court may retain jurisdiction over maintenance if, at the time of permanent orders, an important future contingency exists that can be resolved in a reasonable and specific period of time, and if the court explicitly states its intent to reserve jurisdiction, describes the future event, and sets forth a reasonably specific future time within which maintenance may be considered. In re Folwell, 910 P.2d 91

(Colo. App. 1995); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

The phrase "a proceeding for maintenance following dissolution of marriage by a court" in subsection (3) applies only to those circumstances where the court issuing the decree of dissolution initially lacked personal jurisdiction over the absent spouse and, therefore, could not have ordered one spouse to pay maintenance. It does not provide an alternative for a party to request maintenance at a subsequent date even though he or she waived maintenance at permanent orders. In re Ebel, 116 P.3d 1254 (Colo. App. 2005).

The trial court erred in providing for future adjustments to maintenance. The assumptions made constitute improper speculation upon which to base future changes in maintenance. In re Folwell, 910 P.2d 91 (Colo. App. 1995).

Court not required to reserve jurisdiction over the issue of maintenance when, after sale of residence and an additional period in which to reacclimate to working, wife would have sufficient means to satisfy her own needs. In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

If a payor asks a court to modify or to terminate a maintenance obligation because he or she intends to retire, then the court should follow a general rule. First, it should decide whether the payor's decision to retire was made in good faith. Second, it should then incorporate its findings concerning the payor's decision to retire as one of the factors to consider in deciding whether circumstances have changed in such a substantial and continuing way as to make the original order unfair. In re Thorstad, 2019 COA 13, 434 P.3d 165.

In modifying provision for maintenance, burden is on party seeking modification to prove a substantial and continuing change of circumstances. Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981); In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

Reconsideration of maintenance and attorney fees unnecessary absent contest. When neither party contests a trial court's division of property it is not necessary that the court be able to reconsider the property division in order to correct error in the provisions for maintenance and attorney fees. In re Jones, 627 P.2d 248 (Colo. 1981).

Award of further maintenance upheld. The trial court neither abused its discretion nor exceeded its jurisdiction in awarding further maintenance to the wife where a separation agreement, having been incorporated into the divorce decree, became part of the final order when the decree was entered, and allowed a court to "review the issue" of spousal maintenance at end of six months. In re Sinn, 674 P.2d 988 (Colo. App. 1983); In re Woodman, 676 P.2d 1232 (Colo. App. 1983).

A provision of divorce decree retaining jurisdiction to award such alimony as may be just, did not alter the finality of that portion of the decree determining the rights and interests of the parties in real estate involved. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

Where it appeared from the record in a divorce case that both parties intended that a court retain jurisdiction of a question of permanent alimony and related matters after the entry of a final decree of divorce, orders entered determining such matters after entry of the decree were not void for want of jurisdiction. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

To correct an order for support directing payments in excess of defendant's ability to pay, required formal action by the one thus burdened, since to reduce support payments required by an order of the trial court necessitated a motion by him who sought relief. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

One who has accepted benefits of judgment may not seek reversal of that judgment on appeal. In re Jones, 627 P.2d 248 (Colo. 1981).

Awarding of attorney fees is discretionary with trial court and will not be disturbed on review if supported by the evidence. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982); In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

Fixing permanent alimony, and readjusting a property settlement was a function of the trial court and could not be assumed by the supreme court. Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955); Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959).

A trial court award to a plaintiff of permanent alimony was subject to review by a trial court in the event a changed condition arises. Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955).

Limited consideration of a third party's resources, such as a current spouse's income, is not absolutely prohibited if the existence or use of such assets is directly relevant to an allegation by the payor spouse of a substantial and continuing change of circumstances. In re Bowles, 916 P.2d 615 (Colo. App. 1995).

Five-year reach-back provision in C.R.C.P. 16.2(e)(10) for failure to disclose assets and liabilities does not apply to maintenance or income for the purpose of determining maintenance. The rule does not allow a redetermination of maintenance. In re Dadiotis, 2014 COA 28, 343 P.3d 1017.

III. SEPARATE MAINTENANCE.

An allowance for separate maintenance was not alimony within the strict definition of that term. Weston v. Weston, 79 Colo. 478, 246 P. 790 (1926).

When an original divorce action was dismissed, the parties were still husband and wife, and the wife was at liberty to institute a separate maintenance action against the husband, just as though there had been no former litigation between the parties. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959).

In determining the amount of support to be awarded in a separate maintenance action, the trial court could have considered

the ability of the husband, the value of his estate; and his earning capacity, and adjudication could not result in appropriation of his entire estate or impoverishment to the extent of rendering him unable to maintain himself. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961); Fahey v. Fahey, 43 Colo. 354, 96 P. 251 (1908).

In a separate maintenance action only such alimony and support could be awarded as was necessary to adequately maintain a family in the manner to which it was accustomed and suitable to their station, and a husband could be divested of a reasonable proportion of his earnings and, if need be, of his property, that his wife and children could have reasonable support. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959).

In all cases there was a factor to consider, and that was the ability of a husband and father to meet the reasonable needs of his wife and children. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

The purpose was not to enrich the wife, but to provide suitable support and maintenance for her, taking into consideration the manner in which she is accustomed to living with him, and his ability to provide support. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

A reasonable amount for her maintenance during coverture, or until reconciliation, estimated with reference to the means of her husband, and payable out of his estate, was the relief to which a wife was entitled, if the case made by her complaint should be established. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

In the absence of very special circumstances a lump-sum award could not be made in a separate maintenance suit, and the considerations which supported a lump-sum award or division of property in a divorce action that terminate property rights, were not present in separate maintenance suits where property rights were retained. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

It was an abuse of discretion, to award a wife the equivalent of one-third of the husband's estate, instead of a periodical payment for her support. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its maintenance award in light of its new property division and in light of the significant decrease in the value of one of the parties' investment accounts. In re Balanson, 25 P.3d 28 (Colo. 2001).

IV. ANTENUPTIAL AGREEMENTS.

There is no statutory proscription against contracting for maintenance in an antenuptial agreement. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Separation agreements and antenuptial agreements are separate and distinct legal documents. In re Newman, 44 Colo. App.

307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

Spouses-to-be have right to enter into antenuptial agreements which contemplate the possibility of dissolution. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

Antenuptial agreement no bar to maintenance unless specifically stated. In the absence of any reference in an antenuptial agreement to a relinquishment of the right to maintenance, the agreement does not bar the wife's claim for maintenance. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

Antenuptial agreement did not preclude an award of maintenance or reflect any waiver of maintenance by wife. In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Antenuptial maintenance agreement is subject to judicial scrutiny for conscionability. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

"Unconscionability", as applied to a maintenance agreement, exists when enforcement of the terms of the agreement results in a spouse having insufficient property to provide for his reasonable needs and who is otherwise unable to support himself through appropriate employment. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Maintenance agreement may become unconscionable because of circumstances at time of dissolution. Even though an antenuptial agreement is entered into in good faith, with full disclosure and without any element of fraud or overreaching, the maintenance provisions thereof may become voidable for unconscionability occasioned by circumstances existing at the time of the marriage dissolution. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Burden of proof of unconscionability. One who claims that an antenuptial maintenance agreement is unconscionable must prove that at the time of the marriage dissolution the maintenance agreement rendered the spouse without a means of reasonable support, either because of a lack of property resources or a condition of unemployability. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Where antenuptial agreement was silent on matter of attorney fees, the awarding of such fees was controlled by § 14-10-119. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

14-10-115. Child support guidelines - purpose - determination of income - schedule of basic child support obligations - adjustments to basic child support - additional guidelines - child support commission - definitions.

(1) **Purpose and applicability.**

(a) The child support guidelines and schedule of basic child support obligations have 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) The child support guidelines and schedule of basic child support obligations do the following:

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

(III) Allocate 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.

(2) **Duty of support - factors to consider.**

(a) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall, to the extent allowable within the court's jurisdiction, enter an order directing 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 month the child support obligation begins, without regard to marital misconduct.

(b) In determining the amount of support under this subsection (2), the court shall consider all relevant factors, including:

(I) The financial resources of the child;

(II) The financial resources of the custodial parent;

(III) The standard of living the child would have enjoyed had the marriage not been dissolved;

(IV) The physical and emotional condition of the child and his or her educational needs; and

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

(3) **Definitions.** As used in this section, unless the context otherwise requires:

(a) (I) "Adjusted gross income" means gross income, as specified in subsection (5) of this section, less preexisting child support obligations and less alimony or maintenance actually paid by a parent, as described in subsection (3)(a)(II) of this section.

(II) For purposes of this subsection (3)(a), if the alimony or maintenance actually paid by a parent is deductible for federal income tax purposes by that parent, and the alimony or maintenance is paid and received by the same parties as the child support calculation, then the actual amount of alimony or maintenance paid by that parent must be deducted from that parent's gross income. If the alimony or maintenance actually paid by a parent is not deductible for federal income tax purposes by that parent, then the amount of alimony or maintenance deducted from that parent's gross income is the amount of alimony or maintenance actually paid by that parent subject to the following adjustments:

(A) If the combined monthly adjusted gross income of the parties to the maintenance payment is ten thousand dollars or less, the maintenance actually paid will be multiplied by 1.25;

(B) If the combined monthly adjusted gross income of the parties to the maintenance payment is more than ten thousand dollars, the maintenance actually paid will be multiplied by 1.33; and

(C) If the amount of alimony or maintenance actually paid is increased as described in this section because it is not deductible for federal income tax purposes, there is a rebuttable presumption that the multiplier is correct. The presumption may be rebutted with evidence indicating a different multiplier is more accurate due to the tax implications of the maintenance payment being different than that reflected by the multiplier.

(III) If a court-ordered alimony or maintenance obligation actually paid by a party does not involve the same parties as the child support calculation and is not deductible for federal income tax purposes by that party, then the amount of the court-ordered alimony or maintenance that is

deducted from that party's gross income is the amount actually paid by that party multiplied by 1.25.

(b) "Combined gross income" means the combined monthly adjusted gross incomes of both parents.

(c) "Income" means the 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 subsection (5) of this section.

(c.5) "Mandatory school fees" means fees charged by a school or school district, including a charter school, for a child attending public primary or secondary school for activities that are directly related to the educational mission of the school, including but not limited to laboratory fees; book or educational material fees; school computer or automation-related fees, whether paid to the school directly or purchased by a parent; testing fees; and supply or material fees paid to the school. "Mandatory school fees" does not include uniforms, meals, or extracurricular activity fees.

(d) "Number of children due support", as used in the schedule of basic child support obligations specified in subsection (7) of this section, means children for whom the parents share joint legal responsibility and for whom support is being sought.

(e) "Other children" means children who are not the subject of the child support determination at issue.

(f) "Postsecondary education" includes college and career and technical education programs.

(g) "Postsecondary education support" means support for the following expenses associated with attending a college, university, or career and technical education program: Tuition, books, and fees.

(g.5) "Self-support reserve" means an amount equal to the state hourly minimum wage multiplied by twenty-nine hours per week, multiplied by fifty weeks per year, divided by twelve months.

(h) "Shared physical care", for the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, and as further specified in subsection (8)(b) of this section, means that each parent keeps the children for at least one overnight each year and that both parents contribute to the expenses of the children in addition to the payment of child support.

(i) "Split physical care", for the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, and as further specified in subsection (8)(c) of this section, 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 more than fifty percent of the time.

(4) **Forms - identifying information - advisement.**

(a) The child support guidelines must 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, worksheets, instructions, and advisements.

(b) All child support orders entered pursuant to this article shall provide the names 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. The social security numbers of the parties and children shall be collected pursuant to section 14-14-113 and section 26-13-127, C.R.S.

(c) All child support orders entered pursuant to this article 10 must include a written advisement to the parties that conforms with the written child support advisement approved by the judicial branch, covering the following topics, in plain language:

(I) That a party who does not pay child support may be subject to judicial and administrative enforcement remedies and examples of those remedies;

(II) The operation of income assignments;

(III) The application of interest on arrears;

(IV) The parties' obligations concerning proof of payment;

(V) The basis for a modification or change of support, including the definition of a substantial and continuing change of circumstances;

(VI) The effect of agreements to modify or amend child support and the requirement for court authorization or administrative process action of all modifications or amendments;

(VII) The effect of emancipation; and

(VIII) The effect of spousal maintenance.

(5) **Determination of income.**

(a) For the purposes of the child support guidelines and schedule of basic child support obligations specified in this section, the gross income of each parent is determined according to the following guidelines:

(I) "Gross income" includes income from any source, except as otherwise provided in subsection (5)(a)(II) of this section, and includes, but is not limited to:

(A) Income from salaries;

(B) 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;

(C) Commissions;

(D) Payments received as an independent contractor for labor or services, which payments must be considered income from self-employment;

(E) Bonuses;

(F) Dividends;

(G) Severance pay;

(H) Pensions and retirement benefits, including but not limited to those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, C.R.S., and article 30 of title 31, C.R.S.;

(I) Royalties;

(J) Rents;

(K) Interest;

(L) Trust income;

(M) Annuities;

(N) Capital gains;

(O) Any moneys drawn by a self-employed individual for personal use that are deducted as a business expense, which moneys must be considered income from self-employment;

(P) 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;

(Q) Workers' compensation benefits;

(R) Unemployment insurance benefits;

(S) Disability insurance benefits;

(T) 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;

(U) Monetary gifts;

(V) Monetary prizes, excluding lottery winnings not required by the rules of the Colorado lottery commission to be paid only at the lottery office;

(W) Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies. However, if a parent is a passive investor, has a minority interest in the company, and does not have any managerial duties or input, then the income to be recognized may be limited to actual cash distributions received.

(X) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business if they are significant and reduce personal living expenses;

(Y) Alimony or maintenance received, as adjusted, if applicable, pursuant to subsection (5)(a)(I.5) of this section; and

(Z) Overtime pay, only if the overtime is required by the employer as a condition of employment.

(I.5) For purposes of subsection (5)(a)(I)(Y) of this section, if the alimony or maintenance actually received by a parent is taxable income to that parent for federal income tax purposes, then the actual amount of alimony or maintenance received is included in that parent's gross income. If the alimony or maintenance actually received by a parent is not taxable income to that parent for federal income tax purposes, and the alimony or maintenance is paid and received by the same parties as the child support calculation, then the amount of alimony or maintenance that is included in that parent's gross income is the amount of alimony or maintenance received by that parent subject to the following adjustments:

(A) If the combined monthly adjusted gross income of the parties to the maintenance payment is ten thousand dollars or less, the maintenance actually received will be multiplied by 1.25;

(B) If the combined monthly adjusted gross income of the parties to the maintenance payment is more than ten thousand dollars, the maintenance actually received will be multiplied by 1.33; and

(C) If the amount of alimony or maintenance actually received is increased as described in this section because it is not deductible for federal income tax purposes, there is a rebuttable presumption that the multiplier is correct. The presumption may be rebutted with evidence indicating a different multiplier is more accurate due to the tax implications of the maintenance payment being different than that reflected by the multiplier.

(II) "Gross income" does not include:

(A) Child support payments received;

(B) 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) Income from additional jobs that result in the employment of more than forty hours per week or more than what would otherwise be considered to be full-time employment;

(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; and

(E) Earnings or gains on a retirement account, including an IRA, which earnings or gains must not be included as income unless or until a parent takes a distribution from the account. If a distribution from a retirement account may be taken without being subject to an IRS penalty for early distribution and the parent decides not to take the distribution, the court may consider the distribution that could have been taken in determining the parent's gross income if the parent is not otherwise employed full-time and the retirement account was not received pursuant to the division of marital property.

(III) (A) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" equals gross receipts minus ordinary and necessary expenses, as defined in sub-subparagraph (B) of this subparagraph (III), 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; except that the court may consider straight-line depreciation, if appropriate, even if accelerated depreciation was used in the party's income tax forms.

(IV) If a preexisting court-ordered alimony or maintenance obligation actually paid by a party does not involve the same parties as the child support calculation and is not deductible for federal income tax purposes by that party, then the amount of preexisting court-ordered alimony or maintenance that is deducted from that party's gross income is the amount actually paid by that party multiplied by 1.25.

(b) (I) If a parent is voluntarily unemployed or underemployed, child support must be calculated based on a determination of potential income; except that a determination of potential income must not be made for:

(A) A parent who is physically or mentally incapacitated;

(B) A parent who is caring for a child under the age of twenty-four months for whom the parents owe a joint legal responsibility; or

(C) An incarcerated parent sentenced to one hundred eighty days or more.

(I.5) If the court or delegate child support enforcement unit imputes income pursuant to this subsection (5), the provisions of subsection (5)(b.5) of this section apply.

(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 the 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.

(III) For the purposes of this section, a parent is not 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 that 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 full-time in an educational or vocational program or is employed part-time while enrolled in a part-time educational or vocational program, based on the institution's enrollment definitions, and the program is reasonably intended to result in a degree or certification within a reasonable period of time; completing the program will result in a higher income; the program is a good faith career choice that is not intended to deprive the child of support; and the parent's participation in the program does not unreasonably reduce the amount of child support available to a child.

(b.5) (I) Except as otherwise provided in this section, if the court or delegate child support enforcement unit determines that a parent is voluntarily unemployed or underemployed or employment information is unreliable, the court or delegate child support enforcement unit shall determine and document, for the record, the parent's potential income.

(II) In determining potential income, the court or delegate child support enforcement unit shall consider, to the extent known, the specific circumstances of the parent, including consideration of the following information, when available:

(A) The parent's assets;

(B) Residence;

(C) Employment and earnings history;

(D) Job skills;

(E) Educational attainment;

(F) Literacy;

(G) Age;

(H) Health;

(I) Criminal record;

(J) Other employment barriers;

(K) Record of seeking work;

(L) The local job market;

(M) The availability of employers hiring in the community, without changing existing law regarding the burden of proof;

(N) Prevailing earnings level in the local community. The typical hours available to workers in the parent's job sector as established by any reliable source generally used and relied on by the public or persons in a particular occupation, including, but not limited to, verified statements, work history, the United States department of labor's bureau of labor statistics or other reliable compilations, the department of labor and employment, or other information provided by the parent. In the absence of any such information, the court or delegate child support enforcement unit shall determine the parent's income based on a reasonable rate of pay for a thirty-two-hour workweek for fifty weeks each year, subject to other factors set forth in this section that may affect the number of hours the parent is capable of working, such as age, health, or the specific needs of the subject child.

(O) Transportation; and

(P) Other relevant background factors in the case.

(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 database maintained by the department of labor and employment shall be admissible into evidence for purposes of determining income under this subsection (5).

(6) **Adjustments to gross income.**

(a) At the time a child support order is initially established, or in any proceeding to modify a child support order, if a parent is also legally responsible for the support of any other children for whom the parents do not share joint legal responsibility, the court shall make an adjustment to the parent's gross income prior to calculating the basic child support obligation for the child or children who are the subject of the support order in question as follows:

(I) If a parent is obligated to pay support for another child pursuant to an order, the amount actually paid on the order must be deducted from that parent's gross income;

(II) If the other child is residing in the home of a parent, the court shall deduct from that parent's gross income the amount calculated pursuant to paragraph (b) of this subsection (6);

(III) If another child of a parent is residing outside the home of that parent, the court shall deduct from that parent's gross income the amount of documented money payments actually paid by the parent for the support of the other child, not to exceed the schedule of basic support obligations set forth in subsection (7) of this section.

(b) The amount of the adjustment must not exceed the schedule of basic support obligations listed in this section. For a parent with gross income of less than one thousand five hundred dollars, the adjustment is seventy-five percent of the amount listed under the schedule of basic child support obligations in subsection (7)(b) of this section that would represent a child support obligation based only upon the responsible parent's income, without any other adjustments for the number of children for whom the parent is responsible. For a parent with gross income of one thousand five hundred dollars or more per month, the adjustment is seventy-five percent of the amount listed under the schedule of basic child support obligations in subsection (7)(b) of this section that would represent a child 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 subsection (6)(b) must be subtracted from the amount of the parent's gross income prior to calculating the basic child support obligation based upon both parents' gross income, as provided in subsection (7) of this section.

(7) **Schedule of basic child support obligations.**

(a) (I) The basic child support obligation must be determined using the schedule of basic child support obligations contained in subsection (7)(b) of this section. The basic child support obligation must be divided between the parents in proportion to each parent's adjusted gross income.

(II) For a combined gross income that falls between amounts shown in the schedule of basic child support obligations, basic child support amounts must be interpolated.

(III) (A) In any circumstance in which the obligor's monthly adjusted gross income is less than or equal to six hundred fifty dollars, regardless of the monthly adjusted gross income of the

obligee, the court shall order the obligor to pay the minimum monthly order amount in child support. The minimum order amount is ten dollars per month, regardless of the number of children between the parties. If, as a result of shared parenting time, the obligor's presumptive total monthly child support obligation is less than ten dollars then the ten-dollar minimum monthly order amount does not apply and the presumptive total monthly child support obligation applies.

(B) In circumstances in which the obligor's monthly adjusted gross income is less than or equal to the self-support reserve but more than six hundred fifty dollars, the obligor's basic child support obligation is reduced to fifty dollars per month for one child, seventy dollars per month for two children, ninety dollars per month for three children, one hundred ten dollars per month for four children, one hundred thirty dollars per month for five children, and one hundred fifty dollars per month for six or more children. The reduced low-income adjustment does not apply if, as a result of shared parenting time, the adjustment is greater than the obligor's presumptive total monthly child support obligation calculated pursuant to the child support guidelines. The amount of child support owed by a parent with shared physical care must not exceed the amount owed by that same parent if the parent had no overnights.

(C) For an obligor with an adjusted gross income that is less than or equal to the self-support reserve but more than six hundred fifty dollars, the obligor's basic child support obligation as reduced by the low-income adjustment pursuant to subsection (7)(a)(III)(B) of this section, must be adjusted pursuant to subsection (11)(c)(III) of this section. The obligor's child support amount may be further adjusted to include a share of the work-related and education-related child care costs, health insurance, extraordinary medical expenses, and other extraordinary adjustments as described in subsections (9), (10), (11)(a), and (11)(b) of this section. However, if at the time the child support obligation is calculated, adjustments made pursuant to subsections (9), (10), (11)(a), and (11)(b) of this section, together with the reduced low-income adjustment amount, exceed ten percent of the obligor's adjusted gross income, the child support obligation must be capped at ten percent of the obligor's adjusted gross income. The amount of child support owed by a parent with shared parenting time must not exceed the amount owed by that same parent if the parent had no overnights.

(IV) The final presumptive child support obligation, including adjustments made pursuant to subsections (9), (10), (11)(a), (11)(b), and (11)(c)(III) of this section, must not exceed twenty percent of the obligor's adjusted gross income if the obligor's monthly adjusted gross income is above the self-support reserve and less than or equal to the state minimum wage multiplied by forty hours, multiplied by fifty-two weeks a year, divided by twelve months. The amount of child support owed by a parent with shared physical care must not exceed the amount owed by that same parent if the parent had no overnights.

(V) (A) For an obligor with an adjusted gross income that is above the self-support reserve, the obligor's basic child support obligation must be adjusted by deducting the self-support

reserve amount from the obligor's adjusted gross income. The difference calculated must be equal to eighty percent of the difference for one child, eighty-five percent of the difference for two children, eighty-nine percent of the difference for three children, ninety-two percent of the difference for four children, ninety-four percent of the difference for five children, and ninety-five percent of the difference for six or more children.

(B) If the resulting difference calculated pursuant to subsection (7)(a)(V)(A) of this section is less than the reduced low-income adjustment calculated pursuant to subsection (7)(a)(III)(B) of this section, the obligor's basic child support obligation is equal to the reduced low-income adjustment.

(C) If the resulting difference calculated pursuant to subsection (7)(a)(V)(A) of this section is more than the reduced low-income adjustment calculated pursuant to subsection (7)(a)(III)(B) of this section but less than the schedule of basic child support obligation, the obligor's basic child support obligation is equal to the amount calculated pursuant to subsection (7)(a)(V)(A) of this section.

(D) If the resulting difference calculated pursuant to subsection (7)(a)(V)(A) of this section is equal to or more than the schedule of basic child support obligation, the amount listed in the schedule of basic child support obligation applies.

(VI) In addition to the adjustments described in this subsection (7)(a), the obligor's child support amount must be further adjusted for work-related and education-related child care costs, health insurance, extraordinary medical expenses, and other extraordinary adjustments as described in subsections (9), (10), (11)(a), (11)(b), and (11)(c)(III) of this section.

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

(b) Schedule of basic child support obligations:

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
50	11	17	20	23	25	27

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
100	22	33	40	45	50	54
150	33	50	61	68	74	81
200	44	67	81	90	99	108
250	55	83	101	113	124	135
300	66	100	121	135	149	162
350	77	117	141	158	174	189
400	87	133	161	180	198	215
450	98	149	180	201	221	241
500	108	165	199	223	245	266
550	119	181	219	244	269	292
600	129	197	238	266	292	318
650	140	213	257	287	316	343
700	150	228	276	308	339	369
750	160	244	295	330	363	395
800	171	260	315	351	387	420
850	181	276	334	373	410	446
900	192	292	353	394	434	471
950	202	308	372	416	457	497
1000	213	324	391	437	481	523
1050	223	340	411	459	505	548
1100	234	356	430	480	528	574
1150	244	371	449	502	552	600

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
1200	253	386	466	521	573	623
1250	263	400	483	540	594	645
1300	272	414	500	559	615	668
1350	281	428	517	578	636	691
1400	290	442	534	597	657	714
1450	300	456	551	616	678	736
1500	309	470	568	635	698	759
1550	318	484	585	654	719	782
1600	327	498	602	673	740	805
1650	337	512	620	692	761	827
1700	346	527	637	711	782	850
1750	355	541	654	730	803	873
1800	364	555	671	749	824	896
1850	374	569	688	768	845	918
1900	383	583	705	787	866	941
1950	392	597	722	806	887	964
2000	401	611	739	825	908	987
2050	411	625	756	844	929	1009
2100	420	639	772	863	949	1032
2150	429	653	789	881	970	1054
2200	438	666	806	900	990	1076
2250	447	680	822	918	1010	1098

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
2300	456	694	839	937	1031	1120
2350	465	708	855	956	1051	1143
2400	474	721	872	974	1071	1165
2450	483	735	889	993	1092	1187
2500	492	749	905	1011	1112	1209
2550	501	763	922	1030	1133	1231
2600	510	776	938	1048	1153	1253
2650	519	790	955	1067	1173	1275
2700	528	804	972	1085	1194	1298
2750	537	817	988	1104	1214	1320
2800	546	831	1005	1122	1235	1342
2850	555	845	1021	1141	1255	1364
2900	564	859	1038	1159	1275	1386
2950	573	872	1055	1178	1296	1408
3000	582	886	1071	1196	1316	1431
3050	591	900	1088	1215	1336	1453
3100	600	913	1104	1234	1357	1475
3150	609	927	1121	1252	1377	1497
3200	618	941	1137	1271	1398	1519
3250	627	955	1154	1289	1418	1541
3300	636	968	1171	1308	1438	1564
3350	645	982	1187	1326	1459	1586

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
3400	654	996	1204	1345	1479	1608
3450	663	1010	1220	1363	1500	1630
3500	672	1023	1237	1382	1520	1652
3550	681	1037	1254	1400	1540	1674
3600	690	1051	1270	1419	1561	1696
3650	699	1064	1287	1437	1581	1719
3700	708	1078	1303	1456	1601	1741
3750	717	1092	1320	1474	1622	1763
3800	726	1106	1337	1493	1642	1785
3850	735	1119	1353	1511	1663	1807
3900	744	1133	1370	1530	1683	1829
3950	753	1147	1386	1549	1703	1852
4000	762	1161	1403	1567	1724	1874
4050	771	1173	1417	1583	1742	1893
4100	780	1185	1431	1598	1758	1911
4150	789	1197	1445	1614	1775	1930
4200	798	1209	1458	1629	1792	1948
4250	807	1221	1472	1644	1809	1966
4300	816	1232	1486	1659	1825	1984
4350	825	1244	1499	1675	1842	2002
4400	834	1256	1513	1690	1859	2020
4450	843	1268	1526	1705	1875	2039

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
4500	852	1280	1540	1720	1892	2057
4550	861	1292	1554	1735	1909	2075
4600	870	1304	1567	1751	1926	2093
4650	879	1316	1581	1766	1942	2111
4700	888	1328	1596	1783	1961	2131
4750	896	1342	1612	1800	1980	2152
4800	904	1355	1627	1818	1999	2173
4850	912	1368	1643	1835	2019	2194
4900	920	1381	1658	1852	2037	2214
4950	927	1393	1672	1867	2054	2233
5000	934	1404	1685	1882	2071	2251
5050	941	1416	1699	1898	2087	2269
5100	948	1427	1713	1913	2104	2287
5150	955	1439	1726	1928	2121	2306
5200	962	1450	1740	1943	2138	2324
5250	969	1462	1754	1959	2155	2342
5300	977	1473	1767	1974	2171	2360
5350	984	1485	1781	1989	2188	2379
5400	990	1496	1794	2004	2204	2396
5450	996	1504	1804	2015	2216	2409
5500	1002	1513	1814	2026	2229	2423
5550	1008	1522	1824	2038	2241	2436

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
5600	1013	1530	1834	2049	2254	2450
5650	1019	1539	1845	2060	2266	2464
5700	1025	1547	1855	2072	2279	2477
5750	1031	1556	1865	2083	2292	2491
5800	1036	1565	1875	2095	2304	2504
5850	1042	1573	1885	2106	2317	2518
5900	1048	1582	1896	2117	2329	2532
5950	1054	1590	1906	2129	2342	2545
6000	1060	1599	1916	2140	2354	2559
6050	1065	1608	1926	2151	2367	2573
6100	1071	1616	1936	2163	2379	2586
6150	1076	1624	1946	2173	2391	2598
6200	1080	1629	1951	2180	2398	2606
6250	1083	1634	1957	2186	2405	2614
6300	1087	1639	1963	2193	2412	2622
6350	1091	1644	1969	2199	2419	2629
6400	1094	1650	1974	2205	2426	2637
6450	1098	1655	1980	2212	2433	2645
6500	1101	1660	1986	2218	2440	2652
6550	1105	1665	1992	2225	2447	2660
6600	1108	1670	1998	2231	2454	2668
6650	1112	1675	2003	2238	2461	2676

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
6700	1115	1680	2009	2244	2469	2683
6750	1119	1685	2015	2251	2476	2691
6800	1122	1690	2021	2257	2483	2699
6850	1126	1695	2026	2264	2490	2707
6900	1129	1700	2032	2269	2496	2714
6950	1133	1704	2035	2273	2500	2718
7000	1136	1708	2038	2276	2504	2722
7050	1139	1711	2041	2279	2507	2726
7100	1142	1715	2044	2283	2511	2730
7150	1145	1719	2047	2286	2515	2734
7200	1149	1722	2050	2290	2518	2738
7250	1152	1726	2053	2293	2522	2742
7300	1155	1730	2056	2296	2526	2746
7350	1158	1733	2059	2300	2530	2750
7400	1161	1737	2062	2303	2533	2754
7450	1165	1741	2065	2306	2537	2758
7500	1168	1744	2068	2310	2541	2762
7550	1171	1748	2071	2313	2544	2766
7600	1174	1752	2074	2316	2548	2770
7650	1178	1756	2078	2321	2553	2775
7700	1182	1763	2088	2332	2565	2788
7750	1187	1771	2098	2343	2577	2801

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
7800	1191	1778	2107	2354	2589	2815
7850	1195	1786	2117	2365	2602	2828
7900	1200	1793	2127	2376	2614	2841
7950	1204	1801	2137	2387	2626	2855
8000	1209	1808	2147	2398	2638	2868
8050	1213	1816	2157	2410	2651	2881
8100	1218	1823	2167	2421	2663	2894
8150	1222	1831	2177	2432	2675	2908
8200	1227	1838	2187	2443	2687	2921
8250	1231	1846	2197	2454	2699	2934
8300	1236	1853	2207	2465	2712	2948
8350	1240	1861	2217	2476	2724	2961
8400	1244	1868	2226	2487	2735	2973
8450	1247	1871	2229	2489	2738	2977
8500	1250	1874	2231	2492	2741	2980
8550	1253	1877	2234	2495	2745	2983
8600	1255	1881	2236	2498	2748	2987
8650	1258	1884	2239	2501	2751	2990
8700	1261	1887	2241	2504	2754	2993
8750	1263	1890	2244	2506	2757	2997
8800	1266	1893	2246	2509	2760	3000
8850	1269	1896	2249	2512	2763	3004

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
8900	1272	1899	2251	2515	2766	3007
8950	1274	1902	2254	2518	2769	3010
9000	1277	1905	2256	2520	2772	3014
9050	1280	1909	2259	2523	2776	3017
9100	1282	1912	2261	2526	2779	3020
9150	1285	1915	2264	2529	2782	3024
9200	1289	1920	2269	2534	2788	3030
9250	1292	1924	2274	2540	2794	3037
9300	1296	1929	2279	2545	2800	3043
9350	1300	1934	2284	2551	2806	3050
9400	1303	1939	2288	2556	2812	3056
9450	1307	1944	2293	2562	2818	3063
9500	1311	1948	2298	2567	2824	3069
9550	1314	1953	2303	2572	2830	3076
9600	1318	1958	2308	2578	2836	3082
9650	1322	1963	2313	2583	2842	3089
9700	1325	1968	2318	2589	2848	3095
9750	1329	1972	2322	2594	2854	3102
9800	1333	1977	2327	2600	2860	3108
9850	1336	1982	2332	2605	2866	3115
9900	1340	1987	2337	2611	2872	3121
9950	1345	1993	2344	2618	2880	3130

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
10000	1350	2001	2352	2628	2890	3142
10050	1355	2008	2361	2637	2901	3153
10100	1361	2016	2369	2646	2911	3164
10150	1366	2024	2378	2656	2922	3176
10200	1372	2031	2386	2665	2932	3187
10250	1377	2039	2395	2675	2942	3198
10300	1383	2047	2403	2684	2953	3210
10350	1388	2054	2412	2694	2963	3221
10400	1394	2062	2420	2703	2973	3232
10450	1399	2070	2429	2713	2984	3243
10500	1404	2077	2437	2722	2994	3255
10550	1410	2085	2445	2732	3005	3266
10600	1415	2092	2454	2741	3015	3277
10650	1421	2100	2462	2750	3025	3289
10700	1426	2108	2471	2760	3036	3300
10750	1432	2115	2479	2769	3046	3311
10800	1437	2123	2488	2779	3057	3323
10850	1443	2131	2496	2788	3067	3334
10900	1448	2138	2505	2798	3077	3345
10950	1453	2146	2513	2807	3088	3357
11000	1459	2154	2522	2817	3098	3368
11050	1464	2161	2530	2826	3109	3379

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
11100	1469	2169	2539	2836	3119	3390
11150	1473	2175	2547	2845	3130	3402
11200	1477	2182	2556	2855	3140	3413
11250	1481	2188	2564	2864	3151	3425
11300	1485	2195	2573	2874	3161	3436
11350	1489	2201	2581	2883	3171	3447
11400	1493	2208	2590	2893	3182	3459
11450	1497	2214	2598	2902	3192	3470
11500	1501	2221	2607	2912	3203	3482
11550	1505	2228	2615	2921	3213	3493
11600	1509	2234	2624	2931	3224	3504
11650	1513	2241	2632	2940	3234	3516
11700	1517	2247	2641	2950	3245	3527
11750	1521	2254	2649	2959	3255	3538
11800	1525	2260	2658	2969	3266	3550
11850	1529	2267	2666	2978	3276	3561
11900	1533	2273	2675	2988	3287	3573
11950	1537	2280	2683	2997	3297	3584
12000	1541	2287	2692	3007	3308	3595
12050	1545	2293	2701	3016	3318	3607
12100	1549	2300	2709	3026	3329	3618
12150	1553	2306	2718	3036	3339	3630

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
12200	1557	2313	2726	3045	3350	3641
12250	1561	2319	2735	3055	3360	3652
12300	1564	2324	2739	3060	3366	3659
12350	1567	2328	2744	3065	3372	3665
12400	1570	2332	2749	3070	3377	3671
12450	1573	2337	2754	3076	3383	3678
12500	1576	2341	2758	3081	3389	3684
12550	1579	2345	2763	3086	3395	3690
12600	1583	2349	2768	3092	3401	3697
12650	1586	2354	2772	3097	3406	3703
12700	1589	2358	2777	3102	3412	3709
12750	1592	2362	2782	3107	3418	3715
12800	1595	2367	2787	3113	3424	3722
12850	1598	2371	2791	3118	3430	3728
12900	1601	2375	2796	3123	3436	3734
12950	1604	2380	2801	3129	3441	3741
13000	1607	2384	2806	3134	3447	3747
13050	1610	2388	2810	3139	3453	3753
13100	1614	2393	2815	3144	3459	3760
13150	1617	2397	2820	3150	3465	3766
13200	1620	2401	2824	3155	3470	3772
13250	1623	2406	2829	3160	3476	3779

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
13300	1626	2410	2834	3166	3482	3785
13350	1629	2414	2839	3171	3488	3791
13400	1633	2419	2844	3177	3494	3798
13450	1637	2425	2850	3183	3502	3806
13500	1641	2430	2856	3190	3509	3814
13550	1646	2436	2862	3197	3516	3822
13600	1650	2442	2868	3203	3524	3830
13650	1654	2448	2874	3210	3531	3838
13700	1659	2454	2880	3217	3538	3846
13750	1663	2460	2886	3223	3546	3854
13800	1667	2465	2892	3230	3553	3862
13850	1672	2471	2898	3237	3560	3870
13900	1676	2477	2904	3243	3568	3878
13950	1681	2483	2910	3250	3575	3886
14000	1685	2489	2916	3257	3583	3894
14050	1689	2495	2922	3264	3590	3902
14100	1694	2500	2928	3270	3597	3910
14150	1698	2506	2934	3277	3605	3918
14200	1703	2512	2940	3284	3612	3926
14250	1707	2518	2946	3290	3619	3934
14300	1711	2524	2952	3297	3627	3942
14350	1716	2529	2958	3304	3634	3950

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
14400	1720	2535	2964	3310	3641	3958
14450	1724	2541	2970	3317	3649	3966
14500	1729	2547	2976	3324	3656	3974
14550	1733	2553	2982	3331	3664	3982
14600	1738	2559	2988	3337	3671	3990
14650	1742	2564	2994	3344	3678	3998
14700	1746	2570	3000	3351	3686	4006
14750	1751	2576	3006	3357	3693	4014
14800	1755	2582	3012	3364	3700	4022
14850	1759	2586	3016	3369	3706	4028
14900	1761	2590	3019	3373	3710	4033
14950	1764	2593	3023	3376	3714	4037
15000	1767	2597	3026	3380	3718	4042
15050	1770	2600	3029	3384	3722	4046
15100	1773	2604	3033	3388	3726	4051
15150	1775	2607	3036	3391	3731	4055
15200	1778	2611	3040	3395	3735	4060
15250	1781	2614	3043	3399	3739	4064
15300	1784	2618	3046	3403	3743	4069
15350	1786	2621	3050	3406	3747	4073
15400	1789	2625	3053	3410	3751	4077
15450	1792	2628	3056	3414	3755	4082

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
15500	1795	2632	3060	3418	3759	4086
15550	1798	2635	3063	3421	3763	4091
15600	1800	2639	3066	3425	3768	4095
15650	1803	2642	3070	3429	3772	4100
15700	1806	2646	3073	3433	3776	4104
15750	1809	2649	3076	3436	3780	4109
15800	1812	2653	3080	3440	3784	4113
15850	1814	2656	3083	3444	3788	4118
15900	1817	2660	3086	3448	3792	4122
15950	1820	2663	3090	3451	3796	4127
16000	1823	2667	3093	3455	3801	4131
16050	1825	2670	3096	3459	3805	4136
16100	1828	2674	3100	3463	3809	4140
16150	1831	2677	3103	3466	3813	4145
16200	1834	2681	3107	3470	3817	4149
16250	1837	2686	3112	3476	3823	4156
16300	1843	2693	3121	3486	3834	4168
16350	1847	2701	3129	3495	3845	4179
16400	1852	2707	3137	3504	3855	4190
16450	1857	2714	3145	3513	3864	4201
16500	1861	2721	3153	3522	3874	4211
16550	1866	2728	3161	3531	3884	4222

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
16600	1870	2735	3169	3540	3894	4233
16650	1875	2741	3177	3549	3904	4243
16700	1879	2748	3185	3558	3913	4254
16750	1884	2755	3193	3566	3923	4264
16800	1888	2761	3201	3575	3933	4275
16850	1893	2768	3208	3584	3942	4285
16900	1897	2775	3216	3593	3952	4296
16950	1902	2781	3224	3601	3962	4306
17000	1906	2788	3232	3610	3971	4317
17050	1911	2795	3240	3619	3981	4327
17100	1915	2801	3248	3628	3990	4338
17150	1920	2808	3256	3636	4000	4348
17200	1924	2815	3263	3645	4010	4359
17250	1929	2821	3271	3654	4019	4369
17300	1933	2828	3279	3663	4029	4380
17350	1938	2835	3287	3672	4039	4390
17400	1942	2841	3295	3680	4048	4401
17450	1947	2848	3303	3689	4058	4411
17500	1951	2855	3311	3698	4068	4422
17550	1956	2861	3318	3707	4077	4432
17600	1960	2868	3326	3715	4087	4443
17650	1965	2875	3334	3724	4097	4453

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
17700	1969	2881	3342	3733	4106	4464
17750	1974	2888	3350	3742	4116	4474
17800	1978	2895	3358	3751	4126	4484
17850	1983	2901	3366	3759	4135	4495
17900	1987	2908	3373	3768	4145	4505
17950	1992	2915	3381	3777	4155	4516
18000	1996	2921	3389	3786	4164	4526
18050	2001	2928	3397	3794	4174	4537
18100	2005	2935	3405	3803	4183	4547
18150	2010	2941	3413	3812	4193	4558
18200	2014	2948	3420	3821	4203	4568
18250	2019	2955	3428	3829	4212	4579
18300	2023	2961	3436	3838	4222	4589
18350	2028	2968	3444	3847	4232	4600
18400	2032	2975	3452	3856	4241	4610
18450	2037	2982	3460	3865	4251	4621
18500	2041	2988	3468	3873	4261	4631
18550	2046	2995	3475	3882	4270	4642
18600	2050	3002	3483	3891	4280	4652
18650	2055	3008	3491	3899	4289	4662
18700	2058	3013	3496	3905	4295	4669
18750	2062	3017	3501	3910	4301	4675

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
18800	2065	3022	3505	3916	4307	4682
18850	2069	3027	3510	3921	4313	4688
18900	2073	3032	3515	3926	4319	4695
18950	2076	3036	3520	3932	4325	4701
19000	2080	3041	3525	3937	4331	4708
19050	2083	3046	3530	3943	4337	4714
19100	2087	3051	3535	3948	4343	4721
19150	2091	3055	3539	3954	4349	4727
19200	2094	3060	3544	3959	4355	4734
19250	2098	3065	3549	3964	4361	4740
19300	2101	3070	3554	3970	4367	4747
19350	2105	3074	3559	3975	4373	4753
19400	2109	3079	3564	3981	4379	4760
19450	2112	3084	3569	3986	4385	4766
19500	2116	3089	3573	3992	4391	4773
19550	2119	3093	3578	3997	4397	4779
19600	2123	3098	3583	4002	4403	4786
19650	2126	3103	3588	4008	4409	4792
19700	2130	3108	3593	4013	4415	4799
19750	2134	3112	3598	4019	4421	4805
19800	2137	3117	3603	4024	4427	4812
19850	2141	3122	3608	4030	4433	4818

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
19900	2144	3127	3612	4035	4439	4825
19950	2148	3131	3617	4040	4445	4831
20000	2152	3136	3622	4046	4451	4838
20050	2155	3141	3627	4051	4456	4844
20100	2159	3146	3632	4057	4462	4851
20150	2162	3150	3637	4062	4468	4857
20200	2166	3155	3642	4068	4474	4864
20250	2170	3160	3646	4073	4480	4870
20300	2173	3164	3651	4079	4486	4877
20350	2177	3169	3656	4084	4492	4883
20400	2180	3174	3661	4089	4498	4890
20450	2184	3179	3666	4095	4504	4896
20500	2187	3183	3670	4100	4510	4902
20550	2191	3188	3675	4105	4516	4908
20600	2194	3192	3680	4110	4521	4915
20650	2197	3197	3684	4115	4527	4921
20700	2201	3201	3689	4121	4533	4927
20750	2204	3206	3694	4126	4538	4933
20800	2208	3210	3698	4131	4544	4939
20850	2211	3215	3703	4136	4550	4945
20900	2215	3219	3707	4141	4555	4952
20950	2218	3224	3712	4146	4561	4958

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
21000	2221	3228	3717	4152	4567	4964
21050	2225	3233	3721	4157	4572	4970
21100	2228	3237	3726	4162	4578	4976
21150	2232	3242	3731	4167	4584	4982
21200	2235	3246	3735	4172	4589	4989
21250	2238	3251	3740	4177	4595	4995
21300	2242	3255	3744	4183	4601	5001
21350	2245	3260	3749	4188	4606	5007
21400	2249	3264	3754	4193	4612	5013
21450	2252	3269	3758	4198	4618	5020
21500	2255	3273	3763	4203	4623	5026
21550	2259	3278	3768	4208	4629	5032
21600	2262	3282	3772	4213	4635	5038
21650	2266	3287	3777	4219	4641	5044
21700	2269	3291	3781	4224	4646	5050
21750	2273	3296	3786	4229	4652	5057
21800	2276	3300	3791	4234	4658	5063
21850	2279	3305	3795	4239	4663	5069
21900	2283	3309	3800	4244	4669	5075
21950	2286	3314	3805	4250	4675	5081
22000	2289	3319	3811	4257	4683	5090
22050	2292	3324	3818	4265	4691	5099

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
22100	2295	3329	3825	4273	4700	5109
22150	2298	3334	3832	4280	4708	5118
22200	2301	3340	3839	4288	4717	5127
22250	2304	3345	3846	4296	4725	5137
22300	2307	3350	3853	4304	4734	5146
22350	2310	3355	3860	4311	4743	5155
22400	2313	3360	3867	4319	4751	5164
22450	2316	3365	3874	4327	4760	5174
22500	2319	3371	3881	4335	4768	5183
22550	2322	3376	3888	4342	4777	5192
22600	2325	3381	3895	4350	4785	5201
22650	2328	3386	3901	4358	4794	5211
22700	2331	3391	3908	4366	4802	5220
22750	2334	3396	3915	4373	4811	5229
22800	2337	3401	3922	4381	4819	5239
22850	2340	3407	3929	4389	4828	5248
22900	2343	3412	3936	4397	4836	5257
22950	2346	3417	3943	4404	4845	5266
23000	2349	3422	3950	4412	4853	5276
23050	2352	3427	3957	4420	4862	5285
23100	2355	3432	3964	4428	4871	5294
23150	2358	3437	3971	4436	4879	5304

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
23200	2361	3443	3978	4443	4888	5313
23250	2364	3448	3985	4451	4896	5322
23300	2367	3453	3992	4459	4905	5331
23350	2370	3458	3999	4467	4913	5341
23400	2373	3463	4006	4474	4922	5350
23450	2376	3468	4013	4482	4930	5359
23500	2379	3474	4020	4490	4939	5369
23550	2382	3479	4027	4498	4947	5378
23600	2385	3484	4033	4505	4956	5387
23650	2388	3489	4040	4513	4964	5396
23700	2391	3494	4047	4521	4973	5406
23750	2394	3499	4054	4529	4982	5415
23800	2397	3504	4061	4536	4990	5424
23850	2400	3510	4068	4544	4999	5433
23900	2403	3515	4075	4552	5007	5443
23950	2406	3520	4082	4560	5016	5452
24000	2409	3525	4089	4567	5024	5461
24050	2412	3530	4096	4575	5033	5471
24100	2415	3535	4103	4583	5041	5480
24150	2418	3541	4110	4591	5050	5489
24200	2421	3546	4117	4599	5058	5498
24250	2424	3551	4124	4606	5067	5508

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
24300	2427	3556	4131	4614	5075	5517
24350	2430	3561	4138	4622	5084	5526
24400	2433	3566	4145	4630	5093	5536
24450	2436	3571	4152	4637	5101	5545
24500	2439	3577	4159	4645	5110	5554
24550	2442	3582	4165	4653	5118	5563
24600	2445	3587	4172	4661	5127	5573
24650	2448	3592	4179	4668	5135	5582
24700	2451	3597	4186	4676	5144	5591
24750	2454	3602	4193	4684	5152	5601
24800	2457	3608	4200	4692	5161	5610
24850	2460	3613	4207	4699	5169	5619
24900	2463	3618	4214	4707	5178	5628
24950	2466	3623	4221	4715	5186	5638
25000	2469	3628	4228	4723	5195	5647
25050	2472	3633	4235	4730	5204	5656
25100	2475	3638	4242	4738	5212	5665
25150	2478	3644	4249	4746	5221	5675
25200	2481	3649	4256	4754	5229	5684
25250	2484	3654	4263	4762	5238	5693
25300	2487	3659	4270	4769	5246	5703
25350	2490	3664	4277	4777	5255	5712

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
25400	2493	3669	4284	4785	5263	5721
25450	2496	3675	4291	4793	5272	5730
25500	2499	3680	4297	4800	5280	5740
25550	2502	3685	4304	4808	5289	5749
25600	2505	3690	4311	4816	5297	5758
25650	2508	3695	4318	4824	5306	5768
25700	2511	3700	4325	4831	5314	5777
25750	2514	3705	4332	4839	5323	5786
25800	2517	3711	4339	4847	5332	5795
25850	2520	3716	4346	4855	5340	5805
25900	2523	3721	4353	4862	5349	5814
25950	2526	3726	4360	4870	5357	5823
26000	2529	3731	4367	4878	5366	5833
26050	2532	3736	4374	4886	5374	5842
26100	2535	3742	4381	4893	5383	5851
26150	2538	3747	4388	4901	5391	5860
26200	2541	3752	4395	4909	5400	5870
26250	2544	3757	4402	4917	5408	5879
26300	2547	3762	4409	4924	5417	5888
26350	2550	3767	4416	4932	5425	5897
26400	2553	3772	4423	4940	5434	5907
26450	2556	3778	4430	4948	5443	5916

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
26500	2559	3783	4436	4956	5451	5925
26550	2562	3788	4443	4963	5460	5935
26600	2565	3793	4450	4971	5468	5944
26650	2568	3798	4457	4979	5477	5953
26700	2571	3803	4464	4987	5485	5962
26750	2574	3808	4471	4994	5494	5972
26800	2577	3814	4478	5002	5502	5981
26850	2580	3819	4485	5010	5511	5990
26900	2583	3824	4492	5018	5519	6000
26950	2586	3829	4499	5025	5528	6009
27000	2589	3834	4506	5033	5536	6018
27050	2592	3839	4513	5041	5545	6027
27100	2595	3844	4518	5047	5552	6035
27150	2598	3849	4524	5053	5558	6042
27200	2601	3853	4529	5058	5564	6048
27250	2605	3857	4534	5064	5570	6055
27300	2608	3862	4539	5070	5577	6062
27350	2611	3866	4544	5075	5583	6068
27400	2614	3871	4549	5081	5589	6075
27450	2617	3875	4554	5087	5595	6082
27500	2620	3880	4559	5092	5601	6089
27550	2623	3884	4564	5098	5608	6095

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
27600	2626	3889	4569	5103	5614	6102
27650	2629	3893	4574	5109	5620	6109
27700	2633	3897	4579	5115	5626	6116
27750	2636	3902	4584	5120	5632	6122
27800	2639	3906	4589	5126	5638	6129
27850	2642	3911	4594	5131	5645	6136
27900	2645	3915	4599	5137	5651	6142
27950	2648	3920	4604	5143	5657	6149
28000	2651	3924	4609	5148	5663	6156
28050	2654	3929	4614	5154	5669	6163
28100	2657	3933	4619	5160	5676	6169
28150	2661	3938	4624	5165	5682	6176
28200	2664	3942	4629	5171	5688	6183
28250	2667	3946	4634	5176	5694	6190
28300	2670	3951	4639	5182	5700	6196
28350	2673	3955	4644	5188	5706	6203
28400	2676	3960	4649	5193	5713	6210
28450	2679	3964	4654	5199	5719	6216
28500	2682	3969	4659	5205	5725	6223
28550	2685	3973	4664	5210	5731	6230
28600	2689	3978	4669	5216	5737	6237
28650	2692	3982	4675	5221	5744	6243

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
28700	2695	3986	4680	5227	5750	6250
28750	2698	3991	4685	5233	5756	6257
28800	2701	3995	4690	5238	5762	6263
28850	2704	4000	4695	5244	5768	6270
28900	2707	4004	4700	5250	5775	6277
28950	2710	4009	4705	5255	5781	6284
29000	2713	4013	4710	5261	5787	6290
29050	2717	4018	4715	5266	5793	6297
29100	2720	4022	4720	5272	5799	6304
29150	2723	4027	4725	5278	5805	6311
29200	2726	4031	4730	5283	5812	6317
29250	2729	4035	4735	5289	5818	6324
29300	2732	4040	4740	5295	5824	6331
29350	2735	4044	4745	5300	5830	6337
29400	2738	4049	4750	5306	5836	6344
29450	2741	4053	4755	5311	5843	6351
29500	2745	4058	4760	5317	5849	6358
29550	2748	4062	4765	5323	5855	6364
29600	2751	4067	4770	5328	5861	6371
29650	2754	4071	4775	5334	5867	6378
29700	2757	4075	4780	5340	5873	6384
29750	2760	4080	4785	5345	5880	6391

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
29800	2763	4084	4790	5351	5886	6398
29850	2766	4089	4795	5356	5892	6405
29900	2769	4093	4800	5362	5898	6411
29950	2773	4098	4805	5368	5904	6418
30000	2776	4102	4810	5373	5911	6425
30050	2779	4107	4815	5379	5917	6432
30100	2782	4111	4821	5385	5923	6438
30150	2785	4116	4826	5390	5929	6445
30200	2788	4120	4831	5396	5935	6452
30250	2791	4124	4836	5401	5942	6458
30300	2794	4129	4841	5407	5948	6465
30350	2798	4133	4846	5413	5954	6472
30400	2801	4138	4851	5418	5960	6479
30450	2804	4142	4856	5424	5966	6485
30500	2807	4147	4861	5429	5972	6492
30550	2810	4151	4866	5435	5979	6499
30600	2813	4156	4871	5441	5985	6505
30650	2816	4160	4876	5446	5991	6512
30700	2819	4164	4881	5452	5997	6519
30750	2822	4169	4886	5458	6003	6526
30800	2826	4173	4891	5463	6010	6532
30850	2829	4178	4896	5469	6016	6539

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
30900	2832	4182	4901	5474	6022	6546
30950	2835	4187	4906	5480	6028	6553
31000	2838	4191	4911	5486	6034	6559
31050	2841	4196	4916	5491	6040	6566
31100	2844	4200	4921	5497	6047	6573
31150	2847	4205	4926	5503	6053	6579
31200	2850	4209	4931	5508	6059	6586
31250	2854	4213	4936	5514	6065	6593
31300	2857	4218	4941	5519	6071	6600
31350	2860	4222	4946	5525	6078	6606
31400	2863	4227	4951	5531	6084	6613
31450	2866	4231	4956	5536	6090	6620
31500	2869	4236	4961	5542	6096	6627
31550	2872	4240	4966	5548	6102	6633
31600	2875	4245	4972	5553	6109	6640
31650	2878	4249	4977	5559	6115	6647
31700	2882	4253	4982	5564	6121	6653
31750	2885	4258	4987	5570	6127	6660
31800	2888	4262	4992	5576	6133	6667
31850	2891	4267	4997	5581	6139	6674
31900	2894	4271	5002	5587	6146	6680
31950	2897	4276	5007	5593	6152	6687

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
32000	2900	4280	5012	5598	6158	6694
32050	2903	4285	5017	5604	6164	6700
32100	2906	4289	5022	5609	6170	6707
32150	2910	4294	5027	5615	6177	6714
32200	2913	4298	5032	5621	6183	6721
32250	2916	4302	5037	5626	6189	6727
32300	2919	4307	5042	5632	6195	6734
32350	2922	4311	5047	5638	6201	6741
32400	2925	4316	5052	5643	6207	6748
32450	2928	4320	5057	5649	6214	6754
32500	2931	4325	5062	5654	6220	6761
32550	2934	4329	5067	5660	6226	6768
32600	2938	4334	5072	5666	6232	6774
32650	2941	4338	5077	5671	6238	6781
32700	2944	4342	5082	5677	6245	6788
32750	2947	4347	5087	5683	6251	6795
32800	2950	4351	5092	5688	6257	6801
32850	2953	4356	5097	5694	6263	6808
32900	2956	4360	5102	5699	6269	6815
32950	2959	4365	5107	5705	6276	6821
33000	2962	4369	5112	5711	6282	6828
33050	2966	4374	5117	5716	6288	6835

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
33100	2969	4378	5123	5722	6294	6842
33150	2972	4383	5128	5727	6300	6848
33200	2975	4387	5133	5733	6306	6855
33250	2978	4391	5138	5739	6313	6862
33300	2981	4396	5143	5744	6319	6869
33350	2984	4400	5148	5750	6325	6875
33400	2987	4405	5153	5756	6331	6882
33450	2990	4409	5158	5761	6337	6889
33500	2994	4414	5163	5767	6344	6895
33550	2997	4418	5168	5772	6350	6902
33600	3000	4423	5173	5778	6356	6909
33650	3003	4427	5178	5784	6362	6916
33700	3006	4431	5183	5789	6368	6922
33750	3009	4436	5188	5795	6374	6929
33800	3012	4440	5193	5801	6381	6936
33850	3015	4445	5198	5806	6387	6942
33900	3019	4449	5203	5812	6393	6949
33950	3022	4454	5208	5817	6399	6956
34000	3025	4458	5213	5823	6405	6963
34050	3028	4463	5218	5829	6412	6969
34100	3031	4467	5223	5834	6418	6976
34150	3034	4472	5228	5840	6424	6983

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
34200	3037	4476	5233	5846	6430	6990
34250	3040	4480	5238	5851	6436	6996
34300	3043	4485	5243	5857	6442	7003
34350	3047	4489	5248	5862	6449	7010
34400	3050	4494	5253	5868	6455	7016
34450	3053	4498	5258	5874	6461	7023
34500	3056	4503	5263	5879	6467	7030
34550	3059	4507	5269	5885	6473	7037
34600	3062	4512	5274	5891	6480	7043
34650	3065	4516	5279	5896	6486	7050
34700	3068	4521	5284	5902	6492	7057
34750	3071	4525	5289	5907	6498	7063
34800	3075	4529	5294	5913	6504	7070
34850	3078	4534	5299	5919	6511	7077
34900	3081	4538	5304	5924	6517	7084
34950	3084	4543	5309	5930	6523	7090
35000	3087	4547	5314	5936	6529	7097
35050	3090	4552	5319	5941	6535	7104
35100	3093	4556	5324	5947	6541	7111
35150	3096	4561	5329	5952	6548	7117
35200	3099	4565	5334	5958	6554	7124
35250	3103	4569	5339	5964	6560	7131

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
35300	3106	4574	5344	5969	6566	7137
35350	3109	4578	5349	5975	6572	7144
35400	3112	4583	5354	5981	6579	7151
35450	3115	4587	5359	5986	6585	7158
35500	3118	4592	5364	5992	6591	7164
35550	3121	4596	5369	5997	6597	7171
35600	3124	4601	5374	6003	6603	7178
35650	3127	4605	5379	6009	6609	7185
35700	3131	4610	5384	6014	6616	7191
35750	3134	4614	5389	6020	6622	7198
35800	3137	4618	5394	6025	6628	7205
35850	3140	4623	5399	6031	6634	7211
35900	3143	4627	5404	6037	6640	7218
35950	3146	4632	5409	6042	6647	7225
36000	3149	4636	5414	6048	6653	7232
36050	3152	4641	5420	6054	6659	7238
36100	3155	4645	5425	6059	6665	7245
36150	3159	4650	5430	6065	6671	7252
36200	3162	4654	5435	6070	6678	7258
36250	3165	4658	5440	6076	6684	7265
36300	3168	4663	5445	6082	6690	7272
36350	3171	4667	5450	6087	6696	7279

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
36400	3174	4672	5455	6093	6702	7285
36450	3177	4676	5460	6099	6708	7292
36500	3180	4681	5465	6104	6715	7299
36550	3183	4685	5470	6110	6721	7306
36600	3187	4690	5475	6115	6727	7312
36650	3190	4694	5480	6121	6733	7319
36700	3193	4699	5485	6127	6739	7326
36750	3196	4703	5490	6132	6746	7332
36800	3199	4707	5495	6138	6752	7339
36850	3202	4712	5500	6144	6758	7346
36900	3205	4716	5505	6149	6764	7353
36950	3208	4721	5510	6155	6770	7359
37000	3211	4725	5515	6160	6776	7366
37050	3215	4730	5520	6166	6783	7373
37100	3218	4734	5525	6172	6789	7379
37150	3221	4739	5530	6177	6795	7386
37200	3224	4743	5535	6183	6801	7393
37250	3227	4747	5540	6189	6807	7400
37300	3230	4752	5545	6194	6814	7406
37350	3233	4756	5550	6200	6820	7413
37400	3236	4761	5555	6205	6826	7420
37450	3240	4765	5560	6211	6832	7427

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
37500	3243	4770	5565	6217	6838	7433
37550	3246	4774	5571	6222	6845	7440
37600	3249	4779	5576	6228	6851	7447
37650	3252	4783	5581	6234	6857	7453
37700	3255	4788	5586	6239	6863	7460
37750	3258	4792	5591	6245	6869	7467
37800	3261	4796	5596	6250	6875	7474
37850	3264	4801	5601	6256	6882	7480
37900	3268	4805	5606	6262	6888	7487
37950	3271	4810	5611	6267	6894	7494
38000	3274	4814	5616	6273	6900	7500
38050	3277	4819	5621	6279	6906	7507
38100	3280	4823	5626	6284	6913	7514
38150	3283	4828	5631	6290	6919	7521
38200	3286	4832	5636	6295	6925	7527
38250	3289	4836	5641	6301	6931	7534
38300	3292	4841	5646	6307	6937	7541
38350	3296	4845	5651	6312	6943	7548
38400	3299	4850	5656	6318	6950	7554
38450	3302	4854	5661	6323	6956	7561
38500	3305	4859	5666	6329	6962	7568
38550	3308	4863	5671	6335	6968	7574

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
38600	3311	4868	5676	6340	6974	7581
38650	3314	4872	5681	6346	6981	7588
38700	3317	4877	5686	6352	6987	7595
38750	3320	4881	5691	6357	6993	7601
38800	3324	4885	5696	6363	6999	7608
38850	3327	4890	5701	6368	7005	7615
38900	3330	4894	5706	6374	7012	7622
38950	3333	4899	5711	6380	7018	7628
39000	3336	4903	5717	6385	7024	7635
39050	3339	4908	5722	6391	7030	7642
39100	3342	4912	5727	6397	7036	7648
39150	3345	4917	5732	6402	7042	7655
39200	3348	4921	5737	6408	7049	7662
39250	3352	4925	5742	6413	7055	7669
39300	3355	4930	5747	6419	7061	7675
39350	3358	4934	5752	6425	7067	7682
39400	3361	4939	5757	6430	7073	7689
39450	3364	4943	5762	6436	7080	7695
39500	3367	4948	5767	6442	7086	7702
39550	3370	4952	5772	6447	7092	7709
39600	3373	4957	5777	6453	7098	7716
39650	3376	4961	5782	6458	7104	7722

Combined Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
39700	3380	4966	5787	6464	7110	7729
39750	3383	4970	5792	6470	7117	7736
39800	3386	4974	5797	6475	7123	7743
39850	3389	4979	5802	6481	7129	7749
39900	3392	4983	5807	6487	7135	7756
39950	3395	4988	5812	6492	7141	7763
40000	3398	4992	5817	6498	7148	7769

(8) **Computation of basic child support - shared overnight parenting time - split physical care - stipulations - deviations - basis for periodic updates.**

(a) A total child support obligation is determined by adding each parent's respective basic child support obligation, as determined through the child support guidelines and schedule of basic child support obligations specified in subsection (7) of this section, education and work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule of basic child support obligations, as described in subsections (9), (10), (11)(a), (11)(b), and (11)(c)(III) of this section. The parent receiving a child support payment is presumed to spend the total child support obligation directly on the children. The parent paying child support to the other parent owes the 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 education and work-related net child care costs, extraordinary medical expenses, or extraordinary adjustments to the schedule of basic child support obligations, as described in subsections (9), (10), (11)(a), (11)(b), and (11)(c)(III) of this section.

(b) Shared overnight parenting time presumes that certain basic expenses for the children will be paid directly by the overnight parent; therefore, expenses may be duplicated and an adjustment for shared parenting time is necessary. The shared parenting time adjustment is calculated by identifying the parenting time credit percentage listed in the parenting time table in subsection (8)(h) of this section based upon the number of overnights for each parent. The parenting time credit is the total basic child support obligation multiplied by that parent's parenting time credit percentage. The shared parenting adjustment is deducted from each parent's

share of the basic child support obligation, which is in addition to each parent's proportionate share of education and work-related net child care costs, extraordinary medical expenses, and extraordinary adjustments to the schedule of basic child support obligations, as described in subsections (9), (10), (11)(a), (11)(b), and (11)(c)(III) of this section. The parent owing the greater amount of child support owes the difference between the two amounts as a child support order minus any ordered direct payments made on behalf of the children for education and work-related net child care costs, extraordinary medical expenses, or extraordinary adjustments to the schedule of basic child support obligations, as described in subsections (9), (10), (11)(a), (11)(b), and (11)(c)(III) of this section. The amount of child support ordered to be paid must not exceed the amount owed by that same parent if the parent had no overnights. For purposes of calculating overnights when two or more children are included in the child support worksheet calculation and the parties have a different number of overnights with each of the two or more children, the number of overnights is determined by adding the number of overnights for each child and dividing the resulting number by the number of children included in the child support worksheet calculation.

(c) In cases of split physical care, the number of overnights used to calculate a child support obligation must be computed in the same manner as shared overnight parenting time: By adding the number of overnights for each child and dividing the resulting number by the number of children included in the child support worksheet calculation.

(d) Stipulations presented to the court shall be reviewed by the court for approval. No hearing shall be required; however, the court shall use the guidelines and schedule of basic child support obligations to review the adequacy of child support orders negotiated by the parties as well as the financial affidavit that fully discloses the financial status of the parties as required for use of the guidelines and schedule of basic child support obligations.

(e) In an action to establish or modify child support, whether temporary or permanent, the guidelines and schedule of basic child support obligations set forth in subsection (7) of this section shall be used as a rebuttable presumption for the establishment or modification of the amount of child support. A court may deviate from the guidelines and schedule of basic child support obligations 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 and schedule of basic child support obligations without a deviation. These reasons may include, but are not limited to, instances where one of the parents spends substantially more time with the child than is reflected by a straight calculation of overnights, 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 (II) of paragraph (a) of subsection (5) 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 and basic schedule of child support obligations but may be a factor to be considered in the decision to deviate. The court may deviate from the guidelines and basic schedule of child support obligations even if a factor enumerated in this section does not exist.

(f) The guidelines and schedule of basic child support obligations may be used by the parties as the basis for periodic updates of child support obligations.

(g) Repealed.

(h) Parenting time table:

Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %
0	0.00%	73	8.87%	146	32.32%	218	67.23%	291	90.93%
1	0.07%	74	9.07%	147	32.77%	219	67.68%	292	91.13%
2	0.14%	75	9.27%	148	33.22%	220	68.12%	293	91.33%
3	0.21%	76	9.48%	149	33.68%	221	68.56%	294	91.53%
4	0.28%	77	9.68%	150	34.13%	222	69.00%	295	91.72%
5	0.35%	78	9.90%	151	34.59%	223	69.44%	296	91.91%
6	0.42%	79	10.11%	152	35.05%	224	69.87%	297	92.09%
7	0.49%	80	10.33%	153	35.52%	225	70.30%	298	92.28%
8	0.57%	81	10.55%	154	35.99%	226	70.73%	299	92.46%
9	0.65%	82	10.77%	155	36.45%	227	71.15%	300	92.64%
10	0.72%	83	11.00%	156	36.93%	228	71.57%	301	92.81%
11	0.80%	84	11.23%	157	37.40%	229	71.99%	302	92.99%
12	0.88%	85	11.47%	158	37.88%	230	72.40%	303	93.16%
13	0.96%	86	11.70%	159	38.35%	231	72.81%	304	93.33%
14	1.04%	87	11.94%	160	38.83%	232	73.22%	305	93.49%
15	1.13%	88	12.19%	161	39.32%	233	73.62%	306	93.66%
16	1.21%	89	12.43%	162	39.80%	234	74.02%	307	93.82%

Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %
17	1.29%	90	12.68%	163	40.29%	235	74.42%	308	93.98%
18	1.38%	91	12.94%	164	40.77%	236	74.81%	309	94.13%
19	1.47%	92	13.19%	165	41.26%	237	75.20%	310	94.29%
20	1.56%	93	13.45%	166	41.75%	238	75.59%	311	94.44%
21	1.65%	94	13.72%	167	42.25%	239	75.97%	312	94.59%
22	1.74%	95	13.98%	168	42.74%	240	76.35%	313	94.73%
23	1.84%	96	14.25%	169	43.23%	241	76.73%	314	94.88%
24	1.93%	97	14.53%	170	43.73%	242	77.10%	315	95.02%
25	2.03%	98	14.80%	171	44.23%	243	77.46%	316	95.16%
26	2.12%	99	15.08%	172	44.73%	244	77.83%	317	95.30%
27	2.22%	100	15.37%	173	45.23%	245	78.19%	318	95.44%
28	2.32%	101	15.66%	174	45.73%	246	78.55%	319	95.57%
29	2.43%	102	15.95%	175	46.23%	247	78.90%	320	95.70%
30	2.53%	103	16.24%	176	46.73%	248	79.25%	321	95.84%
31	2.64%	104	16.54%	177	47.23%	249	79.60%	322	95.96%
32	2.74%	105	16.84%	178	47.73%	250	79.94%	323	96.09%
33	2.85%	106	17.15%	179	48.24%	251	80.28%	324	96.22%

Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %
34	2.96%	107	17.46%	180	48.74%	252	80.61%	325	96.34%
35	3.08%	108	17.77%	181	49.24%	253	80.94%	326	96.46%
36	3.19%	109	18.09%	182	49.75%	254	81.27%	327	96.58%
37	3.30%	110	18.41%	182.5	50.00%	255	81.59%	328	96.70%
38	3.42%	111	18.73%	183	50.25%	256	81.91%	329	96.81%
39	3.54%	112	19.06%	184	50.76%	257	82.23%	330	96.92%
40	3.66%	113	19.39%	185	51.26%	258	82.54%	331	97.04%
41	3.78%	114	19.72%	186	51.76%	259	82.85%	332	97.15%
42	3.91%	115	20.06%	187	52.27%	260	83.16%	333	97.26%
43	4.04%	116	20.40%	188	52.77%	261	83.46%	334	97.36%
44	4.16%	117	20.75%	189	53.27%	262	83.76%	335	97.47%
45	4.30%	118	21.10%	190	53.77%	263	84.05%	336	97.57%
46	4.43%	119	21.45%	191	54.27%	264	84.34%	337	97.68%
47	4.56%	120	21.81%	192	54.77%	265	84.63%	338	97.78%
48	4.70%	121	22.17%	193	55.27%	266	84.92%	339	97.88%
49	4.84%	122	22.54%	194	55.77%	267	85.20%	340	97.97%
50	4.98%	123	22.90%	195	56.27%	268	85.47%	341	98.07%

Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %
51	5.12%	124	23.27%	196	56.77%	269	85.75%	342	98.16%
52	5.27%	125	23.65%	197	57.26%	270	86.02%	343	98.26%
53	5.41%	126	24.03%	198	57.75%	271	86.28%	344	98.35%
54	5.56%	127	24.41%	199	58.25%	272	86.55%	345	98.44%
55	5.71%	128	24.80%	200	58.74%	273	86.81%	346	98.53%
56	5.87%	129	25.19%	201	59.23%	274	87.06%	347	98.62%
57	6.02%	130	25.58%	202	59.71%	275	87.32%	348	98.71%
58	6.18%	131	25.98%	203	60.20%	276	87.57%	349	98.79%
59	6.34%	132	26.38%	204	60.68%	277	87.81%	350	98.87%
60	6.51%	133	26.78%	205	61.17%	278	88.06%	351	98.96%
61	6.67%	134	27.19%	206	61.65%	279	88.30%	352	99.04%
62	6.84%	135	27.60%	207	62.12%	280	88.53%	353	99.12%
63	7.01%	136	28.01%	208	62.60%	281	88.77%	354	99.20%
64	7.19%	137	28.43%	209	63.07%	282	89.00%	355	99.28%
65	7.36%	138	28.85%	210	63.55%	283	89.23%	356	99.35%
66	7.54%	139	29.27%	211	64.01%	284	89.45%	357	99.43%
67	7.72%	140	29.70%	212	64.48%	285	89.67%	358	99.51%

Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %	Overnights	Credit %
68	7.91%	141	30.13%	213	64.95%	286	89.89%	359	99.58%
69	8.09%	142	30.56%	214	65.41%	287	90.10%	360	99.65%
70	8.28%	143	31.00%	215	65.87%	288	90.32%	361	99.72%
71	8.47%	144	31.44%	216	66.32%	289	90.52%	362	99.79%
72	8.67%	145	31.88%	217	66.78%	290	90.73%	363	99.86%
								364	99.93%
								365	100.00%

(9) **Adjustments for 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.

(10) **Adjustments for health-care expenditures for children.**

(a) 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.

(a.5) If a child is covered by insurance, the parent securing the coverage, the employer providing the coverage, or the insurance provider shall provide, upon request by the policy holder or by court order, the insurance provider's name, the insurance provider's telephone number, the group and policy number, and the claim address to the non-policy holder. The information must be provided unless otherwise ordered by the court for good cause shown. This subsection (10) authorizes the release of information to the other party or parties. After notice to the party or parties of this obligation, the court has the authority to fine the parent securing coverage for failure to provide the required information.

(b) 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 (10) 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. Any parent providing insurance coverage for the child pursuant to this section must notify the other party or parties and the delegate child support enforcement unit of any change or discontinuation of coverage as soon as practicable, but no later than fourteen days after the change.

(f) 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 the 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) Where the application of the premium payment on the guidelines and schedule of basic child support obligations results in a child support order of fifty dollars or less, or the premium payment is five 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 is, however, required to provide insurance when it becomes available at a reasonable cost.

(h) (I) Any extraordinary medical expenses incurred on behalf of the children must be added to the basic child support obligation and divided between the parents in proportion to each parent's adjusted gross income. Ongoing extraordinary medical expenses may be added as an adjustment on the child support worksheet calculation only if the expenses are consistent and expected to continue. Extraordinary medical expenses that are not ongoing and consistent or that are otherwise not added to the child support worksheet claculation are subject to reimbursement among the parties.

(II) Extraordinary medical expenses include, but are not limited to, copayments, deductibles, and uninsured out-of-pocket expenses for reasonable costs that are reasonably necessary for professional medical care, prescription medication, medical equipment, orthodontia, dental treatment, asthma treatments, physical therapy, vision care, professional counseling or psychiatric therapy for behavioral or mental health disorders, and any uninsured health problem.

For adults and children with disabilities or with a disabling condition who are eligible for long-term services and supports pursuant to article 6 of title 25.5 and who are not emancipated pursuant to subsection (13)(a)(II) of this section, extraordinary medical expenses may include any expense resulting from the adult's or child's disability or disabling conditions, including expenses that are reasonably necessary to support the adult's or child's health, protection, and quality of life. Extraordinary medical expenses may include, but are not limited to, medically necessary equipment, home and vehicle modification, recommended therapeutic activities, and reasonable respite care. Ordinary medical expenses included in the schedule of basic child support obligations that are not subject to allocation pursuant to subsection (10)(h)(I) of this section include minor expenses incurred in the course of caring for an adult or child, such as over-the-counter medication, bandages, or regular hygiene and health products, except when the minor expenses are recommended by the adult's or child's treatment provider to treat or manage the adult's or child's chronic conditions.

(III) (A) The party seeking reimbursement for an extraordinary medical expense that is not included as an adjustment in the monthly child support worksheet calculation and monthly child support order shall provide proof of the expense to the reimbursing party within a reasonable time after incurring the expense. Absent extraordinary circumstances, failure to provide proof of the expense to the reimbursing party by July 1 of the year following the calendar year in which the expense was incurred results in a waiver of the reimbursement.

(B) The party seeking reimbursement may file a motion for judgment of extraordinary medical expenses for that particular calendar year if the party fails to respond and reimburse the expenses or reach a payment arrangement with the requesting party within forty-nine days after the date the request was received. The motion must specify the amount of the expense incurred, the amount sought from the other party pursuant to subsection (10)(h)(I) of this section, and when and how the request for reimbursement was made to the other party. Any response to the motion must include any objection to the costs requested or proposed payment arrangements.

(11) **Extraordinary adjustments to the schedule of basic child support obligations - periodic disability benefits.**

(a) By agreement of the parties or by order of court, the following reasonable and necessary expenses incurred on behalf of the child must 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 or public school mandatory school fees; and

(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.

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

(c) (I) If the noncustodial parent receives periodic disability benefits granted by the federal "Old-age, Survivors, and Disability Insurance Act", 42 U.S.C. sec. 401 et seq., due to the disability of the noncustodial parent or receives employer-paid retirement benefits from the federal government due to the retirement of the noncustodial parent, the noncustodial parent shall notify the custodial party, and the delegate child support enforcement unit, if a party to the case, within sixty days after the noncustodial party receives notice of such benefits.

(II) Absent good cause shown, the custodial party must apply for dependent benefits for the child or children within sixty days after the custodial party receives notification pursuant to subsection (11)(c)(I) of this section and shall cooperate with the appropriate federal agency in completing any application for benefits. No later than seven days after receiving a social security benefit verification letter or other correspondence from the federal social security administration confirming the amount of the lump sum retroactive payment and the dates covered, the custodial party shall provide the noncustodial parent and the delegate child support enforcement unit, if the unit is a party to the case, with a copy of the letter or correspondence.

(III) In cases where the custodial parent receives periodic disability benefits granted by the federal "Old-age, Survivors, and Disability Insurance Act", 42 U.S.C. sec. 401 et seq., 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 (8) of this section must be reduced in an amount equal to the amount of the benefits.

(d) In cases where the custodial parent receives a lump sum retroactive award for benefits granted by the federal old-age, survivors, or disability insurance benefits program, 42 U.S.C. sec. 7, on behalf of a dependent child due to the disability of the noncustodial parent, or receives a lump sum retroactive award for employer-paid retirement benefits from the federal government on behalf of a dependent child due to the retirement of the noncustodial parent, the lump sum award received by the custodial parent must be credited against any retroactive support judgment or any past-due child support obligation, regardless of whether the past-due obligation has been reduced to judgment owed by the noncustodial parent. This credit must not be given against any amounts owed by the noncustodial parent for debt as defined in section 14-14-104 or for any retroactive support or any arrearage that accrued prior to the date of eligibility for disability or retirement benefits as determined by the social security administration. Any lump sum retirement or disability payments due to the retirement or disability of the noncustodial parent, received by the custodial parent as a result of the retirement or disability of the noncustodial parent, paid for a period of time that precedes the date of such benefit date eligibility, or any amount in excess of the established child support order or judgment, must be deemed a gratuity to the child.

(12) **Dependency exemptions.**

(a) The court may allocate an income tax dependency exemption and the resulting tax benefit for a child and require the party who has the child in the party's physical custody for more than fifty percent of the calendar year to provide the other party a properly executed declaration that releases the party's claim to the child as a dependent pursuant to the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 152 (e). If an allocation of exemption is contested, the court must make findings supporting the court's decision for the allocation.

(b) In determining the allocation pursuant to subsection (12)(a) of this section, the court shall consider the following:

(I) The financial resources of each party;

(II) Any negative impacts on a party's ability to provide for the needs of the child if the party is not awarded the allocation of exemption;

(III) If one party or both parties would each receive a tax benefit from the right to claim the child for tax purposes pursuant to the federal "Internal Revenue Code of 1986", 26 U.S.C. sec. 152 (e). The filing status as head of household is not impacted by this designation.

(IV) The impact of the allocation of exemption on either party's ability to claim a premium tax credit or a premium subsidy pursuant to the federal "Patient Protection and Affordable Care Act", 42 U.S.C. sec. 18001 et seq., as amended by the federal "Health Care and Education Reconciliation Act of 2010", 42 U.S.C. sec. 1305 et seq., and any federal guidance or regulations issued pursuant to the federal acts.

(c) (I) The court may place reasonable conditions on a party's right to claim an allocation of exemption, including a requirement that the party remains in compliance with a child support obligation. In the event the party is not in compliance with a child support obligation or other court order, either party may move to modify the allocation of exemption.

(II) As used in this subsection (12)(c), "compliance with a child support obligation" means making ordered payments for the applicable tax year.

(d) If the court determines that a party has claimed an income tax dependency exemption in violation of a court order or applicable law, or has failed or refused to provide a properly executed written declaration that releases the party's claim to a child as a dependent to the other party as required by court order, the court may issue an order requiring compensation in the amount of the lost tax benefit and reasonable attorney fees and costs to the party who was wrongfully deprived of the income tax dependency exemption. A motion for relief must be brought within three years after the date of filing the income tax return in which the exemption was claimed or could have been claimed. A party who brings a meritless motion for relief may be ordered to pay reasonable attorney fees and costs to the other party.

(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:

(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. A concurrent enrollment program, as defined in section 22-35-103, does not qualify as an equivalent program. A child participating in a concurrent enrollment program is emancipated once the child completes the local education provider's minimum high school graduation requirements.

(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) Nothing in paragraph (a) of this subsection (13) or subsection (15) 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 the expenses. If the stipulation or agreement is approved by the court and made part of a decree of dissolution of marriage or legal separation, the terms of the agreement shall be enforced as provided in section 14-10-112.

(14) **Advisement to parties - annual exchange of information.**

(a) When a child support order is entered or modified, unless otherwise ordered by the court, the parties shall exchange information relevant to child support calculations on changes that have occurred since the previous child support order, and other appropriate information once a year or less often, for the purpose of updating and modifying the order without a court hearing. The parties shall use the approved standardized child support forms specified in subsection (4) of this section in exchanging financial information. The parents shall include the forms with any agreed modification or an agreement that a modification is not appropriate at the time. If the agreed amount departs from the guidelines and schedule of basic child support obligations, the parties shall furnish statements of explanation with the forms and shall file the documents with the court. The court shall review the agreement pursuant to this paragraph (a) 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, a modification pursuant to this paragraph (a) shall not 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 forms, as specified in subsection (4) of this section, 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 the financial information pursuant to this paragraph (b) 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.

(c) In any status conference, administrative conference, or hearing in which child support is at issue, the court or the delegate child support unit shall verbally advise the parties that failure to pay child support ordered by the court or as a result of an administrative process action may result in enforcement actions and the addition of interest on arrears and that an agreement to modify child support is not effective until approved by the court, or delegate child support unit for administrative orders, and entered as an order.

(15) **Postsecondary education.**

(a) This subsection (15) 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 (15) shall not apply to child support orders established on or after July 1, 1997, which shall be governed by paragraph (a) of subsection (13) of this section.

(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:

(I) The parties agree otherwise in a written stipulation after July 1, 1991;

(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, unless there is an order for postsecondary education, in which case support continues through postsecondary education as provided in this subsection (15). 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.

(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.

(c) 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 (7) 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 paragraph (a) of subsection (3) of this section. The amount of contribution that each parent is ordered to pay pursuant to this subsection (15) 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 (7) of this section.

(d) 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.

(e) Either parent or the child may move for 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.

(f) 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 the 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.

(g) 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.

(h) 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.

(i) If the court orders support pursuant to this subsection (15), 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 the order. The order shall provide that these expenses be paid in proportion to their adjusted gross incomes as defined in subsection (3) 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.

(j) An order for postsecondary education expenses entered between July 1, 1991, and July 1, 1997, may be modified pursuant to this subsection (15) 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 (15).

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

(16) **Child support commission.**

(a) The child support guidelines, including the schedule of basic child support obligations, and general child support issues must be reviewed at least once every four years by a child support commission, which commission is hereby created. After the periodic review described in this section, the commission shall submit a report to the governor and to the general assembly explaining the commission's recommendations.

(b) As part of its review, the commission shall consider economic data on the cost of raising children and analyze case data on the application of, and deviations from, the guidelines and the schedule of basic child support obligations to be used in the commission's review to ensure that deviations from the guidelines and schedule of basic child support obligations are limited. Further, as part of its review, the commission shall consider:

(I) Establishing an adequate standard of support for children, subject to the parents' ability to pay;

(II) Making awards more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(III) Improving the efficiency of the court process by promoting settlements and giving courts and the parties guidance on establishing levels of awards.

(c) (I) The child support commission consists of no more than twenty-one members. The commission is dedicated to including diverse perspectives in its recommendations.

(II) The governor shall appoint up to nineteen persons to the commission, who must include:

(A) Representatives of the judiciary and the Colorado bar association;

(B) The director of the division in the state department of human services who is responsible for child support services or the director's designee;

(C) A director of a county department of human or social services;

(D) The child support liaison to the judicial department;

(E) Interested parties;

(F) A certified public accountant; and

(G) At least four parent representatives, at least two of whom are present or past obligors and two of whom are present or past obligees.

(III) In making appointments to the commission, the governor shall attempt to ensure racial, economic, gender, and geographical diversity.

(IV) The remaining two members of the commission are 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 must not be members of the same political party.

(d) Members of the child support commission 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.

(d.5) and (e) (Deleted by amendment, L. 2013.)

Source: L. 71: R&RE, p. 527, § 1. **C.R.S. 1963:** § 46-1-15. **L. 85:** (2) added, p. 592, § 10, effective July 1. **L. 86:** (3) to (16) added, p. 718, § 1, effective November 1. **L. 87:** (3)(b), (5),

IP(7)(a), (10)(a), (11), and (12) amended, (7)(b)(II), (15), and (16) repealed, (7)(d), (7)(e), (10)(c), and (17) added, and (8), (9), (13), and (14) R&RE, pp. 587, 588, 600, 591, 589, §§ 5, 7, 38, 9, 6, 8, effective July 10. **L. 89:** (7)(d.5) added and (17) amended, p. 792, §§ 14, 15, effective July 1. **L. 90:** (18) added, p. 890, § 10, effective June 7; (7)(a)(I)(A), (7)(c), and (13)(a)(III) amended and (7)(b)(III) added, pp. 564, 890, 889, §§ 35, 10, 9, effective July 1. **L. 91:** (18)(a) amended, p. 359, § 21, effective April 9; (1.5) added and (7)(b), (13), (14)(b), and (18) amended, p. 234, § 1, effective July 1. **L. 92:** (17) amended, p. 2171, § 18, effective June 2; (1.5)(b)(I), (2), (3)(a), (3)(b), (7)(a), (7)(e), (8), (10)(a)(II), (10)(c), (14)(c)(I), (18), and (18)(a) amended, (1.5)(d), (13.5), (14.5), and (16.5) added, (7)(e) repealed, and (10)(b) R&RE, pp. 166, 203, 188, 169, 198, 193, §§ 1, 9, 2, 3, effective August 1. **L. 93:** (1.5)(b)(I) and (3)(b)(III) amended and (1.5)(e) added, pp. 1556, 577, §§ 1, 7, effective July 1; (1.5)(b)(I), (2), and (10)(c) amended and (3.5) and (18)(e) added, pp. 1559, 1560, §§ 7, 8, effective September 1. **L. 94:** (1.5)(b)(I), (1.5)(e), (7)(a)(I)(A), (7)(b)(III), (7)(d.5)(I), and (18)(e) amended, p. 1536, § 5, effective July 1; (18)(a) amended, p. 2645, § 107, effective July 1. **L. 96:** IP(1), (2), (3)(a), (3)(b)(II), (7)(a)(I)(A), (7)(a)(I)(C), (7)(b)(I), (10)(a)(II), (11)(a), (12), (13.5), and (16.5) amended, p. 594, § 7, effective July 1. **L. 97:** (1.5) amended and (1.6) and (1.7) added, p. 565, § 20, effective July 1; (1.5), (3.5), (7)(b), and (18)(a) amended and (1.6) and (1.7) added, pp. 1264, 1312, §§ 8, 49, effective July 1; (5) and (17) amended, p. 561, § 5, effective July 1; (7)(a)(I)(B) amended, p. 1240, § 37, effective July 1. **L. 98:** (3)(a), (7)(d.5)(I), and (13)(a)(II) amended, p. 768, § 21, effective July 1; (7)(a)(I)(A) amended, p. 921, § 7, effective July 1; (4)(c), (8), (9), (10)(c), and (14) amended, p. 1398, § 42, effective February 1, 1999. **L. 99:** (3.5) amended, p. 1085, § 2, effective July 1; (7)(a)(I)(A) amended, p. 621, § 15, effective August 4. **L. 2000:** (18) amended, p. 1709, § 6, effective July 1. **L. 2001:** (18)(a) amended and (19) added, p. 721, § 4, effective May 31. **L. 2002:** (10)(a)(II), (10)(b), and (13.5)(h)(II) amended, p. 286, § 1, effective January 1, 2003. **L. 2003:** (3)(b)(III) amended, p. 1011, § 15, effective July 1; (10)(a)(II)(B), (10)(a)(II)(C), and (10)(a)(II)(D) amended, p. 1264, § 51, effective July 1. **L. 2004:** (5), (10)(a)(II)(A), (13.5)(h)(II), and (19) amended, p. 385, § 1, effective July 1. **L. 2005:** (1.6) amended, p. 80, § 1, effective August 8. **L. 2006:** IP(1.6) amended, p. 516, § 1, effective August 7. **L. 2007:** Entire section amended with relocated provisions, p. 73, § 1, effective March 16; (16)(d.5) added, p. 178, § 7, effective March 22; (13)(a)(IV), (13)(a)(V), (15)(b)(IV), and (15)(b)(V) added and IP(15)(b) amended, p. 1649, §§ 5, 3, effective May 31; (6)(b)(I) and (10)(a) amended, p. 1651, § 7, effective January 1, 2008. **L. 2008:** (4)(b) and (5)(b)(I) amended, p. 1347, § 1, effective July 1. **L. 2009:** (5)(a)(I)(H) amended, (SB 09-282), ch. 288, p. 1397, § 59, effective January 1, 2010. **L. 2013:** (5)(a)(I)(D), (5)(a)(I)(O), (5)(a)(I)(W), (6)(b)(I), (7)(a)(II)(B), (7)(a)(II)(C), (7)(a)(II)(D), and (16) amended, (5)(a)(II)(E) and (11)(d) added, and (7)(b) R&RE, (HB 13-1209), ch. 103, pp. 327, 332, §§ 1, 2, effective January 1, 2014. **L. 2014:** (16)(d) amended, (SB 14-153), ch. 390, p. 1961, § 7, effective June 6. **L. 2016:** (6), (8)(e), (10)(g), and (14)(a) amended, (HB 16-1165), ch. 157, pp. 493, 494, 495, §§ 4, 5, 6, 7, effective January 1, 2017. **L. 2017:** (3)(f) and (3)(g) amended, (SB 17-294), ch. 264, p. 1391, § 29, effective May 25; (10)(h)(II) amended, (SB 17-242), ch. 263, p. 1295, § 113, effective May 25; (16)(a) amended, (SB 17-234), ch. 154, p. 520, §

1, effective August 9. **L. 2018:** (3)(a), IP(5)(a)(I), and (5)(a)(I)(Y) amended and (5)(a)(I.5) added, (HB 18-1385), ch. 251, p. 1546, § 2, effective August 8; (16)(c) amended, (SB 18-092), ch. 38, p. 400, § 14, effective August 8. **L. 2019:** (5)(b)(I) and (5)(b)(III) amended and (5)(b)(I.5) and (5)(b.5) added, (HB 19-1215), ch. 270, p. 2521, § 1, effective July 1; (16)(a) amended, (HB 19-1215), ch. 270, p. 2552, § 2, effective July 1; (3)(c.5) and (8)(g) added and (6)(b), (7)(a)(II)(B), (7)(a)(II)(C), (7)(a)(II)(D), (7)(b), IP(11)(a), (11)(a)(I), and (11)(c) amended, (HB 19-1215), ch. 270, p. 2521, § 1, effective July 1, 2020. **L. 2021:** (6)(b), (7)(a)(II)(C), (7)(a)(II)(D), and (7)(b) amended, (HB 21-1220), ch. 212, p. 1118, § 1, effective July 1. **L. 2022:** (16)(c) amended, (SB 22-013), ch. 2, p. 21, § 24, effective February 25. **L. 2023:** (3)(a)(II), (3)(a)(III), (5)(a)(I.5), (5)(a)(II)(C), (5)(b.5)(II)(N), (5)(b.5)(II)(O), (10)(e), and (10)(h)(II) amended and (5)(a)(IV), (5)(b.5)(II)(P), (10)(a.5), and (10)(h)(III) added, (SB 23-173), ch. 330, p. 1971, § 3, effective July 1; (16)(b), (16)(c)(I), (16)(c)(II)(B), (16)(c)(II)(G), (16)(c)(III), and (16)(d) amended, (SB 23-173), ch. 330, p. 1981, § 21, effective August 1; (2)(a) amended, (SB 23-173), ch. 330, p. 1970, § 1, effective September 1; (4)(a) amended and (4)(c) and (14)(c) added, (SB 23-173), ch. 330, p. 1970, § 2, effective July 1, 2024. **L. 2025:** (2)(a), IP(5)(a), (5)(a)(III)(B), (5)(a)(IV), (10)(h), (11)(c)(II), (12), and (13)(a)(III) amended, (HB 25-1159), ch. 334, p. 1731, § 2, effective May 31; (3)(g.5) and (8)(h) added, (3)(h), (3)(i), (7)(a), (8)(a), (8)(b), and (8)(c) amended, and (7)(b) R&RE, (HB 25-1159), ch. 334, p. 1731, § 2, effective March 1, 2026; (8)(g)(II) added by revision, (HB 25-1159), ch. 334, pp. 1731, 1766, §§ 2, 13. **L. 2026:** (7)(a)(V)(B), (7)(a)(V)(C), (7)(a)(VI), (8)(a), and (8)(b) amended, (HB 26-1217), ch. 113, p. 454, § 1, effective May 5.

Editor's note: (1) This section was amended in Senate Bill 07-015, resulting in the relocation of provisions. For a detailed comparison of relocated provisions, see the table located in the back of the index.

(2) Subsection (16.5)(d.5) was originally numbered as subsection (18)(a.5), and the amendments to it in Senate Bill 07-076 were harmonized with Senate Bill 07-015 and renumbered as subsection (16)(d.5).

(3) Subsection (8)(g)(II) provided for the repeal of subsection (8)(g), effective March 1, 2026. (See L. 2025, pp. 1731, 1766.)

Cross references: (1) For provisions concerning deductions for health insurance from wages due an obligor ordered to provide health insurance, see § 14-14-112.

(2) For the legislative declaration contained in the 1993 act amending subsection (3)(b)(III), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the act amending subsection (18)(a), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 1997 act amending subsections

(1.5), (3.5), (7)(b), and (18)(a) and enacting subsections (1.6) and (1.7), see section 1 of chapter 236, Session Laws of Colorado 1997. For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

(3) For the "Old-age, Survivors, and Disability Insurance Act", see 42 U.S.C. sec. 401 et seq.

ANNOTATION

I. General Consideration.

II. Duty of Support.

IV. Past Due Support.

I. GENERAL CONSIDERATION.

Law reviews. For article, "What Really Happens in Child Support Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court", see 57 Den. L.J. 21 (1979). For article, "Automatic Escalation Clauses Relating to Maintenance and Child Support", see 12 Colo. Law. 1083 (1983). For article, "Support Calculation Revisited", see 12 Colo. Law. 1647 (1983). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Child Support Guidelines: Will They Cause More Problems Than They Cure?", see 15 Colo. Law. 408 (1986). For article, "Summary of the Report on the Colorado Commission Child Support and Proposed Child Support Guidelines", see 15 Colo. Law. 665 (1986). For article, "New Child Support Guideline Adopted", see 15 Colo. Law. 1662 (1986). For article, "Key Issues in the Colorado Child Support Guidelines", see 16 Colo. Law 51 (1987). For article, "Postsecondary Education Costs: Forging Through a Legislative Labyrinth", see 24 Colo. Law. 43 (1995). For article, "Calculating Income in Child Support Cases", see 25 Colo. Law. 53 (Mar. 1996). For article, "Post-secondary Education Expenses: A Multi-tiered Approach", see 27 Colo. Law. 61 (Jan. 1998). For article, "Determining Gross Income for Child Support Purposes", see 32 Colo. Law. 65 (May 2003). For article, "The State of Voluntary Unemployment and Underemployment in Colorado", see 34 Colo. Law. 49 (Nov. 2005). For article, "Colorado Child Support Case Law Update", see 36 Colo. Law. 79 (Oct. 2007). For article, "Postsecondary Education Expenses after Chalat: Paying College Expenses after Divorce", see 38 Colo. Law. 19 (Jan. 2009). For article, "Child Support Continuation for Disabled Children", see 40 Colo. Law. 61 (Dec. 2011). For article, "Retroactive Child Support: Conflicting Decisions and Practical Advice", see 41 Colo. Law. 91 (Aug. 2012). For article, "'Til Death Do Us Part", see 46 Colo. Law. 34 (July 2017). For article, "A Primer on Executive Compensation in a Colorado Divorce — Part 1", see 51 Colo. Law. 26 (May 2022). For article, "A Primer on Executive Compensation in a Colorado Divorce — Part 2", see 51 Colo. Law. 34 (June 2022). For article, "Psychological Parents and Child Support", see 51 Colo.

Law. 24 (Nov. 2022). For article, "The Treatment of SLATs in the Event of a Dissolution of Marriage", see 53 Colo. Law. 42 (June 2024). For article, "The Algorithmic Family", see 53 Colo. Law. 44 (Sept.-Oct. 2024).

Annotator's note. Since § 14-10-115 is similar to § 14-10-115 as it existed prior to the 2007 amendment relocating provisions, § 46-1-5 (1)(c), C.R.S. 1963, § 46-1-5, CRS 53, and CSA, C. 56, § 8, relevant cases construing those provisions have been included in the annotations to this section.

This section does not violate equal protection, due process, and privacy rights, and enforcement of the section is not an unconstitutional taking of property or an ongoing threat of imprisonment for debt. A distinction between sets of parents based on marital status is rationally related to the legitimate state interest to insure that children of divorced or separated parents receive support despite the divorce or separation. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

Because it approximates the amount of parental income that the child would have received in an intact family, application of the child support guidelines is not arbitrary, capricious, fundamentally unfair, or coercive. Stillman v. State, 87 P.3d 200 (Colo. App. 2003).

There may be a remedy for child support apart from a divorce action. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

Duty of child support is independent, and is not limited to, entry of decree of dissolution. In re Price, 727 P.2d 1073 (Colo. 1986).

Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

Child has standing to seek support for herself under this section. In re Conradson, 43 Colo. App. 432, 604 P.2d 701 (1979).

Reasonable and necessary business expenses may be satisfied before support payment. Obligations relating to reasonable and necessary expenses associated with maintaining the structure and solvency of a business or the production of income can be satisfied before payment of child support. In re Crowley, 663 P.2d 267 (Colo. App. 1983).

Interest accrues on arrearages from the date each installment becomes due. In re Pote, 847 P.2d 246 (Colo. App. 1993).

Award of past pregnancy expenses and support. There is no jurisdiction under this section to award expenses incurred prior to the date of the filing of a motion for child support. In re Garcia, 695 P.2d 774 (Colo. App. 1984).

Reasonable to charge support against Colorado property of out-of-country father. Where the trial court ordered the father, who resides in Norway, to pay child support in a lump sum amount, and the court

further ordered that such sum should be a charge against certain Colorado property interests of the father, such order was reasonable and not confiscatory. Berge v. Berge, 189 Colo. 103, 536 P.2d 1135 (1975).

Subsection (1.5)(a)(II) provides that emancipation occurs and an order for child support terminates when a child attains 19 years of age, unless the child is then mentally or physically disabled and, if a child is physically or mentally incapable of self-support upon attaining majority at age 21, the duty of parental support continues for the duration of the disability. Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

The plain language of subsection (1)(b)(I) creates no exemption for separation agreements entered into under and consistent with earlier legislation. Although the parties' specific intention in 1991 separation agreement to share four years of college costs prevailed over general intention that child would be emancipated at 21 years of age, subsection (1)(b)(I) nevertheless controls and requires that father's college cost obligation terminates upon the earlier of the child's 21st birthday or completion of a four-year college program. In re Crowder, 77 P.3d 858 (Colo. App. 2003).

Subsection (1.5)(c) was modified to distinguish between orders for postsecondary education costs entered prior to, and after, July 1, 1997, when in a distinct departure from prior law, the court could no longer enter orders for postsecondary education expenses absent written agreement of the parties. In re Chalat, 94 P.3d 1191 (Colo. App. 2004), aff'd in part, rev'd in part on other grounds, 112 P.3d 47 (Colo. 2005).

Subsection (1.5)(c.5) was added in 1997 to clarify that the convoluted legislation that had been passed since 1991 was applicable to all orders that concerned postsecondary education expenses and that were established or modified prior to July 1, 1997. In re Chalat, 94 P.3d 1191 (Colo. App. 2004), aff'd in part, rev'd in part on other grounds, 112 P.3d 47 (Colo. 2005).

Tax exemptions. Court has authority to divide tax exemptions between the parents. In re Berjer, 789 P.2d 468 (Colo. App. 1989); In re Nielson, 794 P.2d 1097 (Colo. App. 1990); In re Larsen, 805 P.2d 1195 (Colo. App. 1991).

Court must allocate dependency exemption between the parties based on their respective gross incomes. Federal tax law contemplates such an allocation, and does not preempt it. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

When allocating tax exemptions between the parents, the phrase "contributions to the costs of raising the children" refers to the percentage of child support attributed to each parent in the course of making the child support computation. In re Staggs, 940 P.2d 1109 (Colo. App. 1997).

The trial court may consider the allocation of tax exemptions in a motion for modification. In re Oberg, 900 P.2d 1267 (Colo. App. 1994).

A parent may not be ordered to pay an ex-spouse child support amounts for a period

prior to entry of a child support order. In re Pote, 847 P.2d 246 (Colo. App. 1993).

Husband's discovery request that wife list all gifts, including without limitation, jewelry, clothes, entertainment, travel, and restaurant meals provided to her or the children by her current husband; list all amounts paid by wife's current husband directly to wife or to other parties from which she received a benefit, including attorney fees, maid service, cable television, mortgage payments, car and home repairs, insurance, and utilities; and list all assets purchased for which her current husband contributed, and husband's definition of "income" to include "all funds available for your use, including gifts" was significantly broader than the statutory definition of gross income, and therefore, denial of husband's motion to compel was proper. In re Seanor, 876 P.2d 44 (Colo. App. 1993).

Applied in Smith v. Casey, 198 Colo. 433, 601 P.2d 632 (1979); In re Hartford, 44 Colo. App. 303, 612 P.2d 1163 (1980); In re Dickey, 658 P.2d 276 (Colo. App. 1982); In re Steele, 714 P.2d 497 (Colo. App. 1985); In re Stone, 749 P.2d 467 (Colo. App. 1987).

II. DUTY OF SUPPORT.

Law reviews. For article, "Psychological Parents and Child Support", see 51 Colo. Law. 24 (Nov. 2022).

This section includes adopted children as well as natural children. In re Ashlock, 629 P.2d 1108 (Colo. App. 1981).

Absent a legal parent-child relationship, there is no duty to support a child under this section. In re Bonifas, 879 P.2d 478 (Colo. App. 1994).

Husband and wife who sought and were granted custody of a non-biological child under a parental responsibility order owed a duty of support to the child, and trial court had the authority in their dissolution of marriage proceeding to order husband to pay child support pursuant to subsections (1) and (17). In re Rodrick, 176 P.3d 806 (Colo. App. 2007).

Although this section does not define "psychological parent", it is a well-founded legislative concept in other parts of statute. In this case, the father was unquestionably the psychological parent to children. He fought for and obtained orders for parenting time and certain decision-making responsibilities. Because he not only sought to remain in the children's lives but was granted such opportunity by the court, he is also bound by the parental duty to financially support those children. In re A.C.H., 2019 COA 43, 440 P.3d 1266.

A maternal grandmother who received parental responsibilities through a dependency and neglect proceeding is not a "psychological parent" under In re A.C.H. annotated above and therefore not a parent under this section and therefore cannot be ordered to pay child support. The maternal grandmother voluntarily assumed parental responsibilities for the child through a dependency and neglect proceeding and never sought permanent custody through an adoption proceeding. Her willingness to assume responsibilities while parents were unfit did not transform her into a permanent custodian or

psychological parent. Therefore, the court did not err in not imposing a child support obligation on her after father became fit. In re Bergeson-Flanders, 2022 COA 18, 509 P.3d 1083.

Only the parents' incomes and not the guardians' are to be included in the determination of child support, as supported by § 15-14-209 (2), which states, "A guardian need not use the guardian's personal funds for the ward's expenses". Sidman v. Sidman, 240 P.3d 360 (Colo. App. 2009).

Section contemplates a parent being responsible for the support of his children, not his former spouse, however reprehensible his behavior. Therefore it was error to award the reimbursement of mother's transportation costs as child care. In re Kluver, 771 P.2d 34 (Colo. App. 1989).

Child must reside and be supported by spouse granted custody and support. Wife who has been granted child custody is only entitled to support payments when the children were actually with her and supported by her. Brown v. Brown, 183 Colo. 356, 516 P.2d 1129 (1973).

This section contemplates that, when in a divorce case, custody of a minor child is awarded to the wife, an order for its support may be made on the husband, and in proceeding to such order the court looks only to the future. Gourley v. Gourley, 101 Colo. 430, 73 P.2d 1375 (1937).

It was not an abuse of discretion for trial court to award child support during the pendency of the dissolution proceeding. In re Atencio, 47 P.3d 718 (Colo. App. 2002).

Where plaintiff alleged that defendant was the father of the minor children of the parties, but had failed and refused to support them, and that they were in need of support which he has the means and ability to provide, if established by evidence, plaintiff would be entitled to appropriate relief. Hutchinson v. Hutchinson, 149 Colo. 38, 367 P.2d 594 (1961).

Person without funds or profitable employment not relieved of support obligation. Merely because a spouse desires to work on a long-range investment does not relieve him of his obligation to support his children, and the fact that a person is without funds and without profitable employment has been held not to preclude the allowance of reasonable alimony and support where nothing but a disinclination to work, regardless of the motive therefor, interferes with his ability to earn a reasonable living. Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, 189 Colo. 103, 536 P.2d 1135 (1975).

Where the oldest of three children of the parties was living with father, the trial court did not abuse its discretion in declining to award plaintiff support money for all of the children, since such award would require defendant to pay twice for support of child in his custody. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

Custodial parent can be ordered to pay support to noncustodial parent under Uniform Dissolution of Marriage Act. In re Fest, 742 P.2d 962 (Colo. App. 1987).

In order for child support to be calculated according to shared physical custody, sufficient evidence must be submitted that each parent keeps the children overnight for more than 25% of the time and that both parents contribute to the expenses of the children in addition to the payment of child support. In re Redford, 776 P.2d 1149 (Colo. App. 1989).

There is no statutory requirement that any particular amount of expense be proven by the parent seeking a support adjustment for shared physical custody. In re Redford, 776 P.2d 1149 (Colo. App. 1989).

Application of shared custody formula that results in a support payment by the custodial parent to the noncustodial parent is not necessarily prohibited. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

Where there was an absence of evidence from husband establishing that he contributed to the child's financial needs, there was no basis for application of the shared custody formula under worksheet B. In re Antuna, 8 P.3d 589 (Colo. App. 2000).

Where a mother removed her child from the state and deliberately concealed her whereabouts from the father, and by her affirmative acts voluntarily assumed responsibility for the child's support for a period of several years, during which time it appears that the child wanted for nothing necessary to health, comfort, and welfare, the mother was not in a position to claim reimbursement for such support. Griffith v. Griffith, 152 Colo. 292, 381 P.2d 455 (1963).

Where a father asserted that his right to direct and select the nature of the education of his son coexisted with the obligation to contribute to the costs of the education, it was held that it was for the divorced wife as custodian to make the decisions concerning the place and nature of the son's college education, subject only to the approval of the divorce court acting with due regard for the financial capabilities of the father. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

A divorced father did not have an absolute duty to pay for the college expenses of his minor child. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

When it had been properly demonstrated at trial that the welfare of the child would be served by further education at the college level, the father could properly be compelled to contribute to the costs of such education on a basis commensurate with the father's ability to pay until such time as the child attained majority or was otherwise emancipated. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

Travel expenses for a child, including the travel expenses of the guardians accompanying the child, shall be divided between the parents. Court did not apply the correct legal standard when it ordered the guardians to travel with juvenile at their own expense. Sidman v. Sidman, 240 P.3d 360 (Colo. App. 2009).

Award of retroactive child support is error. Since the court lacked proper jurisdiction to enter support orders until husband was personally served, its attempt to order retroactive child support was void. In re McKendry, 735 P.2d 908 (Colo. App. 1986).

Termination of support pursuant to decree. Absent a provision in the decree or a court order to the contrary, a father's duty to support pursuant to a decree which was paid to his ex-wife terminated with her death, although his common law and statutory duty of support continued. Application of Connolly, 761 P.2d 224 (Colo. App. 1988).

Phrase "each will contribute whatever may be necessary for the support of their children" creates a binding promise on part of father to contribute to children's financial support. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

"Absolute requirement" or "necessary requirement" is not the appropriate standard to apply in determining whether private school was an appropriate placement for a child. The court should consider whether private schooling meets the child's particular educational needs. In re Eaton, 894 P.2d 56 (Colo. App. 1995).

A motion to quash subpoenas issued to third persons allegedly contributing to support of children was properly granted where the voluntary donations of such parties had nothing to do with a defendant's duty to support children. Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963).

Support for adult child. A dissolution action is a proper proceeding to enforce continued support of an adult child. Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983).

III. AWARD OF SUPPORT.

A. Amount.

B. Discretion of Court.

C. Modification.

D. Termination upon Emancipation.

A. Amount.

Law reviews. For article, "Calculation of Potential Income in Child Support Matters", see 20 Colo. Law. 233 (1991). For article, "Postsecondary Education Costs: Forging Through a Legislative Labyrinth", see 24 Colo. Law. 43 (1995).

Needs of the children are of paramount importance in determining child support obligations. Wright v. Wright, 182 Colo. 425, 514 P.2d 73 (1973); In re Van Inwegen, 757 P.2d 1118 (Colo. App. 1988).

There is no mathematical formula for establishing a just and equitable property settlement or alimony or support. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

The guidelines for calculating child support require a court to calculate a monthly amount of child support based on the parties' combined adjusted gross income, adjust the child support based upon the needs of the children for extraordinary medical expenses and work-related child care costs, and allocate each parent's share based on the physical custody arrangements. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Adoption subsidy. An adoption subsidy should not be considered a credit against the noncustodial parent's child support obligation. The underlying intent of the child support statute is best served by declining to offset a noncustodial parent's support obligation by the amount of an adoption subsidy or to consider the subsidy as a factor that may diminish the child's basic needs within the meaning of subsection (13)(b). In re Bolding-Roberts, 113 P.3d 1265 (Colo. App. 2005).

An award of alimony and child support should bear a reasonable relationship to the needs of a wife and children. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

Subsection (1)(a) authorizes the court to consider social security disability payments received on behalf of the children in calculating child support. In re Quintana, 30 P.3d 870 (Colo. App. 2001).

Social security disability benefits received by custodial parent for benefit of child on account of custodial parent's disability are not included in the custodial parent's gross income but are instead considered a financial resource of the child pursuant to subsections (2)(b)(I) and (11)(b). In re Anthony-Guillar, 207 P.3d 934 (Colo. App. 2009).

The extent to which the child's social security disability payment represents a "reduction in need" of the child is a question to be determined by the trial court based upon the totality of the circumstances. The court is not bound to deduct the entire amount of the child's social security disability payment from the basic support obligation. In re Anthony-Guillar, 207 P.3d 934 (Colo. App. 2009).

Social security survivor benefits should not be treated any differently than disability benefits. Thus, survivor benefits received by the wife in a representative capacity for son from previous marriage should not be included in wife's gross income for purposes of calculating husband's support obligation for daughter. In re Ross-Ooley, 251 P.3d 1221 (Colo. App. 2010).

Trial court did not err in excluding adoption subsidies and foster care payments from mother's gross income in child support considerations. These payments are income of the children on whose behalf the mother receives them and are not part of mother's income. In re Dunkle, 194 P.3d 462 (Colo. App. 2007).

Father is not entitled to an offset of his support obligation against the benefit amount he receives through his railroad retirement on behalf of his child since he retains the payments and he is the noncustodial parent. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

Subsection (1.5)(b)(I) does not require that expenses be absolutely necessary but only that they be reasonable. In re Eaton, 894 P.2d 56 (Colo. App. 1995); In re Elmer, 936 P.2d 617 (Colo. App. 1997).

Determination of conscionability of support provisions. To determine whether the child support provisions of a separation agreement which has been incorporated into a prior dissolution decree are fair, reasonable, and just, a trial court should

consider and apply all the criteria provided by the general assembly for judicial evaluation of the provisions of property settlement agreements: the economic circumstances of the parties, § 14-10-112; the division of property, § 14-10-113(1); and the provisions for maintenance, § 14-10-114(1). In re Carney, 631 P.2d 1173 (Colo. 1981).

In determining whether the terms of the original child support decree have become unconscionable, the trial court should apply the criteria set forth in subsection (1). In re Hughes, 635 P.2d 933 (Colo. App. 1981); In re Gomez, 728 P.2d 747 (Colo. App. 1986).

In a divorce action, particularly with respect to the care, custody, and maintenance of minor children, the court, at the time of making an award for the minor children, was obligated to appraise conditions as they exist at the time of the presentation. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955); Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957); Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963); In re Serfoss, 642 P.2d 44 (Colo. App. 1981); In re McKendry, 735 P.2d 908 (Colo. App. 1986).

Parent's net income is primary consideration in determining support. With regard to a parent's ability to pay support for his child, net income after reasonable and justifiable business expenses should be the primary consideration. In re Crowley, 663 P.2d 267 (Colo. App. 1983).

The applicable rule of support ability is the father's ability to pay weighed against the reasonable needs of his children, because society does not require a father in poor or moderate circumstances to support children on a higher scale just because the family once so lived or because the mother may desire to so live after the divorce. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

In making its award of child support, a trial court must weigh the father's ability to pay against the reasonable needs of the children. Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, 189 Colo. 103, 536 P.2d 1135 (1975).

Where the father's income, while substantial, is limited and subject to numerous demands, an order contemplating only the needs of the child and not bearing any relationship to the ability of the father to pay, and that could possibly become confiscatory of all of the father's available resources, is not valid. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

Finding as to earning capacity not confiscatory. Where the evidence supports the court's finding that the husband is capable of earning sums greatly in excess of his present net salary, although it appears that the court based its order on the present net income of the husband, the orders are not confiscatory. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

Order that husband pay one-half of extraordinary medical and dental bills of the children, while unlimited as to amount or duration, was not confiscatory considering that the expenses were to be borne equally by each parent. In re

Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

Factors considered in assessing propriety of child support provisions in separation agreement. In assessing the propriety of child support provisions in a separation agreement, the court must consider, in addition to unconscionability, other factors, such as the living standards the child would have enjoyed had the parties not dissolved the marriage and the physical and emotional well-being of the child. In re Brown, 626 P.2d 755 (Colo. App. 1981).

Child support obligations cannot be altered by agreement of the parents. Wright v. Wright, 182 Colo. 425, 514 P.2d 73 (1973).

Child support cannot be based on financial resources of nonparent with whom child living. The factors to be considered in making a support award do not include the financial resources of a nonparent with whom the child is living. In re Conradson, 43 Colo. App. 432, 604 P.2d 701 (1979).

Estimates of children's expenses to be considered. A trial court should not determine the amount of child support to be paid by a husband based solely on some amount that it feels is commensurate with his income but should make the determination on evidence that includes estimates of the actual needs and expenses of the children involved. In re Berry, 660 P.2d 512 (Colo. App. 1983).

A court must consider and make findings concerning a reasonable pro rata portion of necessary general family expenses as "necessary for support of the child." In re Klein, 671 P.2d 1345 (Colo. App. 1983).

Standard of living employed in determination of child support. Where the evidence shows that the standard of living at the time of separation in all probability would have continued but for the dissolution, that is the standard of living the court must employ in its determination of child support. In re Klien, 671 P.2d 1345 (Colo. App. 1983).

This section does not require specific findings of fact concerning children's assets, but only that, before determining the amount of support to be paid by a parent, the court consider, among other things the financial resources of the child. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

Obligation of support not affected by gifts or transfers. The intent of the uniform act, § 11-50-101 et seq., is to allow custodians to disburse funds whether or not the children are adequately supported. Gifts under that act do nothing to relieve a parent of the separate duty to support the children, nor does that act authorize the custodian to disburse the funds as a means of fulfilling the parent's obligation of support. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

Where a parent or parents voluntarily make gifts to children during the parents' marriage and the gifts are not in fulfillment of a court order to pay support, and where the parents are, at the time of dissolution of the marriage, able to meet their support obligations, the court may order that such

gifts not be used to reduce the legal obligation of support. This rule assumes that the court has properly considered the financial resources of the children as required by subsection (1), before ordering the amount of support to be paid by the parents. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

Court may order life insurance naming children as beneficiaries be maintained by parent obligated to pay child support, just as its provisions for child support now extend beyond the death of the parent, unless otherwise provided. In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975).

Award of additional $6,000 for "recreational opportunities" for children was fairly embraced within the factors to be considered by court in dividing marital property and did not create a separate "recreational fund" for the needs of the children in the nature of child support. In re Jackson, 698 P.2d 1347 (Colo. 1985).

The judgment in the divorce action did not determine the limits of the husband's obligation to support the children, and the children were not parties to that action, and their rights were not concluded thereby. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

Where there was no verification of the father's income as required by this section, the trial court was directed to take additional evidence to determine the income and to modify the support order. In re Velasquez, 773 P.2d 635 (Colo. App. 1989).

Trial court may draw inference that parent was concealing income, where parent refused to make a willing disclosure of financial status. In re Sgarlatti, 801 P.2d 18 (Colo. App. 1990).

Although the general assembly specifically provided for the use of extrapolation for combined gross income amounts falling between amounts shown in the guideline schedule, it did not provide for the use of extrapolation when combined gross incomes fall above or below the guideline schedule. In re Van Inwegen, 757 P.2d 1118 (Colo. App. 1988).

Section guidelines applicable in determination of amount of modified award despite fact that guidelines were enacted after the original support order. In re Anderson, 761 P.2d 293 (Colo. App. 1988).

Application of new child support guidelines resulting in more than a ten percent change in support due creates a rebuttable presumption that existing support award must be modified. In re Pugliese, 761 P.2d 277 (Colo. App. 1988).

The general assembly intended income imputation to be an important exception to the normal rule of computation based on actual gross income of the parent. This exception applies when the parent shirks his or her child support obligation by unreasonably foregoing higher paying employment that he or she could obtain. The legislature meant this exception to prevent detriment to children by deterring parents from making employment choices that do not account for their children's welfare. Nevertheless, the general assembly intended

courts to approach income imputation with caution. People v. Martinez, 70 P.3d 474 (Colo. 2003).

Imputing to voluntarily unemployed wife an income equal to income that of a person employed at the minimum wage even though evidence indicated that wife had been offered a higher paying job was not abuse of court's discretion given evidence of wife's ill health and problems in obtaining day care. In re Beyer, 789 P.2d 468 (Colo. App. 1989).

Imputing of full-time income to mother working part-time was error where mother did not voluntarily choose part-time employment but was required to stay home during the day to care for one of her children who had Downs syndrome. In re Pote, 847 P.2d 246 (Colo. App. 1993).

Court abused its discretion in finding that mother's underemployment was voluntary where mother worked only 32 hours per week so that she would have time to take the parties' child, who had cerebral palsy, to physical therapy. In re Foss, 30 P.3d 850 (Colo. App. 2000).

Interest was properly included in calculation of imputed income. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

"Overtime", in determination of parent's gross income (prior to 1996 amendment), does not include income from "extra" jobs. In re Marson, 929 P.2d 51 (Colo. App. 1996).

It was proper for the trial court to find that the overtime worked by father was required and to include such income within the father's gross income for the following reasons: (1) In his position as equity owner, director, and officer of the family-owned corporation, he was his own supervisor; (2) the evidence established, and the court found, that his position as vice-president and job-site foreman required that he work more than other employees as evidenced by his own testimony that his job as foreman could not always be done in a 40-hour week; and (3) the evidence established that the reason the father was required to work twenty to 25 hours of overtime per week was to assure that the jobs for which he was responsible would be completed in a timely fashion in order to avoid penalties that would work a direct financial disadvantage to the father. In re Rice & Foutch, 987 P.2d 947 (Colo. App. 1999).

Trial court did not abuse its discretion in excluding mother's overtime pay from the determination of her gross income. Mother chose to work extra hours voluntarily, and the overtime was not required as a condition of her employment. In re Dunkle, 194 P.3d 462 (Colo. App. 2007).

Section imposes no burden on one parent to prove that an available job exists for the other parent. Rather, the determination of income hinges on the ability of the parent to perform work. In re Mackey, 940 P.2d 1112 (Colo. App. 1997).

Court is merely required by subsection (7)(b)(I) to determine potential income and statute imposes no burden on one parent to prove that an available job exists for the other parent or that a particular job is

available. In re Bregar, 952 P.2d 783 (Colo. App. 1997).

In order to impute income based upon a parent's voluntary underemployment, the trial court must examine all relevant factors bearing on whether the parent is shirking his or her child support obligation by unreasonably foregoing higher paying employment that he or she could obtain, and, if the parent is, the trial court must determine what he or she can reasonably earn and contribute to the child's support. If the trial court does not find that the parent is shirking his or her child support obligation by unreasonably foregoing higher paying employment, the court should calculate the amount of child support from actual gross income only. People v. Martinez, 70 P.3d 474 (Colo. 2003).

In determining if a parent is voluntarily underemployed, the factors the court may consider may include: The firing and post-firing conduct of the parent; the amount of time the parent spent looking for a job of equal caliber before accepting a lower paying job; whether the parent refused an offer of employment at a higher salary; whether the parent sought a job in the field in which he or she has experience and training; the availability of jobs for a person with the parent's level of education, training, and skills; the prevailing wage rates in the region; the parent's prior employment experience and history; and the parent's history of child support payment. People v. Martinez, 70 P.3d 474 (Colo. 2003).

The court must make findings sufficient to support a determination of underemployment. Imputing support without factual findings supporting a determination of underemployment is in error. In re Martin, 42 P.3d 75 (Colo. App. 2002); In re Garrett, 2018 COA 154, 444 P.3d 812.

Father not underemployed where mother presented no evidence that employment at income previously earned by father was available to him, no evidence of alternative employment at a higher level of remuneration than he presently earned, and no evidence that support to the children had been unreasonably reduced. In re Campbell, 905 P.2d 19 (Colo. App. 1995).

Trial court properly found father was voluntarily underemployed where father, a licensed attorney, had opted for inactive status and worked seasonally for an apple orchard at $10 per hour. In re Elmer, 936 P.2d 617 (Colo. App. 1997).

Trial court properly declined to find that father was voluntarily unemployed or underemployed where he voluntarily refused to file a claim for damages resulting from a work-related accident. In re England, 997 P.2d 1288 (Colo. App. 1999).

Loss of employment due to addiction and re-employment at a lower wage does not constitute voluntary underemployment; however, a person who has been involuntarily terminated from a position for drug use may subsequently become voluntarily unemployed or underemployed based on actions taken after the termination. In re Atencio, 47 P.3d 718 (Colo. App. 2002).

The trial court erroneously computed child support by relying solely upon the

husband's income and disregarding the wife's statutory obligation to contribute to the child's support. If both parents have actual income, or a reasonable ability to earn income, it is erroneous as a matter of law to allocate the support obligation to one parent. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

In computing child support, the trial court erred in failing to consider either the wife's income as represented by the monthly maintenance award or her ability to earn income from the marital property distributed to her under the court's decree. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

For purposes of child support, father's income, as derived from the exercise of stock options, is limited to the difference between his purchase price of the optioned stock and the price at which he then sold it. In re Campbell, 905 P.2d 19 (Colo. App. 1995).

Court should initially include the amount of a capital gain as a component of gross income for the year in which the gain was received. Thereafter, the court has authority to deviate from the child support guidelines if their application would be inequitable, unjust, or inappropriate. In re Zisch, 967 P.2d 199 (Colo. App. 1998).

When considering capital gains from the sale of property awarded in a property division, the court shall include in gross income only those capital gains realized from post-property division appreciation in the property. In re Upson, 991 P.2d 341 (Colo. App. 1999).

Court erred in not deducting ordinary and necessary expenses from capital gains when self-employed. For purposes of determining a person's gross income, when the person was self-employed as a builder of custom homes, ordinary and necessary expenses incurred to sell property should have been deducted from the person's gross income. In re Glenn, 60 P.3d 775 (Colo. App. 2002).

Husband's taxable distributions from a subchapter S corporation owned wholly by him and two partners, one of whom had left, while not properly considered as extra income, should have been included as gross income, less ordinary and necessary business expenses. In re Upson, 991 P.2d 341 (Colo. App. 1999).

In determining monthly child support obligation for the period following the year in which a capital gain is received, the court should impute as income to the party a rate of return that the net capital gain, after taxes, can reasonably be expected to generate. In re Zisch, 967 P.2d 199 (Colo. App. 1998).

Unrealized capital gains in an investment account do not constitute income for purposes of calculating child support. In re Schaefer, 2022 COA 112, 522 P.3d 732.

Subsection (7)(a) does not provide for deduction of federal and state income taxes in computing gross income, including from lottery winnings, for purposes of calculating child support. In re Bohn, 8 P.3d 539 (Colo. App. 2000).

The amount received as gross income from lottery winnings is used to calculate child support for the year in which the income is received. Thereafter, if a parent invests a portion of the funds which were received as income in one year, any interest earned in the subsequent years is properly included as gross income for purposes of calculating child support in those years. In re Bohn, 8 P.3d 539 (Colo. App. 2000).

Income from an irrevocable trust of which wife was beneficiary should not be omitted from wife's gross income for purposes of calculating child support, even though the trial court correctly declined to treat the income as property subject to division. In re Pooley, 996 P.2d 230 (Colo. App. 1998).

If a parent is voluntarily unemployed or underemployed, child support must be based on the parent's potential income. While a parent is entitled to remain underemployed, the other parent's child support obligation may not be increased as a result. In re Mackey, 940 P.2d 1112 (Colo. App. 1997).

The magistrate did not err in imputing to the father the annual income he had earned prior to his resignation. The evidence amply supports the magistrate's determination that the father quit his job because he won the lottery, that he was physically capable of working but was voluntarily unemployed, and that his decision to resign from his job was not a good faith career choice. In re McCord, 910 P.2d 85 (Colo. App. 1995).

Trial court did not err in imputing income to husband absent findings regarding involuntary job loss, ability to pay, and needs of the child. Although the child's needs may be considered in determining the amount of child support that must be paid at a given level of income, nothing in subsection (7) suggests that the child's needs are relevant to the determination of a parent's income. In re Yates, 148 P.3d 304 (Colo. App. 2006).

Mother's decision to accept travel agency job, rather than to collect unemployment benefits until she found a higher paying job, was a good faith career choice and she therefore was not voluntarily underemployed. In re McCord, 910 P.2d 85 (Colo. App. 1995).

Trial court has the prerogative to determine that husband's decision to leave the practice of law and pursue cattle ranching does not fit the exceptions set forth in subsection (7)(b)(III)(B), where husband argued the change was a good faith career choice, was not intended to reduce the support available to his children, and did not unreasonably reduce support. In re Bregar, 952 P.2d 783 (Colo. App. 1997).

Person who is involuntarily terminated from his position due to his own misconduct is not voluntarily unemployed or underemployed. Whether a person lost a job because of willful or knowing misconduct is not determinative of whether the person is voluntarily unemployed or underemployed. What is determinative is the person's subsequent course of action and decision making. A person who has been involuntarily terminated from a position

may thereafter become voluntarily unemployed or underemployed by not attempting in good faith to obtain new employment at a comparable salary or by refusing to accept suitable employment offers. People ex rel. J.R.T., 55 P.3d 217 (Colo. App. 2002), aff'd sub nom. People v. Martinez, 70 P.3d 474 (Colo. 2003).

"Support available to a child" in subsection (7)(b)(III)(B) is not synonymous with "basic child support obligation" elsewhere in this section. "Basic child support obligation", as defined in subsection (10), typically involves consideration of both parties' respective incomes. "Support available to a child" in subsection (7)(b)(III)(B), however, focuses on the career decision and any associated income change of the putatively underemployed parent that affects his or her ability to provide child support. People ex rel. Cerda v. Walker, 32 P.3d 628 (Colo. App. 2001).

Thus, if the mother has improved her ability to provide child support, it does not necessarily mean that the father's voluntary underemployment did not unreasonably reduce his ability to provide child support. Because both parents have a duty to support a child to the best of their abilities, an increase in one parent's ability to provide child support cannot serve as justification for the other parent's unreasonable reduction in his or her ability to provide child support. People ex rel. Cerda v. Walker, 32 P.3d 628 (Colo. App. 2001).

In computing parental income for purposes of establishing child support payments, child support for other dependents which a parent is legally obligated to pay, shall be deducted, and such deduction is not limited to amounts actually paid pursuant to such obligation. In re Eze, 856 P.2d 75 (Colo. App. 1993).

The intent of this section is that a parent who is legally responsible for the support of other children be given a deduction, within statutory guidelines, for child support actually paid, regardless whether an order for that support had been entered. Thus, when a prior support order does not reflect the parent's full legal responsibility for support, the parent is entitled to a deduction under paragraph (d.5) of subsection (7), instead of under paragraph (d), in determining the parent's gross income. In re K.M.T., 33 P.3d 1276 (Colo. App. 2001).

Adequate proof of child support obligations actually paid for other dependents is required when computing parental income for the purpose of establishing child support for present dependents. In re Dickson, 983 P.2d 44 (Colo. App. 1998).

"Maintenance actually paid by a parent", as used in subsection (10)(a)(II), includes payments made by a parent to a former spouse. It is not limited to payments made to the mother of the child in the paternity proceedings before the court; it includes all maintenance payments made by a parent. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

The court must consider the father's and the child's financial resources in

addition to considering the mother's resources in deciding the appropriate amount of the parents' contributions to the child's college expenses. In re Eaton, 894 P.2d 56 (Colo. App. 1995) (decided under law in effect prior to 1993 amendment).

Court did not err in including $350 rent in father's gross income without excluding allowable business deductions since record revealed nothing to warrant reversal of the trial court's implicit determination that any claimed expenses were not necessary or required to produce the rental income in question. In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

Trial court should have considered mother's detailed evidence of the children's living expenses and the fact that father provided and fully paid for a residence for the children in determining the child support obligation, given the difficulty in applying Colorado child support guidelines to the needs of children in Russia. People ex rel. A.K., 72 P.3d 402 (Colo. App. 2003).

Once the requisites for shared physical custody have been established, subsection (10)(c) requires that the child support obligation be adjusted by the mathematical formula contained in subsection (14)(b). In re Redford, 776 P.2d 1149 (Colo. App. 1989).

If trial court deviates from the guidelines, it is required to make findings that application of the guidelines would be inequitable and specifying the reasons for the deviation. Thus, when court deviated from guidelines, it was required to find either that one of the relevant factors in subsection (1) applied or that the husband did not make contributions to the child's expenses beyond what he was obligated to pay in child support. In re Marshall, 781 P.2d 177 (Colo. App. 1989).

Modification of award required where trial court deviates from guidelines but fails to make findings required by subsection (3)(a). In re Sgarlatti, 801 P.2d 18 (Colo. App. 1990).

Trial court must make provision for expense of transportation of child between homes of parents, which expense is to be divided between parents in proportion to their adjusted gross income. In re Marshall, 781 P.2d 177 (Colo. App. 1989); In re Sgarlatti, 801 P.2d 18 (Colo. App. 1990).

Trial court did not err in including transportation expenses in the child support calculation before those expenses were actually known since there was no dispute as to the parents' income and the magistrate was free to adopt the percentage share of the father's income as shown in the father's computation. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

Husband's personal injury settlement payments are a financial resource that constitutes "gross income" under the child support guidelines. In re Fain, 794 P.2d 1086 (Colo. App. 1990).

Proper for court to base child support calculation on father's monthly income from his railroad annuity despite that income deriving from a previously

divided asset since the property division does not change the status of those monthly payments as an income source to be considered in determining the husband's child support obligation. In re Zappanti, 80 P.3d 889 (Colo. App. 2003).

For investments, income is limited to the gain on the original investment. However, a party's characterization of payments as a return on investment is not binding on the court. In re Laughlin, 932 P.2d 858 (Colo. App. 1997).

Trial court did not err in using a two-year average of father's investment income when calculating father's overall income for the purposes of calculating child support. In re Rice and Foutch, 987 P.2d 947 (Colo. App. 1999).

No error in the trial court's conclusion that father's "actual gross income" included interest or dividends which had accrued to his IRA but which he had not withdrawn. The use of the word "actual" in subsection (7)(a) does not limit gross income to that "actually received". In re Tessmer, 903 P.2d 1194 (Colo. App. 1995).

Trial court correctly excluded father's voluntary enhanced retirement program (VERP) benefit from calculation of his gross income. In determining whether the VERP benefit constitutes income for child support purposes, the court must answer the following questions: (1) Is the VERP benefit severance pay? (2) Is the VERP benefit an employer contribution to pension and retirement benefits? (3) Should an undistributed employer contribution be treated as income? (4) Does father's option to elect a lump sum distribution or monthly annuity payments of his retirement account, including the VERP benefit, mean that the VERP benefit should be credited as income? In re Mugge, 66 P.3d 207 (Colo. App. 2003).

The requirements that father voluntarily retire rather than be terminated and that he provide a general release of the employer distinguish the VERP benefit from a typical severance pay program, and thus the VERP benefit was not severance pay includable within the statutory definition of gross income. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

The employer denominated the VERP benefit as a retirement benefit, credited the benefit to the father's retirement account in its pension plan, and calculated the amount using age and years of service, therefore the VERP benefit was an employer-contributed pension or retirement benefit. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

Because the employer determined the amounts of pension plan contributions and the employees did not have the option of directly receiving the amounts as wages, prior to any distribution, the employer's VERP contribution to father's account in its pension plan did not constitute gross income for consideration under the child support guidelines. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

VERP benefit should not be treated as gross income for child support purposes merely because father could have elected a lump sum distribution or monthly annuity payments instead of rolling the benefit over

into another qualified pension plan. In re Mugge, 66 P.3d 207 (Colo. App. 2003).

Employer contributions to father's insurance plans not income for child support purposes. Similar to employer retirement plan contributions, father did not have the option to take the contributions as wages and use them for general living expenses, so such contributions are not properly considered income for purposes of the child support calculation. In re Davis, 252 P.3d 530 (Colo. App. 2011).

Deferred compensation in father's nonqualified retirement plan is not income for child support purposes under the Uniform Parentage Act. Applying the definition of income in this section, the court determined that it was not income because father did not have the ability to use it to pay his expenses, including child support. Father was not vested in the plan, there was no account in his name, the plan would pay only upon retirement if certain conditions were met, and father would forfeit the plan if he was fired, quit, or retired before age sixty-five, and once retired, it would pay out over 10 years. In re N.J.C., 2019 COA 153M, 467 P.3d 1209.

Extraordinary medical expenses were required to be divided between the parties in direct proportion to their adjusted gross income and added to the basic child support, even where the child's condition existed and was known at the time of the original agreement where the parties agreed to each pay one-half of these expenses. In re Nielsen, 794 P.2d 1097 (Colo. App. 1990).

Meaning of "adjusted gross income". Definition of "adjusted gross income" in subsection (10)(a) does not provide for the deduction of federal and state income taxes or FICA taxes in computation for child support purposes. In re Baroni, 781 P.2d 191 (Colo. App. 1989).

The fact that certain items may be deductible on a party's federal income tax return does not require exclusion from gross income under the child support guideline. In re Eaton, 894 P.2d 56 (Colo. App. 1995).

Trial court did not err in determining that "gross income" included the foreign service premium, the commodities and services allowance, and the expatriate tax equalization payment made to compensate person for the cost of living in a foreign locale. In re Stress, 939 P.2d 500 (Colo. App. 1997).

Meaning of "extraordinary medical expenses". Extraordinary medical expenses, as defined in subsection (12)(b), must be "uninsured". Where psychological counseling services were insured expenses under the father's medical insurance plan, trial court erred in requiring him to pay for child's counseling by a psychologist not participating in the plan absent a finding that such counseling was not adequately or reasonably covered by the plan. In re Ahrens, 847 P.2d 257 (Colo. App. 1993).

A parent's obligation for extraordinary medical expenses is an integral part of the child support obligation and, as such, is nondischargeable in bankruptcy. Parent who provided letter to court asserting the

obligation had been discharged was ordered to pay for his share of the extraordinary medical expenses on behalf of the children. In re Campbell, 140 P.3d 320 (Colo. App. 2006).

Basic allowance for quarters (BAQ) constitutes an in-kind payment that is income for child support purposes. In re Long, 921 P.2d 67 (Colo. App. 1996).

Military housing and food allowances are part of gross income under the plain language of subsection (5)(a)(I)(X). In re Parental Responsibilities of L.K.Y., 2013 COA 108, 410 P.3d 492.

Military housing and food allowances that are not paid to children or on behalf of the children but rather are paid to the parent as part of parent's salary should not be deducted under subsection (11)(b) as financial resources of the children despite the fact that the parent is the recipient of temporary child support. In re Parental Responsibilities of L.K.Y., 2013 COA 108, 410 P.3d 492.

Increased cost for the addition of teenage son to automobile insurance is not an extraordinary expense under subsection (13). In re Long, 921 P.2d 67 (Colo. App. 1996).

Court does not have authority to impute a gross income where actual income is tax exempt. Rather the amount received each month shall be deemed to be a gross income. In re Fain, 794 P.2d 1986 (Colo. App. 1990).

"Gross" income for purposes of calculating child support can include the amount of income an asset could reasonably be expected to generate even if that asset has been consumed prior to the support determination. In re Laughlin, 932 P.2d 858 (Colo. App. 1997).

The burden is upon the parent contesting the support order to prove that a deviation from the presumptive award is both reasonable and necessary. In re Baroni, 781 P.2d 191 (Colo. App. 1989).

No automatic adjustment of gross income for non-ordered support. Non-ordered child support payments to others are not to be determined by a mechanical application of the child support schedule. Rather the impact of payment of non-ordered obligations must be evaluated as provided in subsection (3)(a). People in Interest of C.D., 767 P.2d 809 (Colo. App. 1989).

Party alleging that payment of non-ordered support obligation requires deviation from presumptive award determined under statutory guidelines has burden to prove the claim. Deviation from guidelines must be shown reasonable and necessary considering certain enumerated factors. People in Interest of C.D., 767 P.2d 809 (Colo. App. 1989).

An agreement of the parties regarding child support, custody, and visitation does not bind the court, and the court must review child support guidelines to determine the adequacy of the child support agreement of the parties. In re Micaletti, 796 P.2d 54 (Colo. App. 1990).

Trial court's apportionment of costs for child's guardian ad litem upheld where

court apportioned costs between mother and father on the basis of the underemployed mother's potential income. Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

Specific written or oral findings must be made by the court to support deviation from the child support amounts specified by the statutory schedule, and this applies to approving a stipulation of the parties. In re Miller, 790 P.2d 890 (Colo. App. 1990); In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

Where the parties' gross income exceeded the uppermost level of income scheduled in the guidelines and the minimum child support amount is presumed to be set forth in the highest level in the guidelines, this presumption may be rebutted, and the court must exercise discretion considering the financial resources of both parents and the children, the physical and emotional condition of the children and their educational needs, the needs of the noncustodial parent, and the standard of living that the children would have enjoyed had the parents' marriage not been dissolved. In re Schwaab & (Colo. App. 1999), aff'd in part, rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001).

Where parties' gross income exceeded the uppermost level of income in the guidelines, trial court was required to calculate the minimum presumptive amount of support and, in addition, translate the children's higher standard of living into specific monetary requirements. In re Bookout, 833 P.2d 800 (Colo. App. 1990).

There is a rebuttable presumption that the basic child support obligation at the upper level of the guidelines is the minimum presumptive amount of support. Where father won five million dollars in the Colorado state lottery and the parties' adjusted gross incomes thereafter exceeded the uppermost levels of the guidelines, the court remanded the case for a redetermination of child support. In re Foss, 30 P.3d 850 (Colo. App. 2000).

Where parties' income exceeded the highest combined gross income level set out in the guidelines, the gross disparity in their incomes may explain the initial basis for deviation by the court, but additional findings concerning the needs of the children must be entered to establish the amount of deviation ordered. In re Upson, 991 P.2d 341 (Colo. App. 1999).

Where parties' income exceeded the highest combined gross income level set forth in the guidelines, the amount set for child support at the highest combined gross income level reflects the minimum, not maximum, presumptive amount. In such circumstances, the court may use its discretion to determine a higher amount based on the factors set forth in subsection (2)(b). In re Boettcher, 2018 COA 34, 454 P.3d 321, aff'd, 2019 CO 81, 449 P.3d 382.

Because the children's needs are of paramount importance in determining the child support obligation, in calculating the appropriate amount of child support, the court should look at, among other things, the costs of food, shelter, clothing, medical care, education, and recreational costs at the level enjoyed before the dissolution. In re

Schwaab & Rollins, 794 P.2d 1112 (Colo. App. 1990).

Viewing the statute as a whole, the means of meeting the "particular educational needs of a child" are not limited to providing private school only when a child has a learning disability or otherwise qualifies for a program of special education. In re Payan, 890 P.2d 264 (Colo. App. 1995).

Where the mother has sole custody of the three children, and there is a different visitation schedule for each child, in deciding whether the shared custody calculation for child support is applicable, the court must calculate the number of overnight stays for each child, divide each by three and total the results to determine the total amount of time the father spends with the children. If the cumulative number of overnights is less than 25% of the year, the shared custody calculation is inapplicable. In re Quam, 813 P.2d 833 (Colo. App. 1991).

Court erred in beginning the child support calculation for children with different parenting time schedules who are in the mother's primary care by using a separate worksheet for each child. This error effectively treated each child as an only child under the guidelines and resulted in an inflated child support amount. The court did not enter sufficient findings to support a deviation from the presumed amount under the guidelines. In re Wells, 252 P.3d 1212 (Colo. App. 2011).

Each parent in a dissolution proceeding has the obligation to support their children to the best of their abilities, and the court may determine that one parent's failure to find or keep a job is a voluntary refusal to carry out a support obligation. In re Nordahl, 834 P.2d 838 (Colo. App. 1992).

Costs of high school extracurricular activities such as cheerleading, driver's education, sports, and debate do not qualify as higher educational expenses under subsection (13). In re Ansay, 839 P.2d 527 (Colo. App. 1992).

Inclusion of ice skating fees in the support calculation as a reasonable and necessary expense was warranted. In re Laughlin, 932 P.2d 858 (Colo. App. 1997).

Trial court erred in ordering parent to pay percentage of children's estimated educational expenses without specifying sum to be paid. In re Pollock, 881 P.2d 470 (Colo. App. 1994).

Because of a lack of certainty of future bonuses, the court did not abuse its discretion in refusing to estimate the amount of any possible future bonuses for present support purposes. In re Finer, 920 P.2d 325 (Colo. App. 1996).

The trial court did not err in not considering income from the parties' mentally retarded adult son in calculating child support obligation. The trial court is not bound to deduct automatically the amount of a child's income from the basic child support obligation when that income does not reduce the need for parental support. In re Folwell, 910 P.2d 91 (Colo. App. 1995).

Trial court did not abuse its discretion setting appropriate amount of child support when it included the child's pro rata share of the standard and ongoing living expenses in wife's monthly needs. In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd, 25 P.3d 28 (Colo. 2001).

The first $250 of uninsured medical expenses per child per year is included in the shared basic child support obligation of parents with equal parenting time. The trial court properly rejected father's argument that wife should pay the first $250 in uninsured medical expenses per year per child. Each party must pay uninsured medical expenses incurred during their parenting time until the child's expenses for the year exceed $250, at which time a parent may seek reimbursement from the other for the proportional share of expenses incurred for the child. A court could deviate from the guidelines if one parent were likely to incur all of these expenses despite shared equal parenting time. In re Alvis, 2019 COA 97, 446 P.3d 963.

Court did not err in failing to include husband's GI bill tuition assistance and stipend for books and supplies in husband's income for purposes of calculating child support. The tuition payment was not available for husband's discretionary use or to reduce living expenses and would in no discernable way assist him in paying maintenance or child support. In re Tooker, 2019 COA 83, 444 P.3d 856.

For the purposes of calculating child support obligation, father's veteran's disability benefits fall within the broad definition of gross income, despite being nontaxable. In re M.E.R-L., 2020 COA 173, 490 P.3d 1010.

B. Discretion of Court.

Determination of child support is in the sound discretion of the trial court, and in the absence of an abuse of that discretion, not shown here, it will not be disturbed on review. Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959); Lanz v. Lanz, 143 Colo. 73, 351 P.2d 845 (1960); Huber v. Huber, 143 Colo. 255, 353 P.2d 379 (1960); Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Ferguson v. Ferguson, Colo. App. , 507 P.2d 1110 (1973); Berge v. Berge, 33 Colo. App. 376, 522 P.2d 752 (1974), aff'd, 189 Colo. 103, 536 P.2d 1135 (1975); In re Krise, 660 P.2d 920 (Colo. App. 1983); In re Garcia, 695 P.2d 774 (Colo. App. 1984); In re Pierce, 720 P.2d 591 (Colo. App. 1985).

Alimony, support, and property settlement issues were formerly considered together to determine whether the court had abused its discretion, and in making the determination, the court would consider a variety of factors, including whether the property was acquired before or after marriage, the efforts and attitudes of the parties towards its accumulation, the respective ages and earning abilities of the parties, the conduct of the parties during the marriage, the duration of the marriage, their stations in life, their health and physical condition, the necessities of the parties, their financial condition, and other relevant circumstances. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

Court may consider only relevant provisions of section. In awarding child support, a trial court is obligated to consider only the relevant provisions of this section. It commits reversible error by considering matters related to adoption. In re Ashlock, 629 P.2d 1108 (Colo. App. 1981).

In granting a divorce a court has no authority under the statute to decree that a part of the property of the husband shall be the sole property of his children. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964); Giambrocco v. Giambrocco, 161 Colo. 510, 423 P.2d 328 (1967).

The trial court was without authority to direct the husband to give to each of his children a share in a future estate which he may or may not acquire, because the obligation of the defendant is to provide reasonable support for his children according to their need, within the range of his ability, and a father of children is under no obligation to settle any property upon his children, or to deed them an interest in any asset; on the contrary he may by will or deed or other voluntary act disinherit a child if he sees fit to do so. Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964); Giambrocco v. Giambrocco, 161 Colo. 510, 423 P.2d 328 (1967).

Former husband may not discover the amount of former wife's current husband's income but may discover the existence of former wife's income in the form of regular payments made to the former wife by her current husband. In re Nimmo, 891 P.2d 1002 (Colo. 1995).

Although trial court abused its discretion in modifying child support and cause was remanded upon appeal, the trial court order for child support remained in full force and effect pending entry of a new support order. In re Van Inwegen, 757 P.2d 1118 (Colo. App. 1988).

Court improperly ordered noncustodial mother to make support payments when the court made a finding that the mother did not have the financial ability to pay child support. In re Jarman, 752 P.2d 1068 (Colo. App. 1988).

There is a rebuttable presumption in any action to establish or modify child support that $1,000 is the minimum presumptive amount of child support for one child when the parental combined income exceeds the uppermost levels of the guideline; however, the trial court may exercise its discretion and choose to set a different amount after consideration of all relevant factors. In re Van Inwegen, 757 P.2d 1118 (Colo. App. 1988).

As a matter of law, the trial court may not initially refuse to apply child support guidelines. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

Cost of a nanny may be included in the calculation of child support. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998).

Trial court erred in failing to divide uninsured medical expenses in proportion to parents' adjusted gross incomes without making necessary findings to support deviation from guidelines. In re Pollock, 881 P.2d 470 (Colo. App. 1994).

The trial court has discretion to order that the reasonable and necessary costs of a child's attendance at a private school be divided between the parents in proportion to their income. In re Elmer, 936 P.2d 617 (Colo. App. 1997) (decided prior to 1998 amendment to subsection (13)(a)(II)); In re West, 94 P.3d 1248 (Colo. App. 2004).

Attendance at a private school may be approved where it is necessary to meet the particular educational needs of the child. In re West, 94 P.3d 1248 (Colo. App. 2004).

In determining whether the children's parochial school tuition should be approved prospectively as a reasonable and necessary expense, the court should consider the parents' income, the standard of living that the children would have enjoyed if the parents' marriage had not been dissolved, and other factors as appropriate. In re West, 94 P.3d 1248 (Colo. App. 2004).

The trial court exceeded its authority in ordering the husband to fund an educational trust for the benefit of the parties' son. The courts have been granted no authority to order the creation of a trust for the benefit of minor children. In re Sewell, 817 P.2d 594 (Colo. App. 1991).

Trial court did not abuse its discretion in ordering the husband to pay all college expenses of the parties' son. Use of word "divided" in subsection (13) does not imply that both parents must contribute to each item of support; court is given discretion in subsection (1) to order "either or both" parents to pay support. In re Huff, 834 P.2d 244 (Colo. 1992) (decided under law in effect prior to enactment of subsection (1.5), dealing specifically with postsecondary education support).

A parent may also be required to contribute to the costs associated with a child's athletic activities in some cases. The child's particular needs and predissolution standard of living are among the factors to be considered by the court. In re West, 94 P.3d 1248 (Colo. App. 2004).

Psychiatric therapy for child was properly included as an extraordinary medical expense in an order under this section. In re Elmer, 936 P.2d 617 (Colo. App. 1997).

Trial court erred in allocating to father all of child's travel expenses for visitation, rather than proportionately allocating them between the parties, in absence of finding that such allocation was appropriate. In re Elmer, 936 P.2d 617 (Colo. App. 1997) (decided prior to 1998 amendment to subsection (13)(a)(II)).

Child support guideline does not provide for allocation between the parties of a parent's travel expenses. In re Elmer, 936 P.2d 617 (Colo. App. 1997) (decided prior to 1998 amendment to subsection (13)(a)(II)).

Adjustment of the child support amount to allow for transportation expenses is not limited to expenses incurred in long distance or interstate travel and does apply to automobile expenses incurred in transporting a child between the homes of the parents. In re L.F., 56 P.3d 1249 (Colo. App. 2002).

Award constituted an application of, and not a deviation from, the guidelines where the evidence and the findings were sufficient to support only a partial offset of the child's income for her pro rata share of reasonable and necessary monthly expenses as well as the maintenance of a fund for vacations, one-time purchases, and other occasional expenses. In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

The burden is upon the parent contesting the support order to prove that a deviation from the presumptive award is both reasonable and necessary. In re Stress, 939 P.2d 500 (Colo. App. 1997).

Trial court did not abuse its discretion in finding that parent did not meet this burden. In re Stress, 939 P.2d 500 (Colo. App. 1997).

Trial court may deviate from the child support guidelines set forth in this section if the application of such guidelines would be inequitable, but if it does deviate, the court must make specific factual findings to support any deviation and failure to make such specific findings requires reversal. In re English, 757 P.2d 1130 (Colo. App. 1988); In re Hoffman, 878 P.2d 103 (Colo. App. 1994); In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

The trial court has discretion to deviate from the guidelines where justified, provided it makes appropriate findings. In re Thornton, 802 P.2d 1194 (Colo. App. 1990); In re Payan, 890 P.2d 264 (Colo. App. 1995).

Deviation from child support guidelines is not justified by hardship resulting solely from application of the guidelines, absent other unusual or unique financial circumstances. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

Taking care of three-year-old triplets may be considered extraordinary circumstances justifying a deviation from the child support guidelines. In re Ikeler, 148 P.3d 347 (Colo. App. 2006), rev'd on other grounds, 161 P.3d 663 (Colo. 2007).

The court must make specific factual findings, however, justifying such a deviation. In re Ikeler, 148 P.3d 347 (Colo. App. 2006), rev'd on other grounds, 161 P.3d 663 (Colo. 2007).

The finding that it is important for the child to spend extended time with mother is, in itself, irrelevant to the issue of whether there should be a deviation in child support. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

A finding that one parent has a higher cost of living will not, in and of itself, ordinarily justify deviating from the guidelines. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

Case remanded for reconsideration of deviation from guidelines based on new spouse's income under the guidelines in In re Nimmo, 891 P.2d 1002 (Colo. 1995). In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

Subsection (13) does not require an automatic adjustment to presumptive amount of child support but rather gives the trial court discretion to determine if an adjustment on account of a child's financial

resources is appropriate. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

Application of child support guidelines establishes an amount of support that is presumed to be necessary to meet a child's needs; however, the extent to which an unemancipated child's income should be used to defray basic support obligations is within the trial court's discretion and depends upon the totality of circumstances in a particular case. In re Pollock, 881 P.2d 470 (Colo. App. 1994); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

Trial court did not abuse its discretion in declining to include child's receipt of public support payments as income available to the child under subsection (13)(b). Such payments represent gratuitous contributions from the government and do not reduce the parent's duty to provide support. They are intended to supplement other income, not to substitute for it. In re Thornton, 802 P.2d 1194 (Colo. App. 1990).

But it is proper under subsection (13)(b) for the court to consider mother's receipt of social security disability payments on behalf of the children as an adjustment to child support because those payments actually diminished the children's basic needs. In re Quintana, 30 P.3d 870 (Colo. App. 2001).

Court is authorized under this section to calculate child support based on a determination of a parent's potential income if parent is voluntarily unemployed or underemployed. In re Marshall, 781 P.2d 177 (Colo. App. 1989).

Trial court did not abuse its discretion in reducing the father's amount of child support, where it found that the father was not voluntarily underemployed but had terminated his full time employment to return to college to obtain an advanced degree. In re Ehlert, 868 P.2d 1168 (Colo. App. 1994).

If a court determines that a parent engaged in a good faith effort to achieve higher income, financial independence, or a career in the foreseeable future, to impute income to that parent would unfairly penalize the parent's effort at self-sufficiency and would be contrary to the public policy of encouraging the financial independence of dependent spouses. In re Seanor, 876 P.2d 44 (Colo. App. 1993).

Wife was engaged in a good faith effort to achieve a college education in order to further her income position where the evidence showed she had not worked for approximately nine years and she had completed two years of study towards a bachelors degree in a three-year period, during which time she had achieved a 3.72 grade point average. She had not attended school the previous year because of the death of her current spouse's mother and the hospitalization and continued medical complications and concerns of one of the children. In re Seanor, 876 P.2d 44 (Colo. App. 1993).

Trial court properly determined that father, a convicted sex offender, was voluntarily underemployed. Although the conviction likely limited father's employment opportunities, father did not attempt to find gainful employment despite

having an M.B.A. degree, a real estate broker's license, and many years of work experience. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Extent to which a child's income and assets should be applied to the payment of educational expenses or basic support is a question of fact to be determined by the trial court under the totality of circumstances in each case. In re Barrett, 797 P.2d 848 (Colo. App. 1990); In re Pollock, 881 P.2d 470 (Colo. App. 1994); In re Davis, 252 P.3d 530 (Colo. App. 2011).

The limit on postsecondary expenses is the amount calculated as if the child receiving such education had been the only child. Legislative history makes it clear that the 1994 amendment was intended to clarify rather than change the statute. In re Parker, 886 P.2d 312 (Colo. App. 1994).

Trial court did not abuse discretion in not deviating from the child support guidelines in order to avoid calculating child support based on IRA interest and dividends. In re Tessmer, 903 P.2d 1194 (Colo. App. 1995).

Absent a finding that a child has been diagnosed as having a mental disorder, a noncustodial parent cannot be required to share in the costs for therapy, whether such costs are included within the child support obligation or ordered to be paid separately. Absent the need for therapy because of a mental disorder, such cost must be borne by the party who makes the decision to provide the child with therapy. In re Finer, 920 P.2d 325 (Colo. App. 1996).

Court may not deviate downward from the presumptive child support award to ensure continued eligibility for public assistance benefits. Court erred in ordering mother to pay $245 per month in child support instead of the statutory amount of $399 per month in order to preserve the paternal grandparents' public daycare benefits. In re Hein, 253 P.3d 636 (Colo. App. 2010).

Applied in In re Rosser, 767 P.2d 807 (Colo. App. 1988).

C. Modification.

The provisions of subsections (2) and (7)(e) indicate that the general assembly did not intend to include health insurance premiums in the ordinary and necessary expenses covered by the basic child support obligation set forth in the guidelines; therefore, health insurance premiums paid by the father cannot be deducted from the total amount of the father's support obligation under the child support guidelines. In re English, 757 P.2d 1130 (Colo. App. 1988).

Where there was no evidence presented to establish the asserted extra cost of purchasing health insurance through the employment of the father's present spouse, there was no basis for the trial court to apply this section. In re Ansay, 839 P.2d 527 (Colo. App. 1992).

Application of the provisions of this section by the court for the modification of a prior child support order entered under the Uniform Parentage Act was error as a matter of law. Ashcraft v. Allis, 747 P.2d 1274 (Colo. App. 1987).

Pre-1991 postsecondary education support orders. Subsection (1.5)(c.5) allows the modification of pre-1991 postsecondary education support orders. In re Chalat, 112 P.3d 47 (Colo. 2005).

Substantial and continuing changed circumstances requirement and postsecondary education support orders. Absent application of the age of emancipation (§ 14-10-122 (4)) or medical insurance (§ 14-10-122 (1)) exceptions, the court's continuing jurisdiction to modify postsecondary education support orders is invoked only upon a showing of substantial and continuing changed circumstances by the party seeking modification. Nothing in the plain language of subsection (1.5)(c.5) or § 14-10-122 alters this clear, unambiguous requirement. In re Chalat, 112 P.3d 47 (Colo. 2005).

Effect of amendments to postsecondary education support scheme on the substantial and continuing changed circumstances requirement. The general assembly did not express an intent that its enactments of amendments to the postsecondary education support scheme alone automatically triggers a court's continuing jurisdiction to modify child support. The requirement for substantial and continuing changed circumstances must still be shown. In re Chalat, 112 P.3d 47 (Colo. 2005).

Order specifying amount where original order merely imposed duty. Where an original court order imposes a duty of support without specifying an amount under the criteria of this section, a subsequent court order specifying the amount need only conform with this section, rather than the modification requirements of § 14-10-122. In re Saiz, 634 P.2d 1020 (Colo. App. 1981).

If the financial ability of the husband and father improves, and the needs of the minor children increase, the jurisdiction of the court to make additional orders for the care and maintenance of the minor children may be invoked at any time in a proper proceeding. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Trial court properly denied father's motion for modification, which was based solely on the 1993 statutory amendment to subsection (1.5)(b)(I) and which did not allege any substantial or continuing change in the parents' or the child's circumstances. In re Eaton, 894 P.2d 56 (Colo. App. 1995).

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. Thus, if child support is modified, the modification should be effective as of the date of filing of the request therefor. In re Mackey, 940 P.2d 1112 (Colo. App. 1997).

Any order reducing the amount of support money operated only in future. Engleman v. Engleman, 145 Colo. 299, 358 P.2d 864 (1961).

The proposition that future support payments could not be reduced as long as a husband was in default, even though a proper showing could be made of inability to pay, was not the law in Colorado. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

Parent's medical expenses relevant to modification as well as to initial determination of support. Where change in presumed support under guideline based on gross income is less than ten percent, the parent seeking modification may nonetheless establish a substantial and continuing change in circumstances, justifying a deviation from the guideline, due to an increase in the parent's personal medical expenses. In re Ford, 851 P.2d 295 (Colo. App. 1993).

Deviation from the guidelines in calculating the basic child support obligation was error where court reasoned that father would not be able to support himself if required to pay the amount specified in the guidelines in light of his required contribution to the extraordinary medical expenses required by the child. In re Nielsen, 794 P.2d 1097 (Colo. App. 1990).

In circumstances where father is providing health insurance coverage for new spouse and father's other children living with him, in addition to child who is subject to order, the amount of the premium attributable to such child was "not available or cannot be verified" and trial court erred by refusing to allow the addition to the support obligation for a portion of that premium. In re Andersen, 895 P.2d 1161 (Colo. App. 1995).

Child's income may allow for a reduction of the support obligation if the court determines that it does "actually diminish basic needs" of child. In re Kluver, 771 P.2d 34 (Colo. App. 1989).

Mother's receipt of social security disability payments on behalf of the children actually diminished children's basic needs and court did not abuse its discretion by including the payments in the adjustment of the father's child support obligation. In re Quintana, 30 P.3d 870 (Colo. App. 2001).

Modification of award based on child's income for purposes of extraordinary educational expenditures or the satisfaction of basic needs is a question of fact to be determined under the totality of circumstances in each case. In re Barrett, 797 P.2d 848 (Colo. App. 1990).

A trial court is not bound to deduct automatically the entire amount of a child's income from his or her educational costs or basic support obligation but must look at the child's reduced need, if any, for parental support. In re Barrett, 797 P.2d 848 (Colo. App. 1990); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

Trial court abused its discretion in refusing to deviate from a strict application of the guideline calculations for basic child support where certain expenses were shown to be duplicative. In re Barrett, 797 P.2d 848 (Colo. App. 1990).

The court did not err in denying a modification for contributions earned by the children where evidence showed that the older children did not receive any Pell grants toward their college expenses, and testimony regarding the additional expenses towards which the children put their earnings was sufficient for the court to determine that a reduction in the amount of support was not

appropriate. In re Ansay, 839 P.2d 527 (Colo. App. 1992).

A trial court does not err if it requires parents who are legally responsible for support to contribute to a dependent child's needs in lieu of requiring the child to expend all of his or her own resources. In re Pring, 742 P.2d 343 (Colo. App. 1987); In re Cropper, 895 P.2d 1158 (Colo. App. 1995).

Child support obligations to children of a second marriage may be deducted from a parent's income when the court is considering a modification of child support ordered for children of a first marriage. In re Hannum, 796 P.2d 57 (Colo. App. 1990).

The allocation of tax exemptions may be considered when the court is considering a modification of child support. In re Oberg, 900 P.2d 1267 (Colo. App. 1994).

In considering a modification of child support, the trial court is bound by the facts and circumstances of the parents and the children as they exist at the time of the hearing. If there is a pending foreclosure sale, the court should await the sale's completion and complete its record on the amount of debt incurred before it determines the modification question. In re Kimbrough, 784 P.2d 852 (Colo. App. 1989).

Court did not violate prohibition against adjustment that results in support payments lower than previously existing support order under subsection (7)(d.5)(II) when the decrease in the husband's child support obligation was due solely to the switch to a shared custody child support calculation and a decrease in the wife's work-related child care expenses. The decrease was entirely unrelated to the income adjustment given to the wife for her after-born child. In re Martin, 910 P.2d 83 (Colo. App. 1995).

Court had authority to recalculate child support using a different worksheet than previously used. Once court gained jurisdiction to modify child support pursuant to the wife's motion, the court is not prohibited from utilizing the proper formula for such support, particularly when that formula was part of the same statute under which the wife filed her motion to modify. In re Martin, 910 P.2d 83 (Colo. App. 1995).

Rebuttable presumption of a change of circumstances existed under the child support guidelines where the parties changed custody of one of the minor children from the mother to the father. In re Miller, 790 P.2d 890 (Colo. App. 1990).

For purpose of calculating and modifying child support, trial court properly included in gross income of husband an amount which a one-time post-decree inheritance could be expected to yield, although calculation of such amount was incorrect. In re Armstrong, 831 P.2d 501 (Colo. App. 1992).

Trial court did not impermissibly interfere with husband's constitutional property rights by including in gross income an amount which a one-time post-decree inheritance received by husband could be expected to yield. In re Armstrong, 831 P.2d 501 (Colo. App. 1992).

A monetary inheritance should be included in gross income for purposes of calculating child support in the year that

the beneficiary withdraws from the inheritance and relies on it as a source of income. In re A.M.D., 78 P.3d 741 (Colo. 2003).

That remainder of a monetary inheritance that is not withdrawn and spent should be treated as an income-producing asset and the actual interest income it generates should be included in gross income. In re A.M.D., 78 P.3d 741 (Colo. 2003).

In determining how much of the principal of an inheritance to include in gross income, the trial court should apply a two-part test: (1) The court must decide whether an inheritance is monetary; and, if so, (2) whether the recipient used the principal as a source of income either to meet existing living expenses or to increase the recipient's standard of living. In re A.M.D., 78 P.3d 741 (Colo. 2003).

Court did not make findings required by subsection (14.5) to modify the allocation of federal income tax exemptions between the parties. Order allocating exemptions to the parties in alternating years, therefore, was reversed and the cause remanded to the trial court. In re Trout, 897 P.2d 838 (Colo. App. 1994).

Failure to submit financial information to the trial court and the failure of the trial court to review the modified agreement between the parties rendered the resulting trial court order subject to being set aside under C.R.C.P. 60 (b)(5). In re Smith, 928 P.2d 828 (Colo. App. 1996).

Court's award of income tax exemption to father in alternate years, as part of court's judgment on mother's motion to modify child support was supported by the record and complies with the requirements of this section. The court was not required to hold an additional hearing before amending the judgment when it had already heard testimony concerning the parties' incomes and had determined the percentage contribution of the parties to the costs of raising the child. The court could conclude on that record that father would receive a tax benefit from the exemption award. In Interest of A.R.W., 903 P.2d 10 (Colo. App. 1994).

Father's post-dissolution motion for reimbursement of previously paid child care expenses was properly denied. Reimbursement is not mandated under this section and the court has discretion whether to refer the parties to mediation. In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

Court should compare child support order currently in effect with child support guidelines to determine whether a substantial and continuing change of circumstances exists. Although the parties' current child support order was the result of the parties' agreement to a reduced amount of child support, the court should have compared the current child support order with the presumed child support obligation under the guidelines at the time of mother's motion to determine if mother had shown a substantial and continuing change of circumstances sufficient to maintain her motion for modification. In re M.G.C.-G., 228 P.3d 271 (Colo. App. 2010).

A maternal grandmother who received parental responsibilities through a dependency and neglect proceeding is not a "psychological parent" under In re A.C.H., 2019 COA 43, 440 P.3d 1266, and therefore not a parent under this section and therefore cannot be ordered to pay child support. The maternal grandmother voluntarily assumed parental responsibilities for the child through a dependency and neglect proceeding and never sought permanent custody through an adoption proceeding. Her willingness to assume responsibilities while parents were unfit did not transform her into a permanent custodian or psychological parent. Therefore, the court did not err in not imposing a child support obligation on her after father became fit. In re Bergeson-Flanders, 2022 COA 18, 509 P.3d 1083.

D. Termination upon Emancipation.

The resolution of the question of emancipation was concerned more with the extinguishment of parental rights and duties than with the removal of the disabilities of infancy, and it occurred only when there was a complete severance of the filial tie, and the child's possession or lack of possession of the right to vote had little or no bearing on the determination as to whether such tie had or had not been severed. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

The enactment of the voting rights act of 1970, lowering the federal voting age to 18 years, did not emancipate a 20 year old son, as a matter of law. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

In Colorado, a person retains the status of minority until the age of 21 years, and that statutory definition is controlling as to the age at which emancipation occurs as a matter of law, except where otherwise provided by statute. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

In the absence of emancipation occurring upon attainment of majority, the question of whether a child was emancipated was essentially one of fact determinable by the trier of fact. Van Orman v. Van Orman, 30 Colo. App. 177, 492 P.2d 81 (1971).

Change in the age of emancipation and duty of support in this section did not automatically modify a parent's existing obligation of support which required obligor to pay support until child reached 21 years. In re Dion, 970 P.2d 968 (Colo. App. 1997).

The marriage of the minor daughter terminated the parental duty of support and no enforceable rights to support payments could thereafter accrue to the mother. Berglund v. Berglund, 28 Colo. App. 382, 474 P.2d 800 (1970).

Support for dependent child after attainment of majority. This article gives the court jurisdiction to enter a decree for support of a dependent child of the marriage after attainment of majority. In re Koltay, 646 P.2d 405 (Colo. App. 1982), aff'd, 667 P.2d 1374 (Colo. 1983).

Once a child is over 21 and physically and mentally capable of self support, such child is not entitled to receive support payments

from father, despite the fact that the child had an expectation of attending college had parents not divorced. Factors such as standard of living child would have enjoyed and educational needs can only be applied in determining child support if the child had not reached majority. In re Plummer, 735 P.2d 165 (Colo. 1987).

Express provision for post-emancipation support, where circumstances warrant, may be made in a decree entered before the child's twenty-first birthday. In such a case, factors such as standard of living and expectation of attending college may be considered. In re Huff, 834 P.2d 244 (Colo. 1992) (decided under law in effect prior to enactment of subsection (1.5), dealing specifically with postsecondary education support).

Provision for post-emancipation support may also be made by written agreement of the parties, as is indicated by reading this section together with § 14-10-122 (3). In re Huff, 834 P.2d 244 (Colo. 1992).

Meaning of "previously existing support order". An order entered October 22, 1993, nunc pro tunc August 12, 1993, made retroactive to August 1, 1992, modifying a March 1992 support order, is not a "previously existing support order" with regard to a modification of support to take into account a child born to the father and his new wife in December 1992, because it was not "previously existing" until it was actually entered by the court. In re Oberg, 900 P.2d 1267 (Colo. App. 1994).

IV. PAST DUE SUPPORT.

Past due child support payments in themselves constitute debt. Colo. State Bank v. Utt, 622 P.2d 584 (Colo. App. 1980).

Amount owed may be garnished by bank which held judgment against former wife. Colo. State Bank v. Utt, 622 P.2d 584 (Colo. App. 1980).

It was not error to require a husband to pay arrears of support money for his minor children during the period of time the wife refuses him the right to visit the children, where no objection was made to the entry of such order. Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956).

A trial court could not punish a father, delinquent in his child support payments through no fault of his own, by denying him visitation rights until he became current in his payments. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

A trial court was without authority to forgive delinquent payments of support money. Gier v. Gier, 139 Colo. 289, 339 P.2d 677 (1959); Engleman v. Engleman, 145 Colo. 299, 358 P.2d 864 (1961); Drazich v. Drazich, 153 Colo. 218, 385 P.2d 259 (1963).

Overpayments on child support made direct to one child could not be set off against accrued overdue installments which were owed to the mother on behalf of another child. Dorsey v. Dorsey, 28 Colo. App. 63, 470 P.2d 581 (1970).

The general rule was to the effect that when a father was required by a divorce

decree to pay to the mother money for the support of their dependent children, and the unpaid and accrued installments became judgments in her favor, he could not, as a matter of law, claim credit on account of payments voluntarily made directly to the children, special considerations of an equitable nature could justify a court in crediting such payments on his indebtedness to the mother when that could be done without injustice to her. Dorsey v. Dorsey, 28 Colo. App. 63, 470 P.2d 581 (1970).

Promissory estoppel is not a viable legal defense for a claim for past due child support payments. In re Gallo, 2024 COA 86, 558 P.3d 1016.

14-10-116. Appointment in domestic relations cases - representation of the best interests of the child - legal representative of the child - disclosure - short title.

(1) The court may, upon the motion of either party or upon its own motion, appoint an attorney, in good standing and licensed to practice law in the state of Colorado, to serve as the legal representative of the child, representing the best interests of the child in any domestic relations proceeding that involves allocation of parental responsibilities. In no instance may the same person serve as both the child's legal representative pursuant to this section and as the child and family investigator for the court pursuant to section 14-10-116.5. Within seven days after the appointment, the appointed person shall comply with the disclosure provisions of subsection (2.5) of this section.

(2) (a) The legal representative of the child, appointed pursuant to subsection (1) of this section, shall represent the best interests of the minor or dependent child, as described in section 14-10-124, with respect to the parenting time, the allocation of parental responsibilities, financial support for the child, the child's property, or any other issue related to the child that is identified by the legal representative of the child or the appointing court. The legal representative of the child shall actively participate in all aspects of the case involving the child, within the bounds of the law. The legal representative of the child shall comply with the provisions set forth in the Colorado rules of professional conduct and any applicable provisions set forth in chief justice directives or other practice standards established by rule or directive of the chief justice pursuant to section 13-91-105 (1)(c) concerning the duties or responsibilities of best interest representation in legal matters affecting children, including training requirements related to domestic violence and its effect on children, adults, and families. The legal representative of the child shall not be called as a witness in the case. While the legal representative of the child shall ascertain and consider the wishes of the child, the legal representative of the child is not required to adopt the child's wishes in the legal representative of the child's recommendation or advocacy for the child unless such wishes serve the best interests of the child, as described in section 14-10-124.

(b) The short title of this subsection (2) is "Julie's Law".

(2.5) (a) Within seven days after the appointment, the appointed person shall disclose to each party, attorneys or licensed legal paraprofessionals of record, and the court any familial, financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys or licensed legal paraprofessionals of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (2.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(3) (a) The court shall enter an order for costs, fees, and disbursements in favor of the child's legal representative appointed pursuant to subsection (1) of this section. The order shall be made against any or all of the parties; except that, if the responsible parties are determined to be indigent, the costs, fees, and disbursements shall be borne by the state.

(b) In a proceeding for dissolution of marriage or legal separation, prior to the entry of a decree of dissolution or legal separation, the court shall not enter an order requiring the state to bear the costs, fees, or disbursements related to the appointment of a child's legal representative unless both parties are determined to be indigent after considering the combined income and assets of the parties.

(c) If the appointment of a child's legal representative occurs in a case involving unmarried parties, including those proceedings that occur after the entry of a decree for dissolution of marriage or of legal separation, the court shall make every reasonable effort to apportion costs between the parties in a manner that will minimize the costs, fees, and disbursements that shall be borne by the state.

Source: L. 71: R&RE, p. 527, § 1. **C.R.S. 1963:** § 46-1-16. **L. 73:** p. 554, § 8. **L. 93:** Entire section amended, p. 577, § 8, effective July 1. **L. 97:** Entire section R&RE, p. 32, § 1, effective July 1. **L. 98:** (2)(a) amended, p. 1399, § 43, effective February 1, 1999. **L. 2000:** (1) amended, p. 1773, § 3, effective July 1. **L. 2005:** Entire section amended, p. 958, § 2, effective July 1. **L. 2009:** (3) amended, (SB 09-268), ch. 207, p. 941, § 1, effective May 1. **L. 2012:** (1) amended and (2.5) added, (SB 12-056), ch. 108, p. 367, § 1, effective July 1. **L. 2021:** (2) amended, (HB 21-1228), ch. 292, p. 1729, § 3, effective June 22. **L. 2024:** (2.5)(a) amended, (HB 24-1291), ch. 131, p. 469, § 13, effective August 7.

Editor's note: The duties of a special advocate, as formerly set out in subsection (2), were similar to the guidelines for the child and family investigator as set forth in section 14-10-116.5.

Cross references: (1) For the duty of the public defender to represent indigents, see §§ 21-1-103 and 21-1-104.

(2) For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declarations contained in the 2005 act amending this section, see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005. For the legislative declaration in HB 21-1228, see section 1 of chapter 292, Session Laws of Colorado 2021.

ANNOTATION

Law reviews. For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "The Role of the Guardian ad Litem in Custody and Visitation Disputes", see 17 Colo. Law. 1301 (1988). For article, "Custody Cases and the Theory of Parental Alienation Syndrome", see 20 Colo. Law. 53 (1991). For article, "Final Draft of Proposed GAL Standards of Practice", see 22 Colo. Law. 1907 (1993). For article, "Child Custody: The Right Choice at the Right Price", see 26 Colo. Law. 67 (Aug. 1997). For article, "Division of the GAL Role in Domestic Relations Cases", see 27 Colo. Law. 45 (Apr. 1998). For article, "The Role of Guardian ad Litem: Changes in the Wind", see 27 Colo. Law. 73 (Nov. 1998). For article, "Considerations Regarding the Role of the Special Advocate", see 29 Colo. Law. 107 (July 2000). For article, "Special Advocates-Some Fundamentals", see 30 Colo. Law. 39 (June 2001). For article, "Special Advocates-Revised Chief Judge Directive", see 30 Colo. Law. 83 (July 2001). For article, "Use of the Special Advocate as Arbitrator in Domestic Relations Cases", see 31 Colo. Law. 123 (July 2002). For article, "Parenting Time in Divorce", see 31 Colo. Law. 25 (Oct. 2002).

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1997 repeal and reenactment.

No right to participate through chosen counsel. This section does not include a right for a child to participate in custody matters through counsel chosen by the child. In re Hartley, 886 P.2d 665 (Colo. 1994).

Relationship between an attorney and child client differs from relationship between attorney and adult client. In re Hartley, 886 P.2d 665 (Colo. 1994).

Child's attorney acts both as guardian and as advocate, since child is not competent to make legally binding

decisions. In re Hartley, 886 P.2d 665 (Colo. 1994).

Imposition of higher degree of objectivity on a child's attorney. An attorney appointed to represent a child in a custody dispute must present all evidence available concerning the child's best interests. The attorney's role is not simply to parrot the child's expressed wishes. In re Barnthouse, 765 P.2d 610 (Colo. App. 1988).

Trial court did abuse its discretion by denying a motion for appointment of a child representative to present the child's wishes regarding parenting time. A child representative cannot be called as a witness and cannot represent a child's views without question. The attorney is charged with a higher degree of objectivity than when representing an adult. In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001).

Quasi-judicial immunity. A court appointed guardian ad litem in service of the public interest in the welfare of children is entitled to absolute quasi-judicial immunity. Short by Ossterhous v. Short, 730 F. Supp. 1307 (D. Colo. 1990).

Attorney should practice in county of child's residence. If the court, in exercise of its discretion, appointed an attorney to represent these minor children, it is obvious that in terms of client access and the mitigation of expenses, any attorney so appointed should be practicing in the county where the child is residing. Bacher v. District Court, 186 Colo. 314, 527 P.2d 56 (1974).

Trial court's apportionment of costs for child's guardian ad litem upheld where court apportioned costs between mother and father on the basis of the underemployed mother's potential income. Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

Court's order specifying that the special advocate's cost may be later assessed between the parties sufficiently preserved the issue, despite the father's original indication in his motion for appointment of a special advocate that he would pay the special advocate's initial fee. Therefore, the trial court did not abuse its discretion requiring mother to later share in that fee. In re Emerson, 77 P.3d 923 (Colo. App. 2003).

In a custody action, the attorney-client relationship with the child's mother is insufficient as a matter of law to impose a duty from the mother's attorneys to the child as if the child were a client. McGee v. Hyatt Legal Serv., Inc., 813 P.2d 754 (Colo. 1991).

Mere inability of parents to communicate is not a sufficient ground to continue the appointment of the GAL so that he may act as a mediator or facilitator for them beyond the entry of a final decree. In re Finer, 920 P.2d 325 (Colo. App. 1996).

Claim for fees by a child and family investigator (CFI) appointed by a court, which claim the parties agree was in the nature of a "domestic support obligation", is discharged under 11 U.S.C. §§ 101(14A) and 523(a)(5) because the claim was assigned to a nongovernmental third party. The CFI is not one of the enumerated parties under 11 U.S.C. § 101(14A) that can assign

its claim to a nongovernmental entity. In re Cordova, 439 B.R. 756 (Bankr. D. Colo. 2010).

Applied in In re Parker, 41 Colo. App. 287, 584 P.2d 103 (1978); In re Conradson, 43 Colo. App. 432, 604 P.2d 701 (1979); Deeb v. Morris, 14 B.R. 217 (D. Colo. 1981); In re Koltay, 646 P.2d 405 (Colo. App. 1982).

14-10-116.5. Appointment in domestic relations cases - child and family investigator - disclosure - background check - definition.

(1) The court may, upon the motion of either party or upon its own motion, appoint a neutral third person to serve the court as a child and family investigator pursuant to subsection (2) of this section in a domestic relations proceeding that involves allocation of parental responsibilities. The court shall set forth the specific duties of the child and family investigator in a written order of appointment. The same person may not serve as both the legal representative of the child pursuant to section 14-10-116 and as the child and family investigator for the court pursuant to this section. Within seven days after the appointment, the appointed person shall comply with the disclosure provisions of subsection (2.5) of this section.

(2) (a) A child and family investigator appointed by the court from an eligibility roster established pursuant to chief justice directive may be an attorney, a mental health professional, or any other individual with appropriate training and qualifications, as set forth in subsection (2)(f) of this section, and an independent perspective acceptable to the court. The child and family investigator for the court shall investigate and report as specifically directed by the court in the appointment order, taking into consideration the relevant factors for determining the best interests of the child, as described in section 14-10-124. The purpose of the investigation is to assist in determining the best interests of the child, with the child's safety always paramount.

(b) The child and family investigator shall make independent and informed recommendations to the court, in the form of a written report, unless otherwise ordered by the court. In the written report, the child and family investigator shall provide to the court, for the court to consider, options that serve the best interests of the child. The child's wishes, if expressed, must be disclosed in the child and family investigator's written report. The court shall consider the entirety of the report, as well as any testimony by the child and family investigator, the parties, and any other professionals, before adopting any recommendations made by the child and family investigator.

(b.3) (I) The child and family investigator shall include in the written report all information acquired during the investigation concerning domestic violence and child abuse, including:

(A) Child sexual abuse;

(B) Physical abuse;

(C) Emotional abuse;

(D) Coercive control;

(E) Trauma; and

(F) Victim and perpetrator behavioral patterns and relationship dynamics.

(II) The child and family investigator shall include in the written report all information pursuant to subsection (2)(b.3)(I) of this section, regardless of:

(A) The manner in which the information was acquired, including by accusation; evidence of a criminal charge, plea, deferred judgment, or conviction; or evidence of a protection order; or

(B) Who presented the information, including a child.

(b.7) The child and family investigator shall strive to ensure that the written report does not include information or recommendations that are biased, including a bias regarding religion, gender, gender identity, gender expression, sexual orientation, culture, race, ethnicity, national origin, or disability.

(c) The child and family investigator may be called to testify as a court-appointed expert witness regarding the child and family investigator's reports, but only if the court finds that the child and family investigator has the appropriate training and qualifications set forth in subsection (2)(f) of this section. Recommendations should be considered in full context of the report.

(d) In addition to the training requirements and qualifications set forth in subsection (2)(f) of this section, the child and family investigator shall comply with applicable provisions set forth in chief justice directives, and any other practice or ethical standards established by rule, statute, or any licensing board that regulates the child and family investigator. A child and family investigator shall strive to engage in culturally informed and nondiscriminatory practices.

(e) A party wishing to file a complaint related to a person's duties as a child and family investigator shall file such complaint in accordance with the applicable provisions in chief justice directives.

(f) (I) The court shall not appoint a person from the eligibility registry to be a child and family investigator for a case pursuant to this section unless the court finds that the person is qualified as competent by training and experience in, at a minimum, domestic violence and its effects on children, adults, and families; coercive control; child abuse; and child sexual abuse in accordance with section 14-10-127.5. The person's training and experience must be provided by recognized sources with expertise in domestic violence, coercive control, and the traumatic effects of domestic violence in accordance with section 14-10-127.5. Initial and ongoing training must include, at a minimum:

(A) No less than twenty hours of initial training, required pursuant to section 14-10-127.5 (5)(a)(I); and

(B) No less than fifteen hours of ongoing training every five years, required pursuant to section 14-10-127.5 (5)(a)(II).

(II) Notwithstanding subsection (2)(f)(I) of this section, a child and family investigator who completed the initial training required pursuant to section 14-10-127.5 (5)(a)(I) on or before January 1, 2025, is not required to complete supplemental training or the entire training again for the purpose of completing interviewing and forensic report writing training required pursuant to section 14-10-127.5 (5)(b)(IX) and (5)(b)(X).

(2.5) (a) Within seven days after the appointment, the appointed person shall disclose to each party, attorneys or licensed legal paraprofessionals of record, and the court any familial, financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys or licensed legal paraprofessionals of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (2.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(2.7) (a) Prior to performing any duties, a child and family investigator appointed by the court shall provide a written disclosure to each party and each party's attorney, if applicable. At a minimum, the written disclosure must include:

(I) A description of the child and family investigator's specific duties, responsibilities, and limitations, which must be consistent with this article 10;

(II) An acknowledgment that the child and family investigator will comply with applicable state and federal laws in acting as a child and family investigator, including all laws pursuant to this article 10;

(III) An acknowledgment that the child and family investigator is compliant with training requirements pursuant to section 14-10-127.5 (5); and

(IV) Information on filing a complaint pursuant to subsection (2)(e) of this section and with the state court administrator regarding the child and family court investigator pursuant to section 13-3-101 (3.5), including the current contact information for the state court administrator.

(b) Pursuant to a chief justice directive, the court may cap a child and family investigator's fees and allocate responsibility for costs.

(3) (a) The court shall enter an order for costs, fees, and disbursements in favor of the child and family investigator appointed pursuant to subsection (1) of this section. The order must be made against any or all of the parties; except that, if the responsible parties are determined to be indigent, the costs, fees, and disbursements are borne by the state.

(b) In a proceeding for dissolution of marriage or legal separation, prior to the entry of a decree of dissolution or legal separation, the court shall not enter an order requiring the state to bear the costs, fees, or disbursements related to the appointment of a child and family investigator unless both parties are determined to be indigent after considering the combined income and assets of the parties.

(c) If the appointment of a child and family investigator occurs in a case involving unmarried parties, including those proceedings that occur after the entry of a decree for dissolution of marriage or of legal separation, the court shall make every reasonable effort to apportion costs between the parties in a manner that will minimize the costs, fees, and disbursements that shall be borne by the state.

(4) (a) Prior to being appointed as a child and family investigator, the person shall submit a complete set of his or her fingerprints to the judicial department for the purposes of a background check, and the judicial department shall determine based on the background check whether the person is suitable to act as a child and family investigator. The department shall forward such fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing the records of the Colorado bureau of investigation and the federal bureau of investigation. The department is the authorized agency to receive information regarding the result of a national fingerprint-based criminal history record check.

(b) When the results of a fingerprint-based criminal history record check of a person performed pursuant to this section reveal a record of arrest without a disposition, the department shall require that applicant to submit to a name-based judicial record check, as defined in section 22-2-119.3 (6)(d). Upon request of the department pursuant to this section, the applicant shall provide a name-based judicial record check.

(c) The applicant shall pay the cost associated with the background check.

(5) As used in this section, unless the context otherwise requires, "coercive control" means a pattern of threatening, humiliating, or intimidating actions, including assaults or other abuse, that is used to harm, punish, or frighten an individual. "Coercive control" includes a pattern of behavior that takes away the individual's liberty or freedom and strips away the individual's sense of self, including the individual's bodily integrity and human rights. "Coercive control" includes isolating the individual from support, exploiting the individual, depriving the individual

of independence, and regulating the individual's everyday behavior. "Coercive control" includes, but is not limited to, any of the following:

(a) Isolating the individual from friends and family;

(b) Monitoring, surveilling, regulating, or controlling the individual's, or the individual's child's or relative's, finances, economic resources, or access to services;

(c) Monitoring, surveilling, regulating, or controlling the individual's, or the individual's child's or relative's, activities, communications, or movements, including through technology;

(d) Name-calling, degrading, or demeaning the individual, or the individual's child or relative, on a frequent basis;

(e) Threatening to harm or kill the individual or the individual's child or relative, including wearing, accessing, displaying, using, or cleaning a weapon in an intimidating or threatening manner;

(f) Threatening to commit suicide or otherwise harm one's own person, when used as a method of coercion, control, punishment, intimidation, or retaliation against the person;

(g) Threatening to harm or kill an animal with which the individual or the individual's child or relative has an emotional bond;

(h) Threatening to publish the individual's, or the individual's child's or relative's, sensitive personal information, including sexually explicit material, or make reports to the police or authorities;

(i) Damaging the individual's, or the individual's child's or relative's, property or household goods;

(j) Threatening the individual, or the individual's child or relative, with deportation or contacting authorities based on perceived or actual immigration status, withholding essential documents required for immigration, or threatening to withdraw or interfere with an active immigration application or process; or

(k) Forcing the individual, or the individual's child or relative, to take part in criminal activities or child abuse.

Source: L. 2005: Entire section added, p. 960, § 4, effective July 1. **L. 2009:** (3) amended, (SB 09-268), ch. 207, p. 942, § 2, effective May 1. **L. 2012:** (1) amended and (2.5) added, (SB 12-056), ch. 108, p. 368, § 2, effective July 1. **L. 2014:** (4) added, (SB 14-027), ch. 146, p. 496, § 2, effective May 2. **L. 2019:** (4)(b) amended, (HB 19-1166), ch. 125, p. 544, § 18, effective April 18. **L. 2021:** (2) and (3)(a) amended, (HB 21-1228), ch. 292, p. 1730, § 4, effective June 22. **L. 2022:** (4)(b) amended, (HB 22-1270), ch. 114, p. 518, § 19, effective April 21. **L. 2023:** (2)(f)

amended, (HB 23-1178), ch. 266, p. 1583, § 2, effective May 25. **L. 2024:** (2)(b) and (2)(f) amended and (2)(b.3), (2)(b.7), (2.7), and (5) added, (HB 24-1350), ch. 344, p. 2333, § 2, effective August 7; (2.5)(a) amended, (HB 24-1291), ch. 131, p. 469, § 14, effective August 7. **L. 2025:** (2)(f)(I)(B) amended, (SB 25-300), ch. 428, p. 2442, § 14, effective August 6.

Cross references: For the legislative declarations contained in the 2005 act enacting this section, see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005. For the legislative declaration in HB 21-1228, see section 1 of chapter 292, Session Laws of Colorado 2021. For the legislative declaration in HB 24-1350, see section 1 of chapter 344, Session Laws of Colorado 2024.

ANNOTATION

Law reviews. For article, "Child and Family Investigator Standards in Colorado — Part I", see 35 Colo. Law. 61 (July 2006). For article, "Child and Family Investigator Standards in Colorado — Part II", see 35 Colo. Law. 75 (Aug. 2006). For article, "CFIs and APR Evaluators — Similarities and Differences", see 37 Colo. Law. 31 (Jan. 2008).

14-10-117. Payment of maintenance or child support.

(1) Upon its own motion or upon motion of either party, the court may at any time order that maintenance or child support payments be made to the clerk of the court or, if the executive director of the department of human services has notified the state court administrator that the judicial district issuing the order is ready to participate in the family support registry pursuant to section 26-13-114 (5), C.R.S., and, for payments for maintenance obligations, the family support registry is ready to accept maintenance payments, through the family support registry, as trustee, for remittance to the person entitled to receive the payments. The court may not order payments to be made to the clerk of the court once payments may be made through the family support registry. The payments shall be due on a certain date or dates of each month. If the support payments are required under this section, title 19, C.R.S., or section 26-13-114 (1), C.R.S., to be made through the family support registry, the court shall order that payments be made through the registry in accordance with the procedures specified in section 26-13-114, C.R.S.

(2) The clerk of the court shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order for those payments he or she receives through the court registry.

(3) If payments are to be made through the family support registry, the parties affected by the order shall inform the family support registry, and if payments are to be made through the court

registry, the parties affected by the order shall inform the clerk of the court of any change of address or of other conditions that may affect the administration of the order.

(4) (Deleted by amendment, L. 98, p. 756, § 6, effective July 1, 1998.)

(5) and (6) Repealed.

(7) In cases in which a party is ordered to make payments through the court registry, upon receipt of a verified notice of a support obligation assigned to the state, the clerk of the court shall, without further action by the court, pay the support to the county child support enforcement unit rather than to the obligee. When the state no longer has authorization to receive any support payments, the county child support enforcement unit shall notify the clerk of the court to stop sending the support payments to the county and to send the support payments directly to the obligee.

Source: L. 71: R&RE, p. 527, § 1. **C.R.S. 1963:** § 46-1-17. **L. 77:** (4) amended, p. 824, § 1, effective May 24. **L. 86:** (1) amended, p. 724, § 2, effective July 1. **L. 88:** (7) added, p. 632, § 6, effective July 1. **L. 90:** (1) amended, p. 1414, § 13, effective June 8. **L. 98:** (1), (2), (3), (4), and (7) amended, p. 756, § 6, effective July 1. **L. 99:** (1) amended, p. 1091, § 11, effective July 1. **L. 2005:** (5) and (6) repealed, p. 498, § 1, effective August 8.

ANNOTATION

Applied in Adams County Dept. of Soc. Servs. v. Frederick, 44 Colo. App. 378, 613 P.2d 642 (1980).

14-10-118. Enforcement of orders.

(1) Repealed.

(2) The court has the power to require security to be given to ensure enforcement of its orders, in addition to other methods of enforcing court orders prescribed by statute or by the Colorado rules of civil procedure on or after July 6, 1973.

Source: L. 71: R&RE, p. 528, § 1. **C.R.S. 1963:** § 46-1-18. **L. 73:** p. 554, § 9. **L. 81:** (1) amended, p. 909, § 3, effective June 8. **L. 82:** (1) amended, p. 280, § 3, effective April 7. **L. 87:** (1) amended, p. 595, § 25, effective July 10. **L. 92:** (1) amended, p. 577, § 5, effective July 1. **L.**

93: (1) amended, p. 1871, § 5, effective June 6. **L. 94:** (1) amended, p. 1252, § 6, effective July 1. **L. 96:** (1) repealed, p. 598, § 8, effective July 1.

ANNOTATION

I. General Consideration.

II. Security for Enforcement of Order.

III. Enforcement by Execution.

IV. Enforcement by Contempt.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Enforcement of Divorce Decrees in Colorado", see 21 Rocky Mt. L. Rev. 364 (1949).

Annotator's note. Since § 14-10-118 is similar to repealed § 46-1-5 (3), C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The early law allowed the court to require husband to give security and permitted enforcement of decree in any manner consistent with rules and practice of court. Johnson v. Johnson, 22 Colo. 20, 43 P. 130 (1895).

Section provides only for issuance of temporary injunction. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

C.R.C.P. 65 (h) grants authority to courts in dissolution proceedings to make prohibitive or mandatory orders as may be just. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

Order to direct employer to withhold payments. This section does not preclude an order to the person obligated to pay support or maintenance to direct an employer to withhold child support or maintenance payments as they become due. In re McCue, 645 P.2d 854 (Colo. App. 1982).

Enforcement of agreement which did not specify dollar amount for child support is not modification of agreement. Agreement established duty on father to pay child support and it is within the discretion of the court to determine a reasonably necessary dollar amount. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

Attorney fees. An award of attorney fees may not be enforced by an assignment under this section. In re McCue, 645 P.2d 854 (Colo. App. 1982).

II. SECURITY FOR ENFORCEMENT OF ORDER.

The general assembly authorized a court to require security for the payment of alimony. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Security required by court must be reasonable in both amount and duration. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

If the amount ordered as security is greatly in excess of the amount actually owed, it is not security, but is confiscatory.

Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955); In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

It was held that the supreme court was fortified in limiting the court's authority to require security for the payment of alimony by reason of the fact that with respect to orders for the payment of sums required for the support and maintenance and education of the minor children of the parties, the general assembly had wisely enacted § 14-6-101 which made it a felony for a husband to neglect, fail or refuse to provide reasonable support and maintenance for his minor children under the age of 16 years, and a father who thus neglected to discharge his natural, as well as his statutory, duty to his children "shall be deemed guilty of a felony", and may be imprisoned for so doing unless he provided a bond conditioned upon the support of such children. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

The writ of ne exeat was not a form of security for the payment of alimony within the meaning of this section. Price v. Price, 80 Colo. 158, 249 P. 648 (1926).

Property lien authorized. A court may impose a lien on a party's property in order to enforce an agreement where the party has threatened to dispose of the property and put himself beyond the court's jurisdiction. In re Valley, 633 P.2d 1104 (Colo. App. 1981).

Amount and duration of security held unreasonable where court required replacement of any security used for payment of maintenance, and amount of security equaled the amount of maintenance awarded, and where there was no competent evidence supporting the amount required to be set aside as security for the payment of child support and health insurance. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

III. ENFORCEMENT BY EXECUTION.

Mature installments of alimony under a divorce decree were final judgments, the payment of which the court could enforce by execution or imprisonment. Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Paul v. Marty, 72 Colo. 399, 211 P. 667 (1922); Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926); Burke v. Burke, 127 Colo. 257, 255 P.2d 740 (1953); Beardshear v. Beardshear, 143 Colo. 293, 352 P.2d 969 (1960).

Child support payment becomes money judgment when it matures. A child support payment under a decree for dissolution of marriage becomes a money judgment when it matures and may be enforced as other judgments without further action by the court. In re McCue, 645 P.2d 854 (Colo. App. 1982).

The judgments were enforceable during the entire period of the statute of limitations. Hauck v. Schuck, 143 Colo. 324, 353 P.2d 79 (1960).

Action by a court, in the form of an order of entry of judgment, is a mandatory prerequisite to enforcement of child support obligations by means other than remedial contempt proceedings. People in Interest of G.S., 678 P.2d 1033 (Colo. App. 1983).

A husband was not prejudiced by the entering of a judgment for the correct total amount due under a divorce decree,

as each installment which matures under a decree which had not been modified became a judgment debt similar to any other judgment for money. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958).

A trial court had power, without previous notice to a husband, to enter judgment for any total arrears so that execution might issue thereon and the proceedings available to any judgment creditor could thereby be made available to the wife. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958).

The trial court exceeded its jurisdiction in an order limiting the wife's right to collect her judgment on an arrearage, because the judgment entered was no different than any other money judgment, and the wife was entitled to levy execution on her judgment in the same manner as any other judgment creditor was entitled to collect on a judgment, and no authority empowered the trial court to enter an order authorizing a judgment creditor to parcel out payments in liquidating a judgment. Green v. Green, 168 Colo. 303, 451 P.2d 282 (1969).

Each installment of child support maturing under a decree which had not been modified became a judgment debt similar to any other judgment for money and retroactive modifications thereof could not be effected. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958); Drazich v. Drazich, 153 Colo. 218, 385 P.2d 259 (1963); Talbot v. Talbot, 155 Colo. 350, 394 P.2d 607 (1964).

Since past due installments for support money under a valid order constituted a debt and were in and of themselves judgment, a trial court had no power or authority to cancel such payments. Carey v. Carey, 29 Colo. App. 328, 486 P.2d 38 (1971).

Since accrued installments of support or alimony were final judgments, the appropriate statute of limitations was that which pertained to judgments. Hauck v. Schuck, 143 Colo. 324, 353 P.2d 79 (1960).

The defense of laches was not applicable in an action to enforce accrued child support payments ordered in a divorce action; it was applicable only where the attempted enforcement was by contempt proceedings. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958); Hauck v. Schuck, 143 Colo. 324, 353 P.2d 79 (1960); Carey v. Carey, 29 Colo. App. 328, 486 P.2d 38 (1971).

A husband in default in the payment of support money was not entitled to notice of the entry of a judgment thereon. Jenner v. Jenner, 138 Colo. 149, 330 P.2d 544 (1958).

Assignment of wages is proper. An assignment of wages to satisfy a judgment for child support arrearages is proper. In re McCue, 645 P.2d 854 (Colo. App. 1982).

Order is analogous to garnishment. An order entered pursuant to subsection (1) is analogous to a garnishment and should be governed by applicable limitations on garnishment. In re McCue, 645 P.2d 854 (Colo. App. 1982).

IV. ENFORCEMENT BY CONTEMPT.

A court may exercise its power of contempt to enforce orders entered in a dissolution of marriage proceeding. Gonzales v. District Court, 629 P. 2d 1074 (Colo. 1981).

Contempt not separate proceeding. Contempt for failure to comply with the court's orders is not a separate proceeding but a continuance of the dissolution action. Gonzales v. District Court, 629 P.2d 1074 (Colo. 1981).

The power to punish for contempt should be used with caution after due deliberation, and only when necessary to prevent actual, direct obstruction of, or interference with, the administration of justice. Engleman v. Engleman, 145 Colo. 299, 358 P.2d 864 (1961).

When considering whether a party is in contempt for failure to pay maintenance, a court cannot base a finding that the party has the present ability to pay solely on a conclusion that the party is voluntarily underemployed. Past or potential future ability to pay is not the proper legal question. The court can, however, consider the party's voluntary underemployment as evidence of a willful violation of the support order for punitive purposes. In re Sheehan, 2022 COA 29, 511 P.3d 708.

Absent any procedural attempt to correct an order for support payments under this section, based upon its being founded in mistake, or absent action designed to seek modification of the order, the trial court could only determine whether the husband was in contempt for failure to comply with the order. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

Moreover, a defendant could not be held in contempt for failure to pay alimony where it clearly appeared that he was unable to perform the acts required of him by the support order. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

A defendant could not be imprisoned for failure to pay alimony where it clearly and satisfactorily appeared that he was absolutely unable to perform the acts required of him at the time the order of commitment was made. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

Where a divorced wife for a long period of time supported the minor child of herself and divorced husband without receiving or claiming the alimony adjudged her for its support, there being no sufficient cause shown for her delay in attempting to enforce payment, the doctrine of laches applied, and a judgment of contempt against defendant for failure to pay the alimony was reversed. Price v. Price, 80 Colo. 158, 249 P. 648 (1926).

The contention of defendant that an order abating the proceedings until he complied with an order of court for the payment of alimony deprived him of his right to make a defense, and that imprisonment for failure to comply with the order was in violation of his constitutional rights, was overruled. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

14-10-119. Attorney and licensed legal paraprofessional fees.

The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding pursuant to this article 10 and for attorney fees or licensed legal paraprofessional fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney or the licensed legal paraprofessional, who may enforce the order in the attorney's or the licensed legal paraprofessional's name.

Source: L. 71: R&RE, p. 528, § 1. **C.R.S. 1963:** § 46-1-19. **L. 2024:** Entire section amended, (HB 24-1291), ch. 131, p. 469, § 15, effective August 7.

Cross references: For allowance of attorney fees generally, see C.R.C.P. 3(a), 30(g), 37(a), 37(c), 56(g), and 107(d); for awarding of attorney fees in civil actions generally, see § 13-17-102.

ANNOTATION

I. General Consideration.

III. Antenuptial Agreements.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Payment of the Wife's Attorney Fee in Colorado Divorce Cases", see 34 Rocky Mt. L. Rev. 481 (1962). For article, "Attorney's Fees", see 11 Colo. Law. 411 (1982). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Attorney Fees at Temporary Orders: Reality or Illusion?", see 24 Colo. Law. 2185 (1995).

Annotator's note. Since § 14-10-119 is similar to repealed § 46-1-5 (1)(e), C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The former divorce act was silent on the subject of counsel fees and suit money, but in discussing the power of the district court to make allowance for these items, the supreme court held that notwithstanding the silence of the statute with respect to these matters, it had the authority to order such allowances because its jurisdiction as to such items did not depend upon the statute. Pleyte v. Pleyte, 15 Colo. 125, 25 P. 25 (1890); Hart v. Hart, 31 Colo. 333, 73 P. 35 (1903).

Attorney fees are not a non-challengeable marital debt under § 14-10-113. In re Rieger, 827 P.2d 625 (Colo. App. 1992).

Debts incurred during the marriage but which are dissolution litigation costs should be allocated pursuant to this section, not § 14-10-113. In re Burford, 26 P.3d 550 (Colo. App. 2001).

Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

This section inapplicable to wife's independent action seeking to reopen dissolution decree. In re Burns, 717 P.2d 991 (Colo. App. 1985).

Attorney fees may be awarded based on the parties' financial circumstances at the time a decree is entered, including a post-decree motion, in a dissolution of marriage case. In re Martin, 2021 COA 101, 497 P.3d 1063.

Intent to equalize status. The provision in the dissolution of marriage statute which sanctions the assessment of attorney fees was intended to equalize the status of the parties to the dissolution proceeding. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

The purpose of allowing the court discretion as to attorney fees is to equalize the status of the parties by enabling the court to ensure that neither party is forced to suffer unduly as a consequence of the termination of the marriage. In re Mitchell, 195 Colo. 399, 579 P.2d 613 (1978); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

This section is designed to allow the court to apportion costs and fees equitably between the parties. In re Nichols, 38 Colo. App. 82, 553 P.2d 77 (1976); In re Hauger, 679 P.2d 604 (Colo. App. 1984).

This section empowers the trial court to equitably apportion costs and fees between parties based on relative ability to pay. Section 5-12-106 (1)(a) mandates interest on such an order and C.A.R. 37 specifies the trial court's authority to mandate interest. In re Gutfreund, 148 P.3d 136 (Colo. 2006).

Attorney fees are to be awarded primarily to equalize the financial positions of the parties. In re Trout, 897 P.2d 838 (Colo. App. 1994); In re Bregar, 952 P.2d 783 (Colo. App. 1997).

Primary purpose of award of attorney fees under this section is to equalize the parties' financial positions. Although mother deceived father by failing to disclose disability benefits received on behalf of the minor child, the court reduced father's child support arrearages in payment of father's attorney fees to punish mother without making the proper findings pursuant to this section for an award of attorney fees and without considering the policies relating to child support and the best interests of the child before reducing child support arrearages. In re Anthony-Guillar, 207 P.3d 934 (Colo. App. 2009).

The principle that in maintenance and divorce proceedings a wife had a right to be placed on an equal footing with her

husband was particularly applicable where the facts show that the wife's absence from the state is due to being unable to afford the expenses of litigation without her fault, and where she may have meritorious claims difficult to pursue in absentia. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

Fairness in domestic relations cases seeks to place the wife on a plane of equality with the husband in such litigation by allowing her suit money and attorney fees out of the husband's estate or earnings, where such appears necessary to bring about such parity, but such allowance will not be granted unless it is shown that the wife is destitute in whole or in part of the means necessary to maintain herself and carry on the litigation, and a concomitant to this condition for relief is a showing of the husband's present ability to pay such allowance. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961); Peercy v. Peercy, 154 Colo. 575, 392 P.2d 609 (1964).

Provision in agreement granting parties remedies at law and in equity for enforcement of agreement gave court jurisdiction to hear motion for attorney fees. In re Meisner, 807 P.2d 1205 (Colo. App. 1990).

By the allowance of attorney fees, full and complete adjudication of all claims in the one action will result; otherwise, a multiplicity of suits will ensue, forcing the attorney to sue the wife, and she in turn to join the husband under his indemnity agreement. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961).

The power of the court to allow attorney fees to the wife for the purpose of prosecuting her suit or defending the husband's suit was an incident to the court's powers to award alimony and divide property. Krall v. Krall, 31 Colo. App. 538, 504 P.2d 681 (1972).

If there is a wide disparity in the parties' earning capacities, an award of attorney fees is permissible. In re Renier, 854 P.2d 1382 (Colo. App. 1993).

An allowance for counsel fees, being for the benefit of the wife to put her in a position to litigate on the same footing as the husband, was made on the same basis as alimony or other forms of support by the husband to the wife. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

Trial court has the authority to advance prospective fees and costs during the litigation of a dissolution of marriage action if necessary to diminish the advantage that one spouse may have over the other in litigation because of their respective financial circumstances. In re Rose, 134 P.3d 559 (Colo. App. 2006).

The purpose of an award of attorney fees is to apportion equitably the costs of dissolution, based on the current resources of the parties. In re Renier, 854 P.2d 1382 (Colo. App. 1993); In re Foottit, 903 P.2d 1209 (Colo. App. 1995); In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Waiver of attorney fee provision in an antenuptial agreement is voidable on the grounds of unconscionability. In re Dechant, 867 P.2d 193 (Colo. App. 1993) (decided

under law in effect prior to amendment effective July 1, 1986).

The allowance to a wife was based upon the same underlying thought as is an allowance to her to buy food, shelter, and clothing. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

Payment of attorney fees is a substantive aspect of a dissolution action, and permanent orders are not final until the court addresses that issue. Unlike statutory and contractual fee-shifting provisions that premise the award of attorney fees on the merits of the claims and a determination of who prevailed in the action, the apportionment of attorney fees in a dissolution action is inextricably intertwined with the other issues to be resolved by the court in determining permanent orders. In re Hill, 166 P.3d 269 (Colo. App. 2007).

For purposes of attorney-fees award in dissolution action, trial court should consider parties' financial resources as of the dissolution decree issuance date or the disposition of property hearing date, if the property hearing precedes the decree date. Trial court did not err in issuing a protective order prohibiting further discovery of husband's financial resources for the period after the entry of decree and property disposition and prior to attorney fees hearing scheduled six months after dissolution hearing. In re de Koning, 2016 CO 2, 364 P.3d 494.

Attorney fee request sought in a post-decree modification motion is no longer an integral and substantive part of the proceeding but is ancillary to the motion and may be decided independently of the modification motion. The underlying motion, once decided, is a final appealable order, notwithstanding the unresolved request for attorney fees. In re Nelson, 2012 COA 205, 292 P.3d 1214.

An order allocating parental responsibilities that is unrelated to a dissolution of marriage is final and appealable once the intertwined issues of parental responsibilities and child support are resolved. An unresolved request for attorney fees under this section does not prevent finality. In re W.P.A.S., 2026 COA 4, 586 P.3d 1112.

Where an attorney withdrew as counsel for the wife in a divorce action and his motion for fees was ordered held in abeyance until final settlement of the action, a subsequent property settlement agreement providing that each of the parties would pay his own counsel fees was not binding on the counsel if services rendered prior to withdrawal entitled him to additional fees. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

Withdrawal of wife's counsel before determination of attorney fees issue cannot be construed as a waiver by wife regarding payment of the fees. In re Hill, 166 P.3d 269 (Colo. App. 2007).

Reconciliation did not deprive the court of jurisdiction to award attorney fees. Pacheco v. Pacheco, 156 Colo. 356, 398 P.2d 978 (1965).

The trial court was in error when it concluded that it was without jurisdiction

to grant an allowance of attorney fees. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961).

On review of an order adjudging a defendant in a divorce case guilty of contempt for failure to pay alimony, under the facts disclosed, it was held that the trial court had jurisdiction to make an order allowing counsel fees to the wife for the hearing on review. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926); Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

No violation of involuntary servitude proscription. The assertion in a divorce that one may be forced to work for the benefit of the other spouse's attorney, despite the fact that the burdened party is without "fault", cannot be equated with slavery or involuntary servitude within the meaning of § 26 of art. II, Colo. Const. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Because the dissolution of marriage statute, in an effort to eliminate the inequities resulting from the termination of the relationship, provides for attorney fees, as well as maintenance and child support, when the relative status of the parties involved indicates the need of such, it does not constitute involuntary servitude. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Applied in In re Deines, 44 Colo. App. 98, 608 P.2d 375 (1980); Gann v. Gann, 616 P.2d 1000 (Colo. App. 1980); In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980); In re Kiefer, 738 P.2d 54 (Colo. App. 1987).

II. AWARD OF ATTORNEY FEES.

A. Right and Need for Award.

B. Amount.

C. Discretion of Court.

D. Enforcement.

E. Modification and Scope of Review.

A. Right and Need for Award.

When a husband desires the luxury of a divorce from his wife, he should be compelled to pay the expenses of his wife pending the litigation, and, in cases where the wife is a nonresident of the state, if she desires to come to the state to make a defense, she should be given an opportunity to do so, and the courts should require plaintiff to deposit in court a sum sufficient to pay the expenses of the wife from her home to the state of Colorado, to be paid to her upon her arrival here within a reasonable time, with such additional sum as may be necessary to properly defend the suit, and in case the plaintiff is unable to make reasonable provision for his wife during the pendency of the suit, the suit should be abated until he is able to do so. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

On the question of allowance of attorney fees for the wife, the court should take into consideration, among other things, the financial condition of the parties, their income, and necessities of the case. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

In awarding fees and costs under this section, the district court must consider the relative financial status of each party by making findings concerning their relative incomes, assets, and liabilities. In

re Aldrich, 945 P.2d 1370 (Colo. 1997); In re Chalat, 94 P.3d 1191 (Colo. App. 2004), aff'd in part, rev'd in part on other grounds, 112 P.3d 47 (Colo. 2005).

The financial resources of the husband were greater than those of the wife and that disparity supports the order for attorney fees. In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

An order providing for the father to pay attorney fees for the mother could not stand in view of the favorable financial condition of the mother, since the purpose of providing an allowance for attorney fees is to place the wife on an equal footing with the husband. Andrews v. Andrews, 161 Colo. 529, 423 P.2d 573 (1967).

Where defendant initiated the circumstances making attorney fees necessary, an allowance to plaintiff therefor was proper. Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960).

Where a wife's estate is small, she is not required to impair her capital in order to litigate properly her side of the controversy, especially is this true where the value of the assets of the parties are grossly disproportionate. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Additional expert testimony was unnecessary to support award of attorney fees to mother in child support modification action where testimony of the mother, her attorney, and the attorney's affidavit adequately supported the award. In re Pollock, 881 P.2d 470 (Colo. App. 1994).

Husband is not liable for deceased wife's attorney fees where the wife dies during the pendency of the action and prior to the entry of an order making permanent property disposition. In re Benjamin, 740 P.2d 532 (Colo. App. 1987).

A spouse who accepts maintenance payments or an attorney fees award is not precluded from appealing such order. In re Lee, 781 P.2d 102 (Colo. App. 1989).

Plaintiff not entitled to attorney fees under this section when the statutory basis for grandparents' visitation request was § 19-1-117. Additionally, because the attorney fee provision contained in § 19-1-117 (3) was the more specific provision, it should control. In re Gallegos, 251 P.3d 1086 (Colo. App. 2010).

B. Amount.

This section cannot be construed as a general grant of authority to determine the amount of fees to which an attorney is entitled. In re Nichols, 38 Colo. App. 82, 553 P.2d 77 (1976); In re Shapard, 129 P.3d 1007 (Colo. App. 2004).

The trial court's duty is to determine what reasonable fee a party should be responsible for under all the circumstances of the case. The effect of an order granting fees to a party less than the amount actually billed by the attorney is not to modify the fee contract between the attorney and client. In re Seely, 689 P.2d 1154 (Colo. App. 1984); In re Bowles, 916 P.2d 615 (Colo. App. 1995).

The lodestar method should be applied when determining reasonable attorney fees

in the domestic relations context. In re Aragon, 2019 COA 76, 444 P.3d 837.

Enforcement of attorney's charging lien raises separate issues. Nothing in this section allows a spouse's attorney, as lienholder or otherwise, to litigate a claim for fees against the other spouse. In re Shapard, 129 P.3d 1007 (Colo. App. 2004).

Predicate to an award of attorney fees. There must be proof of reasonableness premised upon considerations of the amount of the fees charged, the time spent by the attorney, the services rendered, and the prevailing rates in the community. In re Sarvis, 695 P.2d 772 (Colo. App. 1984).

On application for allowance of attorney fees in a divorce suit, it may be that no evidence is required as to the amount to be allowed, where all the facts are within the knowledge of the court. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

Where the same judge had heard various aspects of this case over a period of several months and was thoroughly familiar with the file and with the financial resources of the parties, it was not necessary that evidence be presented as to the current situation unless there was a claim of change of circumstances. In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977).

C. Discretion of Court.

Before or after the issuance of a decree in a divorce action, the trial court could make such orders as the circumstances warrant for suit money, court costs, and attorney fees. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

The allowance of attorney fees and suit money is within the sound discretion of the trial court, and unless that discretion has been abused, the allowance made or denied will not be disturbed. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959); Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962); Berglund v. Berglund, 28 Colo. App. 382, 474 P.2d 800 (1970); Krall v. Krall, 31 Colo. App. 538, 504 P.2d 681 (1972); In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977); In re DaFoe, 677 P.2d 426 (Colo. App. 1983); In re Connell, 831 P.2d 913 (Colo. App. 1992); In re LeBlanc, 944 P.2d 686 (Colo. App. 1997); In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

This section confers significant discretion on the trial court, and permits consideration of the financial resources of both parties, so that where the husband has limited income and substantial financial obligations including payment of child support and the children's attorney fees, there is no abuse of discretion in the court's denial of the wife's motion for attorney fees. In re Parker, 41 Colo. App. 287, 584 P.2d 103 (1978); In re Rieger, 827 P.2d 625 (Colo. App. 1992).

The awarding of attorney fees is discretionary with the trial court and will not be disturbed on review if supported by the evidence. In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975); In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

An award of attorney fees in subsequent litigation to enforce a separation agreement

is within the trial court's discretion. Baker v. Baker, 667 P.2d 767 (Colo. App. 1983).

Notwithstanding the trial court's discretion in the allowance of fees, such discretion is a judicial one, and requires and presupposes a hearing together with a presentation of facts upon which to base the exercise of such discretion. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961).

Court must conduct a hearing, on the reasonableness of an award of attorney fees if a party requests a hearing. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

But a court need not conduct a hearing sua sponte if a hearing is not timely requested by a party. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

This section does not limit the authority of the trial court to award counsel fees only as against a defendant, but such fees may be assessed against either or both of the parties. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

It is within the trial court's discretion to award only a portion of the attorney fees. In re Schwaab, 794 P.2d 1112 (Colo. App. 1990); In re Connell, 831 P.2d 913 (Colo. App. 1992).

Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its attorney fee award, since in making an attorney fee award, the court must consider the financial resources of both parties. In re Balanson, 25 P.3d 28 (Colo. 2001).

On a final property settlement, if it developed that the wife had ample assets of her own to pay for the services of her attorneys, then any additional fees, including the services of counsel on a writ of error and other related matters, may have or may not have been awarded against the husband as the court determines. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

The trial court erred in not affording the plaintiff an opportunity to present evidence as to the services rendered by her attorneys, and the reasonable value of such services. Hoffman v. Hoffman, 167 Colo. 432, 447 P.2d 1005 (1968).

The trial court in a separate maintenance action had no authority to award counsel fees to the wife in a divorce action instituted by the husband and pending in another state, such fees being a matter for determination by the courts of the state where the divorce action is pending. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959).

Order for defendant to pay portion of plaintiff's attorney fees upheld. Krall v. Krall, 31 Colo. App. 538, 504 P.2d 681 (1972).

Abuse of discretion. Where the wife not only earned more than husband, but had assets worth substantially more than husband's, and, moreover, initiated the proceedings making attorney fees necessary, the trial court abused its discretion in awarding attorney fees to wife. In re Corbin, 42 Colo. App. 200, 591 P.2d 1046 (1979).

Because family owned corporations were not parties to the dissolution action and because wife instituted post-decree proceedings that were groundless for lack of jurisdiction over the corporations against which relief was sought, court abused its discretion in imposing attorney fees against corporation and divorced husband. In re Noon, 735 P.2d 884 (Colo. App. 1986).

Where the trial court's property division order was an attempt to place the wife in the same financial position insofar as her separate property was concerned as she had been prior to the two-year-old marriage, but after the wife deducted her attorney fees, she was left with less than she had when she was married, the supreme court held that the portion of that order requiring the wife to pay her attorney fees constituted an abuse of discretion. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Denial of wife's motion for expenses held abuse of discretion. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

There is no abuse of discretion where trial court does not take into account the resources of wife's new husband in concluding that she is entitled to attorney fees. In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979).

Where wife is unemployed and has no income, there is no abuse of discretion in an order for partial payment of her attorney fees. In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979).

Where husband was temporarily unemployed at the time of the hearing and wife's assets were substantially greater than husband's, trial court did not abuse its discretion in denying wife's request for attorney fees. In re McKendry, 735 P.2d 908 (Colo. App. 1986).

Trial court did not err in awarding attorneys fees in a nonparent custody proceeding authorized by § 14-10-123. The award was neither punitive nor inequitable and did not constitute an abuse of discretion. In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001).

Where the agreement which provided that each party bear its own legal fees did not contemplate efforts to change the agreement after it was finally approved by the court and incorporated into the decree of divorce, the award of attorney fees by the trial court was within its discretion. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

Because the issue as to whether special separation benefits received by former husband upon his voluntary discharge from the Air Force constituted marital property was one of first impression, trial court did not abuse its discretion in denying wife attorney fees. In re McElroy, 905 P.2d 1016 (Colo. App. 1995).

Award of attorney fees to attorney appearing on pro bono basis is allowable under statute. In re Swink, 807 P.2d 1245 (Colo. App. 1991).

Trial court has wide discretion in awarding fees and costs and is not bound by the general provisions for recovery of costs for a prevailing party. In re Pickering, 967 P.2d 164 (Colo. App. 1997).

Trial court considering the award of attorney fees under this section must consider not only the reasonableness of the charge per hour but also the necessity for incurring the hours billed. In re Rieger, 827 P.2d 625 (Colo. App. 1992).

Trial court erred in denying husband's request for hearing on the reasonableness and necessity of wife's attorney fees and other costs. In re Mockelmann, 944 P.2d 670 (Colo. App. 1997).

This section allows for the award of attorney fees in subsequent proceedings even though the spouse was denied attorney fees in the original dissolution proceeding. Thus, it was an abuse of discretion for the court to deny attorney fees on a subsequent motion where the denial was based on the denial of fees in the original proceeding. In re Plesich, 881 P.2d 379 (Colo. App. 1994).

Trial court may review a waiver of attorney fees in a marital agreement for unconscionability at the time of dissolution, because an unconscionable waiver violates the public policy interest behind protecting spouses and thus is not a valid contract term under § 14-2-304. In re Ikeler, 161 P.3d 663 (Colo. 2007).

D. Enforcement.

The allowance to a wife was enforceable by contempt. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

An order for payment of counsel fees decreed by the court to a wife in a divorce action was not a debt dischargeable in bankruptcy. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

Award of attorney fees may not be enforced by an assignment under § 14-10-118. In re McCue, 645 P.2d 854 (Colo. App. 1982).

E. Modification and Scope of Review.

Reconsideration of property division to correct error unnecessary absent contest. When neither party contests a trial court's division of property it is not necessary that the court be able to reconsider the property division in order to correct error in the provisions for maintenance and attorney fees. In re Jones, 627 P.2d 248 (Colo. 1981).

Despite a disparity of income, when the court found that the spouse receiving maintenance had considerable assets and ordered her to pay her own attorney fees, there was no abuse of discretion. In re Weibel, 965 P.2d 126 (Colo. App. 1998).

Issues on review whether attorney fees should have been awarded must depend upon whether the record reflects that the property settlement order contemplated attorney fees and whether as a whole it was fair and equitable. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Lack of written findings of facts leaves no basis for review. Where a trial court makes no written findings of fact in support of its denial of an award of attorney fees, a reviewing court has no basis on which to review the ruling. In re Pilcher, 628 P.2d 126 (Colo. App. 1980).

Where the motion of an attorney, who had withdrawn as counsel for the wife in

a divorce action, for allowance of fees was denied, and record disclosed no evidence or offer of proof to show value of services rendered prior to withdrawal, the action was remanded for findings on the value of his services rendered, if any, for which he had not been compensated, and for judgment pursuant thereto. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

A finding by the trial court that under the circumstances shown each party should pay his or her own costs and attorney fees, supported by the record, will not be disturbed. Jensen v. Jensen, 142 Colo. 420, 351 P.2d 387 (1960).

Under the circumstances shown, the trial court's order was adequate to permit appellate review. In re Woolley, 25 P.3d 1284 (Colo. App. 2001).

Where an order requiring a husband to pay attorney fees for his wife was a means of paying off her indebtedness rather than of enabling her to prosecute, it could properly be considered by the court as part of the division of property settlement and the question on review would have been whether the property settlement as a whole was fair and equitable, not whether the wife had the financial ability to pay her own fees. Krall v. Krall, 31 Colo. App. 538, 504 P.2d 681 (1972).

The supreme court has, in the exercise of its appellate jurisdiction, power to act on applications for attorney fees, costs, alimony, etc., in matters pending on error; however, under ordinary circumstances all of these matters should be presented to the trial court for the reason that the trial court has already had the case before it and is better equipped to determine questions of fact and to make a full and complete investigation and adjudication. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

An order granting attorney fees was reviewable even though there had been no final judgment in the case. Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Bagot v. Bagot, 68 Colo. 562, 191 P. 96 (1920); Benham v. Willmer, 71 Colo. 451, 207 P. 592 (1922); Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922); Stockham v. Stockham, 145 Colo. 376, 358 P.2d 1026 (1961).

III. ANTENUPTIAL AGREEMENTS.

Section controls awarding of attorney fees where antenuptial agreement was silent on the matter. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd in part on other grounds, 653 P.2d 728 (Colo. 1982).

No unconstitutional impairment of antenuptial contract by award. Where the matter of attorney fees was left open by an antenuptial contract, there was therefore no unconstitutional impairment of that contract by the award of such. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

14-10-120. Decree.

(1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, so that either of the parties may remarry pending appeal.

(2) No earlier than one hundred eighty-two days after entry of a decree of legal separation, on motion of either party and proof that a notice has been mailed to the other party at his or her last-known address, the court shall convert the decree of legal separation to a decree of dissolution of marriage, and a copy thereof shall be mailed to both parties.

(3) The clerk of the court shall give notice of the entry of a decree of dissolution to the office of state registrar of vital statistics in the division of administration of the department of public health and environment, which office shall make this information available to the public upon request.

(4) No decree that may enter shall relieve a spouse from any obligation imposed by law as a result of the marriage for the support or maintenance of a spouse determined to be mentally incompetent by a court of competent jurisdiction prior to the decree, unless such spouse has sufficient property or means of support.

(5) Whenever child support has been ordered, the decree of dissolution, legal separation, declaration of invalidity, allocating parental responsibilities, or support shall contain an order for an income assignment pursuant to section 14-14-111.5.

(6) Notwithstanding the entry of a final decree of dissolution of marriage or of legal separation pursuant to this section, the district court may maintain jurisdiction to enter such temporary or permanent civil protection orders as may be provided by law upon request of any of the parties to the action for dissolution of marriage or legal separation, including, but not limited to, any protection order requested pursuant to section 14-10-108.

Source: L. 71: R&RE, p. 528, § 1. **C.R.S. 1963:** § 46-1-20. **L. 75:** (3) R&RE, p. 585, § 1, effective May 31; (4) amended, p. 925, § 21, effective July 1. **L. 77:** (2) amended, p. 825, § 1, effective May 26. **L. 85:** (5) added, p. 592, § 11, effective July 1. **L. 94:** (5) amended, p. 1539, § 6, effective May 31; (3) amended, p. 2731, § 348, effective July 1. **L. 96:** (5) amended, p. 622, § 31, effective July 1. **L. 98:** (5) amended, p. 1399, § 44, effective February 1, 1999. **L. 99:** (6) added, p. 500, § 2, effective July 1. **L. 2003:** (6) amended, p. 1012, § 16, effective July 1. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 831, § 27, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (3), see section 1 of chapter 345, Session Laws of Colorado 1994.

ANNOTATION

Law reviews. For article, "Income Tax on Alimony", see 30 Dicta 263 (1953).

Annotator's note. Since § 14-10-120 is similar to repealed § 46-1-7, C.R.S. 1963, § 46-1-9, CRS 53, CSA, C. 56, §§ 13 through 17, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The general assembly intended to eliminate the six-month delay for a decree of dissolution to become effective and intended to terminate the marital status of the parties immediately upon entry of the decree of dissolution. Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

This section permits a party to appeal the termination of the marital status only when the party challenges the district court's finding that the marriage is irretrievably broken or by raising a jurisdictional defect in the proceedings. Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

By filing a timely notice of appeal after the entry of permanent orders, wife may challenge the common law marriage order and the dissolution decree that were entered many months earlier. In re Carey, 2026 COA 3, 586 P.3d 725.

An unappealed decree of dissolution is final when entered to determine the status of the parties and that abatement does not occur should one party die after the decree is entered. Estate of Burford v. Burford, 935 P.2d 943 (Colo. 1997).

There was but one final decree in a divorce suit, although it may consist of different provisions, one for a dissolution of the marriage relation, another for security for the payment of alimony, and various other provisions embodied in the one instrument. Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923).

No other decree was required to be entered than the interlocutory one which in a normal situation mechanically became final. Morris v. Propst, 98 Colo. 213, 55 P.2d 944 (1936); Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

A court need not have entered a final decree reiterating or summarizing or tying together its previous orders including an interlocutory decree in Colorado. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

It may have been said that the interlocutory decree was a final order by express provision of the former statute, but, it was pertinent to observe that while the statute said that the interlocutory decree was a final order and therefore subject to review on writ of error, that it did not say that such order was a final decree of divorce. Doty v. Doty, 103 Colo. 543, 88 P.2d 573 (1939).

An unverified, unsupported motion to set aside an interlocutory decree of divorce was not a "motion or petition" within the meaning of the former section concerning the setting aside of interlocutory decrees. Morris v. Propst, 98 Colo. 213, 55 P.2d 944 (1936).

The prevailing party in a divorce action could not be compelled to permit a decree to become final against his express desire and over his objection. Faith v. Faith, 128 Colo. 483, 261 P.2d 255 (1953); McClanahan v. County Court, 136 Colo. 426, 318 P.2d 599 (1957).

Where the prevailing party in a divorce action moved to dismiss the same prior to the entry of a final decree, a trial court lacked jurisdiction to act in the case other than to dismiss the same. McClanahan v. County Court, 136 Colo. 426, 318 P.2d 599 (1957).

Decree of dissolution entered after a spouse's death is void for lack of jurisdiction, and the dissolution action is abated. In Re Connell, 870 P.2d 632 (Colo. App. 1994).

A reversal of the judgment of the trial court was had because of its refusal to grant plaintiff's motion to dismiss her divorce case after the entry of the interlocutory decree. Faith v. Faith, 128 Colo. 483, 261 P.2d 225 (1953).

Where it appears from a record and from the conduct of counsel that the parties agreed that a court would defer determination of permanent alimony, property settlement, and related matters until after the entry of a final decree of divorce, orders entered pursuant thereto were not void because not included in such decree, or the questions reserved therein. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

Where orders for permanent alimony and related matters were not included in the interlocutory decree, because a court had taken the matter under advisement, orders resulting therefrom were valid and remained in full force and effect, constituting a modification of the interlocutory decree and were merged in a final decree which recited upon the terms and conditions contained in the interlocutory decree or any modification of change thereof. Rodgers v. Rodgers, 137 Colo. 74, 323 P.2d 892 (1958).

Provision in agreement incorporated into dissolution decree which required a father to pay a daughter's medical bills until the daughter was "gainfully employed" was not ambiguous and required that the employment of the daughter be self-supporting, rather than remunerative, in order to terminate the father's obligations. In re Norton, 757 P.2d 1127 (Colo. App. 1988).

The former section relating to the entry of an interlocutory decree in a divorce action within 48 hours after close of a trial, or the return of a verdict, was directory and not mandatory or jurisdictional. Kemper v. Kemper, 140 Colo. 367, 344 P.2d 449 (1959).

Formerly, the necessity for the lapse of six months and the entry of a final decree was just as essential to the power of a court to order a division of property, as to

authorize it to enter a final decree. McCoy v. McCoy, 139 Colo. 105, 336 P.2d 302 (1959).

A writ of error in a divorce case was not dismissible on the ground that it was not filed within six months after the issuance of the interlocutory decree. Simmons v. Simmons, 107 Colo. 78, 108 P.2d 871 (1940).

However, notice of a motion to vacate an interlocutory decree of divorce, served upon the administrator of the estate of successful party after the latter's death and after the expiration of the six-month period designated by statute, was futile and without effect. Morris v. Propst, 98 Colo. 213, 55 P.2d 944 (1936).

Where the wife's lien was created by the judgment of the court in a divorce action based upon the stipulation of the parties, the judgment became final and where a subsequent order of abatement terminated the proceedings relative to the motion which the husband had filed to reduce the payments to the wife, it had no effect upon the final judgment which created the lien. Willis v. Neilson, 32 Colo. App. 129, 507 P.2d 1106 (1973).

C.R.C.P. 59(e) specifies that a party may move to alter or amend a judgment by a motion filed not later than 10 days after entry of judgment; therefore, where appellate filed such a motion within the allotted time, and the trial court subsequently did amend its judgment pursuant to such motion and the supplemental motion, the original court's judgment never became final, and it was not enforceable by either divorced party with respect to his or her property rights, because it did not create an enforceable right either in the husband or in his estate to take a divided share of the joint tenancy property. Sarno v. Sarno, 28 Colo. App. 598, 478 P.2d 711 (1970).

Order under C.R.C.P. 54(b) authorized. Section 14-10-105, providing that the Colorado rules of civil procedure apply to dissolution proceedings except as "otherwise specifically provided" in the act, and this section, providing that a decree of dissolution of marriage is "final" when entered, subject to the right of appeal, authorize the trial court to enter an order pursuant to C.R.C.P. 54(b) making the decree final for purposes of appeal. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Appealability of decree on entry of such order. Upon the entry of an order under C.R.C.P. 54(b) a decree of dissolution of marriage may be appealed prior to entry of permanent orders on the issues of child custody, support, and division of property. In re Baier, 39 Colo. App. 34, 561 P.2d 20 (1977).

Stay of decree pending appeal. When an appeal is taken from the finding that the marriage is "irretrievably broken", the finality of the decree dissolving the marriage may be stayed upon an appropriate motion duly made. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Where a decree in a divorce action ordering title to real property to remain in joint tenancy, and granting the right to possession and income therefrom to the wife, had become final and the time for

appeal had expired, the decree could not be reversed by the supreme court. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

Dissolution decree severing joint tenancy upheld, even though documents conveying house into tenancy in common were not executed. Cannon v. Waddell, 642 P.2d 520 (Colo. App. 1981).

Where the record on error in a divorce action contained no reporter's transcript, the supreme court had no means of reviewing the evidence; hence, the findings and judgment of a trial court were presumed to be supported by the evidence. Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958).

Erroneous divorce decree valid and binding. Although divorce decree was an erroneous judgment, until modified by the court which entered it, or set aside on motion for new trial, or until reversed by an appellate court on direct review proceedings, it was valid and binding. McLeod v. Provident Mut. Life Ins. Co., 186 Colo. 234, 526 P.2d 1318 (1974).

The validity of the arbitration agreement is not governed by the characterization of the proceeding as one for legal separation or for dissolution of marriage. While the agreement for binding Rabbinical arbitration was entered into in the context of a legal separation proceeding that was later dismissed, its validity and application to the current dissolution of marriage proceeding between the same parties is not affected. In re Popack, 998 P.2d 464 (Colo. App. 2000).

For appeals procedure in divorce cases under early laws, see Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Mercer v. Mercer, 13 Colo. App. 237, 57 P. 750 (1899); Mercer v. Mercer, 27 Colo. 216, 60 P. 349 (1900); Eickhoff v. Eickhoff, 27 Colo. 380, 61 P. 225 (1900); Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902); Carlton v. Carlton, 44 Colo. 27, 96 P. 995 (1908); Dickinson v. Dickinson, 46 Colo. 351, 104 P. 414 (1909); Rudolph v. Rudolph, 50 Colo. 243, 114 P. 977 (1911); Prewitt v. Prewitt, 52 Colo. 522, 122 P. 766 (1912); Harrington v. Harrington, 58 Colo. 154, 144 P. 20 (1914); Gill v. Gill, 59 Colo. 40, 148 P. 264 (1915); Boyd v. Boyd, 63 Colo. 157, 164 P. 703 (1917); Chamberlain v. Chamberlain, 66 Colo. 562, 185 P. 354 (1919); Kurtz v. Kurtz, 70 Colo. 20, 196 P. 530 (1921); Hobbs v. Hobbs, 72, Colo. 190, 210 P. 398 (1922); Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923); Perry v. Perry, 74 Colo. 106, 219 P. 221 (1923); Miller v. Miller, 74 Colo. 143, 219 P. 783 (1923); Unzicker v. Unzicker, 74 Colo. 211, 220 P. 495 (1923); Fowler v. Fowler, 74 Colo. 231, 220 P. 988 (1923); Diebold v. Diebold, 76 Colo. 255, 230 P. 605 (1924); Hultquist v. Hultquist, 77 Colo. 260, 236 P. 777 (1925); Lednum v. Lednum, 78 Colo. 57, 239 P. 877 (1925); Weston v. Weston, 79 Colo. 478, 246 P. 790 (1926); Ikeler v. Ikeler, 82 Colo. 278, 260 P. 104 (1927); Taylor v. Taylor, 85 Colo. 65, 273 P. 878 (1928); Blackmer v. Blackmer, 87 Colo. 173, 286 P. 114 (1930); Laizure v. Baker, 91 Colo. 48, 11 P.2d 560 (1932); Hayhurst v. Hayhurst, 91 Colo. 58, 11 P.2d 804 (1932); Pierce v. Pierce, 97 Colo. 39, 46 P.2d 748 (1935).

14-10-120.2. Ex-parte request for restoration of prior name of party.

(1) Pursuant to the provisions of this section, at any time after the entry of a decree of dissolution or legal separation, a party to the action may request restoration of a prior full name.

(2) The requesting party must file a verified motion and affidavit under the same case number in the district court in which the decree of dissolution or legal separation was entered. The requesting party's motion and affidavit must include:

(a) The caption and case number for the action in which the decree of dissolution or legal separation was entered; and

(b) The requesting party's sworn statement that the restoration of a prior full name is not detrimental to any person.

(3) The court shall enter an order restoring the requesting party's name if the court determines that:

(a) The court entered a decree of dissolution or legal separation in an action concerning the requesting party; and

(b) The request to restore a prior full name is not detrimental to any person.

(4) The order restoring a prior full name of the party does not affect any party's rights or obligations pursuant to the decree of dissolution or legal separation entered in the action.

Source: L. 2016: Entire section added, (HB 16-1085), ch. 55, p. 133, § 1, effective September 1.

14-10-120.3. Dissolution of marriage or legal separation upon affidavit - requirements.

(1) Final orders in a proceeding for dissolution of marriage or legal separation may be entered upon the affidavit of either or both parties when:

(a) There are no minor children of the husband and wife and the wife is not pregnant or the husband and wife are both represented by counsel or by a licensed legal paraprofessional and have entered into a separation agreement that provides for the allocation of parental responsibilities concerning the children of the marriage and setting out the amount of child support to be provided by the husband or wife or both; and

(b) The adverse party is served in the manner provided by the Colorado rules of civil procedure; and

(c) There is no genuine issue as to any material fact; and

(d) There is no marital property to be divided or the parties have entered into an agreement for the division of their marital property.

(2) If one party desires to submit the matter for entry of final orders upon an affidavit, the submitting party shall file his or her affidavit setting forth sworn testimony showing the court's jurisdiction and factual averments supporting the relief requested in the proceeding together with a copy of the proposed decree, a copy of any separation agreement proposed for adoption by the court, and any other supporting evidence. The filing of the affidavit does not shorten any statutory waiting period required for entry of a decree of dissolution or decree of legal separation.

(3) The court shall not be bound to enter a decree upon the affidavits of either or both parties, but the court may, upon its own motion, require that a formal hearing be held to determine any or all issues presented by the pleadings.

Source: L. 82: Entire section added, p. 303, § 1, effective May 22. **L. 98:** (1)(a) amended, p. 1399, § 45, effective February 1, 1999. **L. 2012:** IP(1) and (2) amended, (HB 12-1233), ch. 52, p. 187, § 2, effective July 1. **L. 2024:** (1)(a) amended, (HB 24-1291), ch. 131, p. 470, § 16, effective August 7.

ANNOTATION

Law reviews. For article, "Legislative Activities in Family Law", see 11 Colo. Law. 1560 (1982). For article, "Mediation and the Colorado Lawyer", see 11 Colo. Law. 2315 (1982).

14-10-120.5. Petition - fee - assessment - displaced homemakers fund.

(1) There shall be assessed against a nonindigent petitioner a fee of five dollars for each filing of a petition for dissolution of marriage, declaration of invalidity of marriage, legal separation, or declaratory judgment concerning the status of marriage. All such fees collected shall be transmitted to the state treasurer for deposit in the displaced homemakers fund created pursuant to section 8-15.5-108, C.R.S.

(1.5) There shall be assessed against a nonindigent petitioner a fee of five dollars for each filing of a petition for dissolution of a civil union, declaration of invalidity of a civil union, legal separation, or declaratory judgment concerning the status of a civil union. All such fees collected shall be transmitted to the state treasurer for deposit in the displaced homemakers fund created pursuant to section 8-15.5-108, C.R.S.

(2) Notwithstanding the amount specified for the fee in subsection (1) or (1.5) of this section, the chief justice of the supreme court by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the chief justice by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

Source: L. 80: Entire section added, p. 455, § 2, effective July 1. **L. 98:** Entire section amended, p. 1330, § 40, effective June 1. **L. 2009:** (1) amended, (SB 09-038), ch. 119, p. 498, § 2, effective July 1. **L. 2013:** Entire section amended, (SB 13-011), ch. 49, p. 163, § 15, effective May 1.

Cross references: For the docket fees for dissolution of marriage actions, see § 13-32-101.

14-10-121. Independence of provisions of decree or temporary order.

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit parenting time is not suspended; but said party may move the court to grant an appropriate order.

Source: L. 71: R&RE, p. 529, § 1. **C.R.S. 1963:** § 46-1-21. **L. 93:** Entire section amended, p. 577, § 9, effective July 1.

Cross references: For the legislative declaration contained in the 1993 act amending this section, see section 1 of chapter 165, Session Laws of Colorado 1993.

ANNOTATION

Intent of general assembly is to make matters relating to child support and child custody independent of each other. County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979).

Applied in Wise v. Bravo, 666 F.2d 1328 (10th Cir. 1981).

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

(1) (a) Except as otherwise provided in sections 14-10-112 (6) and 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 trial court retains continuing jurisdiction to modify a decree respecting maintenance or child support pursuant to this section during the pendency of an appeal. The court shall not revoke or modify the provisions as to property disposition unless the court finds the existence of conditions that justify the reopening of a judgment.

(b) Application of the child support guidelines and schedule of basic child support obligations set forth in section 14-10-115 to the circumstances of the parties at the time of the filing of a 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 be deemed not to be a substantial and continuing change of circumstances.

(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 is not retroactively modified except pursuant to subsection (1)(a) of this section 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. The obligee or the delegate child support enforcement unit is not required to wait fourteen days to execute on such support judgment. However, a copy of the verified entry of support judgment must be provided to all parties pursuant to rule 5 of the Colorado rules of civil procedure, upon filing with the court. 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 revives 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 subsection (1)(c), no court order for support judgment nor verified entry of support judgment is 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.

(d) If maintenance or child support is modified pursuant to this section, the modification should be effective as of the date of the filing of the motion, unless the court finds that it would cause undue hardship or substantial injustice or unless there has been a mutually agreed upon change of physical custody as provided for in subsection (5) of this section. In no instance shall the order be retroactively modified prior to the date of filing, unless there has been a mutually agreed upon change of physical custody. The court may modify installments of maintenance or child support due between the filing of the motion and the entry of the order even if the circumstances justifying the modification no longer exist at the time the order is entered.

(1.5) (a) **Lien by operation of law.**

(I) Commencing July 1, 1997, all cases in which services are provided in accordance with Title IV-D of the federal "Social Security Act", as amended, referred to in this subsection (1.5) as "IV-D cases", shall be subject to the provisions of this subsection (1.5), regardless of the date the order for child support was entered. In any IV-D case in which current child support, child support when combined with maintenance, or maintenance has been ordered, a payment becomes a support judgment when it is due and not paid, and a lien therefor is created by operation of law against the obligor's real and personal property and any interest in any such real or personal property. The entry of an order for child support debt, retroactive child support, or child support arrearages or a verified entry of judgment pursuant to this section creates a lien by operation of law against the obligor's real and personal property and any interest in any such real and personal property.

(II) The amount of such lien shall be limited to the amount of the support judgment for outstanding child support, child support when combined with maintenance, maintenance, child support debt, retroactive child support, or child support arrearages, any interest accrued thereon, and the amount of any filing fees as specified in this section.

(III) A support judgment or lien shall be entitled to full faith and credit and may be enforced in any court of this state or any other state. Full faith and credit shall be accorded to such a lien arising from another state that complies with the provisions of this subsection (1.5). Judicial notice or hearing or the filing of a verified entry of judgment shall not be required prior to the enforcement of such a lien.

(IV) The creation of a lien pursuant to this section shall be in addition to any other remedy allowed by law.

(b) **Lien on real property.**

(I) To evidence a lien on real property created pursuant to this subsection (1.5), a delegate child support enforcement unit shall issue a notice of lien and record the same in the real estate records in the office of the clerk and recorder of any county in the state of Colorado in which the obligor holds an interest in real property. From the time of recording of the notice of lien, such lien shall be an encumbrance in favor of the obligee, or the assignee of the obligee, and shall encumber any interest of the obligor in any real property in such county.

(II) The lien on real property created by this section shall remain in effect for the earlier of twelve years or until all past-due amounts are paid, including any accrued interest and costs, without the necessity of renewal. A lien on real property arising pursuant to this subsection (1.5) may be extended or renewed indefinitely beyond twelve years by rerecording the lien every twelve years. Within twenty calendar days after satisfaction of the debt or debts described in the notice of lien, the delegate child support enforcement unit shall record a release of lien with the clerk and recorder of the county where the notice of lien was recorded. A release of lien shall be conclusive evidence that the lien is extinguished.

(III) The child support enforcement unit shall be exempt from the payment of recording fees charged by the clerk and recorder for the recording of notices of lien or releases of lien.

(c) **Lien on personal property other than wages, insurance claim payments, awards, and settlements, and money held by a financial institution as defined in 42 U.S.C. sec. 669a (d)(1) or motor vehicles.**

(I) To evidence a lien on personal property, other than wages; insurance claim payments, awards, and settlements as authorized in section 26-13-122.7; accounts as authorized in section 26-13-122.3; and money held by a financial institution as defined in 42 U.S.C. sec. 669a (d)(1) or motor vehicles, created pursuant to this subsection (1.5), the state child support enforcement agency shall file a notice of lien with the secretary of state by means of direct electronic data transmission. From the time of filing the notice of lien with the secretary of state, the lien is an encumbrance in favor of the obligee, or the assignee of the obligee, and encumbers all personal property or any interest of the obligor in any personal property.

(II) The lien on personal property created by this section shall remain in effect for the earlier of twelve years or until all past-due amounts are paid, including any accrued interest and costs, without the necessity of renewal. A lien on personal property arising pursuant to this subsection (1.5) may be extended or renewed indefinitely beyond twelve years by rerecording the lien every twelve years. Within twenty calendar days after satisfaction of the debt or debts described in the notice of lien, the state child support enforcement agency shall file a release of lien with the secretary of state. The filing of such a release of lien shall be conclusive evidence that the lien is extinguished.

(III) The state child support enforcement agency shall be exempt from paying a fee for the filing of notices of liens or releases of liens with the secretary of state pursuant to this paragraph (c).

(IV) For purposes of this paragraph (c), "personal property" means property that the child support enforcement agency has determined has a net equity value of not less than five thousand dollars at the time of the filing of the notice of lien with the secretary of state.

(d) **Lien on motor vehicles.**

(I) (A) To evidence a lien on a motor vehicle created pursuant to this subsection (1.5), a delegate child support enforcement unit shall issue a notice of lien to the authorized agent as defined in section 42-6-102 (1.5) by first-class mail. From the time of filing of the lien for public record and the notation of such lien on the owner's certificate of title, such lien shall be an encumbrance in favor of the obligee, or the assignee of the obligee, and must encumber any interest of the obligor in the motor vehicle. In order for any such lien to be effective as a valid lien against a motor vehicle, the obligee, or assignee of the obligee, shall have such lien filed for public record and noted on the owner's certificate of title in the manner provided in sections 42-6-121 and 42-6-129.

(B) Liens on motor vehicles created by this section shall remain in effect for the same period of time as any other lien on motor vehicles as specified in section 42-6-127, C.R.S., or until the entire amount of the lien is paid, whichever occurs first. A lien created pursuant to this section may be renewed pursuant to section 42-6-127, C.R.S. Within twenty calendar days after satisfaction of the debt or debts described in the notice of lien, the delegate child support enforcement unit shall release the lien pursuant to the procedures specified in section 42-6-125, C.R.S. When a lien on a motor vehicle created pursuant to this subsection (1.5) is released, the authorized agent and the executive director of the department of revenue shall proceed as provided in section 42-6-126, C.R.S.

(C) The child support enforcement unit shall not be exempt from the payment of filing fees charged by the authorized agent for the filing of either the notice of lien or the release of lien. However, the child support enforcement unit may add the amount of the filing fee to the lien amount and collect the amount of such fees from the obligor.

(II) For purposes of this subsection (1.5), "motor vehicle" means any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways, trailers, semitrailers, and trailer coaches, without motive power; that has a net equity value based upon the loan value identified for such vehicle in the national automobile dealers' association car guide of not less than five thousand dollars at the time of the filing of the notice of lien and that meets such additional conditions as the state board of human services may establish by rule; and on which vehicle a lien already exists that is filed for public record and noted accordingly on the owner's certificate

of title. "Motor vehicle" does not include low-power scooters, as defined in section 42-1-102, C.R.S.; vehicles that operate only upon rails or tracks laid in place on the ground or that travel through the air or that derive their motive power from overhead electric lines; farm tractors, farm trailers, and other machines and tools used in the production, harvesting, and care of farm products; and special mobile machinery or industrial machinery not designed primarily for highway transportation. "Motor vehicle" does not include a vehicle that has a net equity value based upon the loan value identified for such vehicle in the national automobile dealers' association car guide of less than five thousand dollars at the time of the filing of the notice of lien and does not include a vehicle that is not otherwise encumbered by a lien or mortgage that is filed for public record and noted accordingly on the owner's certificate of title.

(e) **Priority of a lien.**

(I) A lien on real property created pursuant to this section shall be in effect for the earlier of twelve years or until all past-due amounts are paid and shall have priority over all unrecorded liens and all subsequent recorded or unrecorded liens from the time of recording, except such liens as may be exempted by regulation of the state board of human services. A lien on real property arising pursuant to this subsection (1.5) may be extended or renewed indefinitely beyond twelve years by rerecording the lien every twelve years.

(II) A lien on personal property, other than motor vehicles, created pursuant to this section shall be in effect for the earlier of twelve years or until all past-due amounts are paid and shall have priority from the time the lien is filed with the central filing officer over all unfiled liens and all subsequent filed or unfiled liens, except such liens as may be exempted by regulation of the state board of human services. A lien on personal property arising pursuant to this subsection (1.5) may be extended or renewed indefinitely beyond twelve years by rerecording the lien every twelve years.

(III) Liens on motor vehicles created pursuant to this section shall remain in effect for the same period of time as any other lien on motor vehicles as specified in section 42-6-127, C.R.S., or until all past-due amounts are paid, whichever occurs first, and shall have priority from the time the lien is filed for public record and noted on the owner's certificate of title over all unfiled liens and all subsequent filed or unfiled liens, except such liens as may be exempted by regulation of the state board of human services.

(f) **Notice of lien - contents.**

(I) The notice of lien must contain the following information:

(A) The name and address of the delegate child support enforcement unit and the name of the obligee or the assignee of the obligee as grantee of the lien;

(B) The name, social security number, and last-known address of the obligor as grantor of the lien;

(C) The year, make, and vehicle identification number of any motor vehicle for liens arising pursuant to paragraph (d) of this subsection (1.5);

(D) A general description of the personal property for liens arising pursuant to paragraph (c) of this subsection (1.5);

(E) The county and court case number of the court of record that issued the order of current child support, child support debt, retroactive child support, child support arrearages, child support when combined with maintenance, or maintenance or of the court of record where the verified entry of judgment was filed;

(F) The date the order was entered;

(G) The date the obligation commenced;

(H) The amount of the order for current child support, child support debt, retroactive child support, child support arrearages, child support when combined with maintenance, or maintenance;

(I) The total amount of past-due support as of a date certain; and

(J) A statement that interest may accrue on all amounts ordered to be paid, pursuant to sections 14-14-106 and 5-12-101, and may be collected from the obligor in addition to costs of sale, attorney fees, licensed legal paraprofessional fees, and any other costs or fees incident to the sale for liens arising pursuant to subsections (1.5)(b) and (1.5)(c) of this section.

(II) For purposes of liens against motor vehicles, the notice of lien shall include the information set forth in subparagraph (I) of this paragraph (f) in addition to the information specified in section 42-6-120, C.R.S.

(g) **Rules.** The state board of human services shall promulgate rules and regulations concerning the procedures and mechanism by which to implement this subsection (1.5).

(h) **Bona fide purchasers - bona fide lenders.**

(I) The provisions of this subsection (1.5) shall not apply to any bona fide purchaser who acquires an interest in any personal property or any motor vehicle without notice of the lien or to any bona fide lender who lent money to the obligor without notice of the lien the security or partial security for which is any personal property or motor vehicle of such obligor.

(II) For purposes of this paragraph (h):

(A) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim, including but not limited to an automatic lien arising pursuant to this subsection (1.5).

(B) "Bona fide lender" means a lender for value in good faith and without notice of an adverse claim, including but not limited to an automatic lien arising pursuant to this subsection (1.5).

(i) **No liability.** No clerk and recorder, authorized agent as defined in section 42-6-102 (1.5), financial institution, lienholder, or filing officer, nor any employee of any of such persons or entities, shall be liable for damages for actions taken in good faith compliance with this subsection (1.5).

(j) **Definition.** For purposes of this subsection (1.5), "child support debt" shall have the same meaning as set forth in section 26-13.5-102 (3), C.R.S.

(2) (a) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the earlier of:

(I) The death of either party;

(II) The end of the maintenance term, unless a motion for modification is filed prior to the expiration of the term;

(III) The remarriage of or the establishment of a civil union by the party receiving maintenance; or

(IV) A court order terminating maintenance.

(b) A payor spouse whose income is reduced or terminated due to his or her retirement after reaching full retirement age is entitled to a rebuttable presumption that the retirement is in good faith.

(c) For purposes of this subsection (2), "full retirement age" means the payor's usual or ordinary retirement age when he or she would be eligible for full United States social security benefits, regardless of whether he or she is ineligible for social security benefits for some reason other than attaining full retirement age. "Full retirement age" shall not mean "early retirement age" if early retirement is available to the payor spouse, nor shall it mean "maximum benefit retirement age" if additional benefits are available as a result of delayed retirement.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

(4) Notwithstanding the provisions of subsection (1) of this section, the provisions of any decree respecting child support may be modified as a result of the change in age for the duty of support as provided in section 14-10-115 (15), but only as to installments accruing subsequent to the filing of the motion for modification; except that section 14-10-115 (15)(b) does not apply to

modifications of child support orders with respect to a child who has already achieved the age of nineteen as of July 1, 1991.

(5) Notwithstanding the provisions of subsection (1) of this section, when a court-ordered, voluntary, 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 or terminated as of the date when physical care was changed. The provisions for the establishment of a child support order based on a court-ordered, voluntary, or mutually agreed upon change of physical care may also be entered retroactively to the date when the physical care was changed. When a court-ordered, voluntary, or 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 court shall not modify child support pursuant to this subsection (5) for any time more than five years prior to the filing of the motion to modify child support, unless the court finds that its application would be substantially inequitable, unjust, or inappropriate. The five-year prohibition on retroactive modification does not preclude a request for relief pursuant to any statute or court rule.

(6) (a) Notwithstanding any other provisions of this article, within the time frames set forth in paragraph (c) of this subsection (6), the individual named as the father in the order may file a motion to modify or terminate an order for child support entered pursuant to this article if genetic test results based on DNA testing, administered in accordance with section 13-25-126, C.R.S., establish the exclusion of the individual named as the father in the order as the biological parent of the child for whose benefit the child support order was entered.

(b) If the court finds pursuant to paragraph (a) of this subsection (6) that the individual named as the father in the order is not the biological parent of the child for whose benefit the child support order was entered and that it is just and proper under the circumstances and in the best interests of the child, the court shall modify the provisions of the order for support with respect to that child by terminating the child support obligation as to installments accruing subsequent to the filing of the motion for modification or termination, and the court may vacate or deem as satisfied, in whole or in part, unpaid child support obligations arising from or based upon the order determining parentage. The court shall not order restitution from the state for any sums paid to or collected by the state for the benefit of the child.

(c) (I) A motion to modify or terminate an order for child support pursuant to this subsection (6) must be filed within two years from the date of the entry of the initial order establishing the child support obligation.

(II) Repealed.

(d) Notwithstanding subsections (6)(a) and (6)(b) of this section, a court order for child support must not be modified or terminated pursuant to this subsection (6) if:

(I) The child support obligor acknowledged paternity pursuant to section 19-4-105 (1)(c) or (2)(a.5) knowing that he was not the father of the child;

(II) The child was adopted by the child support obligor; or

(III) The child was conceived by means of assisted reproduction.

(e) A motion filed pursuant to this section may be brought by the individual named as the father in the order and shall be served in the manner set forth in the Colorado rules of civil procedure upon all other parties. The court shall not modify or set aside a final order determining parentage pursuant to this section without a hearing.

(f) For purposes of this subsection (6), "DNA" means deoxyribonucleic acid.

Source: L. 71: R&RE, p. 529, § 1. **C.R.S. 1963:** § 46-1-22. **L. 86:** (1) amended, p. 724, § 3, effective November 1. **L. 87:** (1)(c) added, p. 587, § 4, effective July 10. **L. 88:** (1)(c) amended, p. 633, § 7, effective July 1. **L. 89:** (1)(a) and (1)(c) amended, p. 792, § 16, effective July 1. **L. 90:** (1)(c) amended, p. 891, § 11, effective July 1. **L. 91:** (4) and (5) added, pp. 238, 253, §§ 2, 8, effective July 1. **L. 92:** (1)(d) added, p. 203, § 10, effective August 1. **L. 93:** (1)(a) amended, p. 1557, § 2, effective July 1. **L. 97:** (1)(c) amended, p. 561, § 6, effective July 1; (1.5) added, p. 1266, § 9, effective July 1. **L. 98:** (1)(a), (1)(c), (1)(d), and (5) amended, p. 764, § 14, effective July 1; (5) amended, p. 1400, § 46, effective February 1, 1999. **L. 99:** (1.5)(c), (1.5)(e)(II), and (1.5)(i) amended, p. 751, § 21, effective January 1, 2000. **L. 2000:** (1.5)(b)(II) amended, p. 1704, § 1, effective July 1. **L. 2001:** (1.5)(c) amended, p. 1445, § 38, effective July 1. **L. 2004:** (1.5)(b)(II), (1.5)(c)(II), (1.5)(e)(I), and (1.5)(e)(II) amended, p. 386, § 2, effective July 1. **L. 2007:** (1)(b), (4), and (5) amended, p. 107, § 3, effective March 16. **L. 2008:** (6) added, p. 1656, § 3, effective August 15. **L. 2009:** (1.5)(d)(II) amended, (HB 09-1026), ch. 281, p. 1258, § 19, effective October 1. **L. 2010:** (1.5)(d)(II) amended, (HB 10-1172), ch. 320, p. 1493, § 18, effective October 1. **L. 2012:** (1)(c) amended, (SB 12-175), ch. 208, p. 831, § 28, effective July 1. **L. 2013:** (1.5)(c)(I) amended, (HB 13-1300), ch. 316, p. 1675, § 35, effective August 7; (1)(a) and (5) amended, (HB 13-1209), ch. 103, p. 354, § 3, effective January 1, 2014; (2) amended, (HB 13-1058), ch. 176, p. 652, § 2, effective January 1, 2014. **L. 2014:** (2)(a)(III) amended, (HB 14-1379), ch. 307, p. 1300, § 2, effective May 31. **L. 2016:** (1.5)(c)(I) and (5) amended, (HB 16-1165), ch. 157, pp. 490, 496, §§ 2, 8, effective January 1, 2017. **L. 2017:** (1.5)(d)(I)(A) and (1.5)(i) amended, (SB 17-294), ch. 264, p. 1391, § 30, effective May 25. **L. 2019:** (1)(c) and (1.5)(c)(I) amended, (HB 19-1215), ch. 270, p. 2552, § 3, effective July 1. **L. 2021:** (1)(a) amended, (HB 21-1031), ch. 116, p. 450, § 2, effective May 7. **L. 2024:** IP(1.5)(f)(I) and (1.5)(f)(I)(J) amended, (HB 24-1291), ch. 131, p. 470, § 17, effective August 7. **L. 2025:** IP(6)(d) and (6)(d)(I) amended, (HB 25-1159), ch. 334, p. 1761, § 3, effective May 31.

Editor's note: (1) Amendments to subsection (5) by Senate Bill 98-139 and House Bill 98-1183 were harmonized, effective February 1, 1999.

(2) The term "custody" has been changed in other places in the Colorado Revised Statutes to correspond with the use of the term "parental responsibility" as described in § 14-10-124.

(3) Subsection (6)(c)(II)(B) provided for the repeal of subsection (6)(c)(II), effective July 1, 2011. (See L. 2008, p. 1656.)

(4) Section 8 of chapter 116 (HB 21-1031), Session Laws of Colorado 2021, provides that the act changing this section applies to any request to modify an order appealed on, after, or before May 7, 2021.

Cross references: For the legislative declaration contained in the 1997 act enacting subsection (1.5), see section 1 of chapter 236, Session Laws of Colorado 1997. For the legislative declaration in HB 21-1031, see section 1 of chapter 116, Session Laws of Colorado 2021.

ANNOTATION

I. General Consideration.

III. Termination of Maintenance and Child Support.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Interstate Modification of Support Decrees", see 28 Rocky Mt. L. Rev. 355 (1956). For article, "The Economy: Its Effects on Family Law", see 11 Colo. Law. 97 (1982). For article, "Automatic Escalation Clauses Relating to Maintenance and Child Support", see 12 Colo. Law. 1083 (1983). For article, "Support Calculation Revisited", see 12 Colo. Law. 1647 (1983). For article, "The Continued Jurisdiction of the Court to Modify Maintenance", see 13 Colo. Law. 62 (1984). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Child Support Obligations After Death of the Supporting Parent", see 16 Colo. Law. 790 (1987). For article, "Maintenance in Colorado: Issues and Factors", see 21 Colo. Law. 2399 (1992). For article, "Overcoming Difficulties in Collecting Child Support and Maintenance", see 24 Colo. Law. 2725 (1995). For article, "Post-dissolution Maintenance Review in Trial Court Under CRS §§ 14-10-114 or -122", see 26 Colo. Law. 93 (July 1997). For article, "Postsecondary Education Expenses after Chalat: Paying College Expenses after Divorce", see 38 Colo. Law. 19 (Jan. 2009). For article, "Modifying or Terminating Maintenance Based on Cohabitation", see 38 Colo. Law. 45 (June 2009). For article, "The Modification of a Denial of Spousal Maintenance at Permanent Orders", see 39 Colo. Law. 37 (Feb. 2010). For article, "Retroactive Child Support: Conflicting Decisions and Practical Advice", see 41 Colo. Law. 91 (Aug. 2012). For article,

"Maintenance Revisited The New Act", see 42 Colo. Law. 69 (Nov. 2013). For article, "Leap of Faith: Retiring while Paying Spousal Maintenance", see 48 Colo. Law. 28 (Oct. 2019).

Annotator's note. Cases relevant to § 14-10-122 (1) decided prior to its earliest source, L. 71, p. 529, § 1, have been included in the annotations to this section.

This section effects a legislative abrogation of the common law that developed under the divorce statutes operative prior to the uniform dissolution of marriage act. In re Icke, 189 Colo. 319, 540 P.2d 1076 (1975).

For the effect of this section on prior law, see In re Edwards, 39 Colo. App. 26, 560 P.2d 849 (1977).

Abatement of maintenance payments not authorized by this section. In re Ward, 717 P.2d 513 (Colo. App. 1985).

Social security benefits may be credited towards support obligation. Social security disability benefit payments and social security retirement benefit payments for minor children may, at the discretion of the trial court, be credited toward a father's obligation to pay support. In re Robinson, 651 P.2d 454 (Colo. App. 1982).

When social security disability benefit payments for children are set off against a father's obligation to pay support, the father is entitled to credit only up to the extent of his obligation for monthly payments of child support, but not in excess thereof. In re Robinson, 651 P.2d 454 (Colo. App. 1982).

Life insurance reasonable means of meeting obligation. The maintenance of a life insurance policy with the former husband's minor children as beneficiaries provides a reasonable and practical means by which the obligation under this section can be met. In re Icke, 189 Colo. 319, 540 P.2d 1076 (1975).

Where the husband was in very poor health, suffering from diabetes and high blood pressure, had heart damage and had previously suffered a stroke, and furthermore, because of his poor health, the husband was under doctor's orders to work in a low pressure occupation, the trial court did not err in ordering the husband to carry a life insurance in favor of his former wife. In re Koktavy, 44 Colo. App. 305, 612 P.2d 1161 (1980).

Court may order life insurance naming children as beneficiaries be maintained by parent obligated to pay child support, just as its provisions for child support now extend beyond the death of the parent, unless otherwise provided. In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975).

Valuation of undisclosed assets. Once property has been divided pursuant to § 14-10-113, such property becomes akin to separate property, and any increase in the value of ownership interest therein should be considered when determining valuation. The failure to do so constitutes a confiscatory taking. In re Hiner, 710 P.2d 488 (Colo. 1985).

The doctrine of equitable estoppel may properly be applied to afford relief from

accrued arrearages in child support if the party asserting the claim demonstrates reasonable reliance, to the party's detriment, upon the acts or representations of the other person and lack of knowledge or convenient means of knowing the facts. In re Dennin & Lohf, 811 P.2d 449 (Colo. App. 1991).

The doctrine of equitable estoppel did not prevent enforcement of California decree to pay child support where father's failure to pay ordered amount or to seek modification did not fall within any of the special circumstances for which estoppel is applicable. In re Barone, 895 P.2d 1075 (Colo. App. 1994).

Where a court finds that the doctrine of equitable estoppel will support a reduction in child support arrearages due to a parent's misconduct, the court must determine whether such reduction meets the statutory policies contained in § 14-10-115 and whether such reduction will damage the child's interests. The court's calculation of the reduction of the arrearages must be based on the amount of child support that would have been paid but for the misconduct of the parent. In re Anthony-Guillar, 207 P.3d 934 (Colo. App. 2009).

Child support obligations may be modified only as to installments accruing after motion to modify has been filed. In re Pote, 847 P.2d 246 (Colo. App. 1993) (decided under law in effect prior to 1991 amendment relating to voluntary change of physical custody).

The provisions of any decree respecting child support may be modified only as to installments accruing after the filing for modification. Thus, the trial court's ability to modify retroactively an accrued child support obligation is severely restricted. In re Wright, 924 P.2d 1207 (Colo. App. 1996).

Interest accrues on arrearages from the date each installment becomes due. In re Pote, 847 P.2d 246 (Colo. App. 1993).

Entry of a judgment pursuant to this section for past due support payments will not alter a trial court's authority to enforce its order underlying that judgment through contempt proceedings. The entry of a judgment, by operation of law pursuant to this section, does not deprive the trial court of its authority to enforce its child support and maintenance orders underlying the judgment. In re Nussbeck, 974 P.2d 493 (Colo. 1999) (overruling In re Woodrum, 618 P.2d 732 (Colo. App. 1980)).

Order on post-decree modification of maintenance is final, appealable order despite unresolved request for attorney fees. Attorney fee request sought in post-decree motion is no longer an integral and substantive part of the proceeding but is ancillary to the motion and may be decided separately. In re Nelson, 2012 COA 205, 292 P.3d 1214.

Applied in Blank v. District Court, 190 Colo. 114, 543 P.2d 1255 (1975); Glickman v. Mesigh, 200 Colo. 320, 615 P.2d 23 (1980); Soehner v. Soehner, 642 P.2d 27 (Colo. App. 1981); In re Manzo, 659 P.2d 669 (Colo. 1983); In re Ward, 670 P.2d 1260 (Colo. App. 1983); In re Hauger, 679 P.2d 604 (Colo. App. 1984); In re Burns, 717 P.2d 991 (Colo. App. 1985); In re Aragon, 773

P.2d 1110 (Colo. App. 1989); In re Wisdom, 833 P.2d 884 (Colo. App. 1992).

II. MODIFICATION.

A. Procedure.

B. Unconscionability.

C. Changed Circumstances.

D. Discretion of Court.

E. Jurisdiction of Court.

F. Effective Date of Modification.

G. Scope of Review.

A. Procedure.

Application for increase of alimony, and not contempt proceeding, was proper remedy of divorced wife complaining of reduction of alimony by court order. Weydeveld v. Weydeveld, 100 Colo. 301, 67 P.2d 72 (1937).

Orderly process requires a motion for modification of support payments, notice thereof, and a setting of the matter for hearing and disposition, and the party opposing modification has the right to prepare for such issue and present countervailing evidence. Wheeler v. Wheeler, 155 Colo. 7, 392 P.2d 285 (1964).

The mere filing of a petition to modify support payments and even having a hearing thereon without proceeding to a conclusion and the entry of an order thereon can have no legal effect. Drazich v. Drazich, 153 Colo. 218, 385 P.2d 259 (1963).

The former statute of 1883 made provision for a reasonable and proper alteration in the amount of alimony allowed in a decree of divorce, and was held to contemplate that when such a change occurred in the condition or circumstances of the parties as renders a modification of the decree in this respect proper, that the application therefor should be made to the trial court, but such an application, necessarily based on new and additional matters, could be entertained in the supreme court on a petition for a rehearing of an appeal, although the original decree was here modified on the hearing. Luthe v. Luthe, 12 Colo. 421, 21 P. 467 (1889).

A judgment modifying, or refusing to modify, that part of the original divorce decree awarding alimony was a judgment in a divorce action, and was clearly subject to the requirement of notice as to a review, as was the original judgment or decree. Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923).

Where a modification of a decree awarding alimony was sought, the application, though made in the same case, was upon a petition asserting new facts, and upon a new notice, and the judgment of the court thereon was a final judgment to which a writ of error would lie. Prewitt v. Prewitt, 52 Colo. 522, 122 P. 766 (1912).

Order specifying amount where original order merely imposed duty. Where an original court order imposes a duty of support without specifying an amount under the criteria of § 14-10-115, a subsequent court order specifying the amount need only conform with § 14-10-115 rather than the modification requirements of

this section. In re Saiz, 634 P.2d 1020 (Colo. App. 1981).

Reference to C.R.C.P. 60 to reopen judgment. There is no specific provision in this section, controlling the procedure by which a property division order may be reopened. Therefore, in order to determine whether the judgment may be reopened, reference must be made to C.R.C.P. 60. In re Scheuerman, 42 Colo. App. 206, 591 P.2d 1044 (1979).

Appropriate motion required to alter, amend, or vacate original trial court's order. Original trial court's order valuing the marital property was a valid final judgment which could be altered only upon appropriate motion under either C.R.C.P. 59 or 60. In re McKendry, 735 P.2d 908 (Colo. App. 1986).

The provisions of this section governing retroactive modification of child support upon a change of physical custody conflict with, but control over, C.R.C.P. 60 (b) because subsection (1)(c) expressly provides for retroactive modification of child support without imposing any time limit. In re Green, 93 P.3d 614 (Colo. App. 2004).

Upon registration, decree of foreign court becomes in effect a Colorado order, and is subject to the same limitations as to modification as if entered in a Colorado court. Such orders can only be modified by compliance with this section. Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981).

Informal motion to modify is permissible. Unless due process is violated, the informality of an oral motion by one party to set aside the property agreement amounts to no more than an irregularity which does not affect the jurisdiction of the district court. In re Stroud, 631 P.2d 168 (Colo. 1981).

A property division is final and nonmodifiable absent conditions justifying relief from judgment. In re Wells, 833 P.2d 797 (Colo. App. 1991).

Reconsideration of property division to correct error unnecessary absent contest. When neither party contests a trial court's division of property it is not necessary that the court be able to reconsider the property division in order to correct error in the provisions for maintenance and attorney fees. In re Jones, 627 P.2d 248 (Colo. 1981).

Findings based on needs and circumstances on hearing date. In modification of support orders, the court must base its findings and orders on the needs of the children and the circumstances of the parents at the time of the hearing rather than on what those conditions might have been in the past or may be in the future. In re Serfoss, 642 P.2d 44 (Colo. App. 1981).

In modification of maintenance, court must base its findings and orders on needs and circumstances of parties at the time of the hearing rather than on what those conditions might have been in the past or may be in the future and should consider the parties' actual financial situation and their ability to earn. In re Ward, 717 P.2d 513 (Colo. App. 1985).

Although a separation agreement incorporated into a decree may expressly prohibit any modification of maintenance

provisions contained therein, a district court may modify the maintenance provisions of a separation agreement incorporated into a dissolution decree on grounds of unconscionability if the agreement is silent on the subject or if the parties specifically reserve such power to the court. Any effort to limit or preclude the authority of district court to modify the maintenance provision of separation agreement must be articulated by language that is specific and unequivocal. In re Udis, 780 P.2d 499 (Colo. 1989).

Family law referee lacks authority to hear a motion for the modification of child support when the party against whom such motion is filed objects to a hearing before a referee. In re Mead, 765 P.2d 1072 (Colo. App. 1988).

In those cases in which a child support obligation has been ordered and the obligated parent becomes eligible for social security benefits, a motion to modify child support is required before the child support obligation of the parent may be reduced by the amount of social security benefits paid for the benefit of the child. In re Wright, 924 P.2d 1207 (Colo. App. 1996).

B. Unconscionability.

Premise for challenge to separation agreement. A challenge to a separation agreement under this article directed to the provisions pertaining to maintenance and child support must be premised on whether the agreement is unconscionable. In re Lowery, 39 Colo. App. 413, 568 P.2d 103 (1977), aff'd, 195 Colo. 86, 575 P.2d 430 (1978).

Fraud and overreaching must also be shown. In order to set aside the property division provisions of a settlement agreement, in addition to establishing the unconscionability of the agreement, fraud and overreaching must be shown. In re Lowery, 39 Colo. App. 413, 568 P.2d 103 (1977), aff'd, 195 Colo. 86, 575 P.2d 430 (1978).

"Unconscionable" construed. The term "unconscionable", in subsection (1), has the same meaning of fair, reasonable and just, as the identical term used in § 14-10-112. In re Carney, 631 P.2d 1173 (Colo. App. 1981); In re Dixon, 683 P.2d 803, (Colo. App. 1983).

In determining whether an agreement is, or has become, unconscionable, the trial court should consider and apply the pertinent criteria set forth in the following sections: Section 14-10-112 as to the economic circumstances of the parties; § 14-10-113 (1) as to the division of property; § 14-10-114 (1) as to maintenance; and § 14-10-115 (1) as to child support. In re Lowery, 39 Colo. App. 413, 568 P.2d 103 (1977), aff'd, 195 Colo. 86, 575 P.2d 430 (1978).

In determining whether the terms of the original child support decree have become unconscionable, the trial court should apply the criteria set forth in § 14-10-115 (1). In re Hughes, 635 P.2d 933 (Colo. App. 1981).

In deciding whether the terms of a dissolution decree have become unconscionable, a trial court should consider and apply the criteria listed in § 14-10-115 (1). In re Pring, 742 P.2d 343 (Colo. App. 1987).

A party seeking modification of the terms of a separation agreement incorporated into a dissolution decree has a heavy burden of proving that those provisions have become unconscionable under all relevant circumstances. In re Udis, 780 P.2d 499 (Colo. 1989).

Presumption of unconscionability provision deprived parties of right to objective judicial determination. Provision in divorce decree specifying conditions under which unconscionability would be presumed deprived parties of the right to have an objective judicial determination in the future, based on the circumstances then existing. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

No presumption of unconscionability in cost of living increase provision. Provision in property settlement providing for a cost of living increase in child support based on the consumer price index does not create presumption of unconscionability because provision was not imposed by the court. In re Lamm, 682 P.2d 67 (Colo. App. 1984).

Educational savings not basis for unconscionability. The fact that a parent manages to save money for her children's education should not be a reason to punish that parent's frugality by allowing such savings to serve as a basis to characterize the initial agreement as unconscionable. In re Anderson, 638 P.2d 826 (Colo. App. 1981).

Parties are free to mutually agree upon child support provision which a court could not impose upon them. In re Lamm, 682 P.2d 67 (Colo. App. 1984).

Where the trial court reserves jurisdiction for the modification of a maintenance decree but does not establish a standard other than the unconscionability standard in this section, the unconscionability standard must be applied. In re Bowman-Berry, 749 P.2d 465 (Colo. App. 1987).

The fact that a spouse who receives maintenance enjoys increased income in comparison to the amount of income earned by that spouse at the time the decree was entered does not necessarily require the conclusion that the initial award of maintenance has been rendered unconscionable. In re Udis, 780 P.2d 499 (Colo. 1989).

Wife's increased earnings do not require conclusion that maintenance amount is unconscionable nor do they reduce dollar for dollar the amount properly awarded where record supports the determination that wife met the threshold for maintenance. In re Connell, 831 P.2d 913 (Colo. App. 1992).

Where wife was earning $1,500 per month, but her standard of living was below that enjoyed during the marriage, it was within the court's discretion to determine that the continuing disparity of income between the husband and wife required continuing maintenance, although in a lower monthly amount. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

Obligor spouse's reduced income as a result of a job change in anticipation of or in connection with early retirement may be considered by court in reducing

maintenance, and the obligor shall not be considered voluntarily underemployed if (1) the obligor's decision was made in good faith and not with the motivation to decrease or eliminate maintenance, and (2) the decision was objectively reasonable based on factors such as the obligor's age, health, and the practice of the industry in which the obligor was employed. A similar analysis would apply to an obligee spouse who took an early retirement and sought to increase maintenance on that basis. In re Swing, 194 P.3d 498 (Colo. App. 2008).

C. Changed Circumstances.

It was fundamental that orders for the payment of alimony were subject to modification due to the changed circumstances of the parties. Stevens v. Stevens, 31 Colo. 188, 72 P. 1061 (1903); Prewitt v. Prewitt, 52 Colo. 522, 122 P. 766 (1912); Jewel v. Jewel, 71 Colo. 470, 207 P. 991 (1922); Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923); Huff v. Huff, 77 Colo. 15, 234 P. 167 (1925); Harris v. Harris, 113 Colo. 41, 154 P.2d 617 (1944); Elmer v. Elmer, 132 Colo. 57, 285 P.2d 601 (1955); Huber v. Huber, 143 Colo. 255, 353 P.2d 379 (1960); Brownfield v. Brownfield, 143 Colo. 262, 352 P.2d 674 (1960); Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961).

There must be evidence of change of circumstances from time of previous decree awarding child support to justify a change in provisions. Manson v. Manson, 35 Colo. App. 144, 529 P.2d 1345 (1974); In re Soderquist, 44 Colo. App. 131, 608 P.2d 851 (1980); In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

The question is not whether, based on current financial circumstances of the parties, a court would have awarded the same amount of child support as that incorporated in the original decree. Instead, the question on a motion to modify is different: Have the terms of the original award become unfair, i.e., unconscionable. In re Anderson, 638 P.2d 826 (Colo. App. 1981); In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

The burden is heavy upon him who seeks modification; "changed circumstances so substantial and continuing as to make the terms unconscionable" must be shown. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975); In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979); In re Anderson, 638 P.2d 826 (Colo. App. 1981); McVay v. Johnson, 727 P.2d 416 (Colo. App. 1986); In re Pring, 742 P.2d 343 (Colo. App. 1987).

This section places the burden upon the party who seeks the modification to show changed circumstances so substantial as to make the terms of the decree unconscionable. In re Davis, 44 Colo. App. 355, 618 P.2d 692 (1980).

In modifying a provision for maintenance, the burden is on the party seeking the modification to prove a substantial and continuing change of circumstances, and that, in considering the modification, the court should take into account the provisions of § 14-10-114. Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981).

Question is not whether, based on the current financial circumstances of the

parties, a court would have awarded the same amount of child support as that incorporated in the original decree, but whether the terms of the original agreement have become unfair. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Provisions as to property disposition may not be modified absent conditions justifying the reopening of a judgment, and no attempt was made to establish the existence of such conditions. In re Anderson, 711 P.2d 699 (Colo. App. 1985).

Child support may be modified only upon a showing of changed circumstances that are substantial and continuing. In re Hamilton, 857 P.2d 542 (Colo. App. 1993); In re Aldrich, 945 P.2d 1370 (Colo. 1997); In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

A change is not substantial and continuing if application of the guidelines to the parties' present situation results in a change of less than 10% in the amount of child support. In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

It is not every change of circumstance that entitles a former husband to a reduction of his support payments. Frazier v. Frazier, 164 Colo. 245, 433 P.2d 764 (1967).

Substantial and continuing changed circumstances requirement and postsecondary education support orders. Absent application of the age of emancipation (subsection (4)) or medical insurance (subsection (1)) exceptions, the court's continuing jurisdiction to modify postsecondary education support orders is invoked only upon a showing of substantial and continuing changed circumstances by the party seeking modification. Nothing in the plain language of § 14-10-115 (1.5)(c.5) or this section alters this clear, unambiguous requirement. In re Chalat, 112 P.3d 47 (Colo. 2005).

Effect of amendments to postsecondary education support scheme on the substantial and continuing changed circumstances requirement. The general assembly did not express an intent that its enactments of amendments to the postsecondary education support scheme alone automatically triggers a court's continuing jurisdiction to modify child support. The requirement for substantial and continuing changed circumstances must still be shown. In re Chalat, 112 P.3d 47 (Colo. 2005).

Trial court properly denied father's motion for modification, which was based solely on the 1993 statutory amendment to § 14-10-115 (1.5)(b)(I) and which did not allege any substantial or continuing change in the parents' or the child's circumstances. In re Eaton, 894 P.2d 56 (Colo. App. 1995).

Where the divorce decree by its terms anticipated the very change in circumstances upon which the court at the modification hearing based its new order, such an increase in income could not support a later decree of the court modifying the original decree, because where the alleged change in the circumstances of the parties was one that the trial court anticipated and made allowance for when entering the original decree, such change

would not be a ground for a modification of the decree. Andrews v. Andrews, 161 Colo. 529, 423 P.2d 573 (1967).

Where the most recent court order in a divorce action was based on the parties' written stipulation and agreement, and the wording of the order clearly and unambiguously stated that defendant was to pay $25 per week for the support of the minor children, and there was no mention in that order of any alimony or support for plaintiff, the subsequent remarriage of plaintiff was immaterial in the disposition of the case considering reduction in payments. Ferguson v. Ferguson, 32 Colo. App. 145, 507 P.2d 1110 (1973).

When a divorce decree directed the father to pay a specified amount periodically for the joint benefit of more than one minor child, the emancipation of one of the children did not automatically affect the liability of the father for the full sum prescribed by the order, rather it became the burden of the father to make such showing as would entitle him to be relieved of all or a part of such obligation, and his failure to do so estopped him from asserting any credits for such emancipation under an arrearage judgment for the full amount of the group allowance. Ferguson v. Ferguson, 32 Colo. App. 145, 507 P.2d 1110 (1973).

If the financial ability of the husband and father improves, and the needs of the minor children increase, the jurisdiction of the court to make additional orders for the care and maintenance of the minor children may be invoked. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957); Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963).

If the financial ability of the father improves and the needs of the minor children increase, it is proper to make appropriate increases in the amount of child support. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

On a motion to modify maintenance, the court may, but is not required to, address all of the maintenance factors set forth in § 14-10-114 (3). The threshold question is whether the moving party has demonstrated a substantial and continuing change of circumstances so as to make the existing terms unfair. To decide the question, the court may consider the guideline amount and term of maintenance and the relevant statutory factors. Whether the existing order is unfair is a higher standard than whether, under the current financial situation, the court would have awarded the same amount as originally ordered. In re Young, 2021 COA 96, 497 P.3d 524.

A former spouse receiving maintenance should be permitted to benefit from his or her frugality and not the obligor. The former spouse should not be penalized for choosing a more austere lifestyle. In re Weibel, 965 P.2d 126 (Colo. App. 1998).

The fact that the spouse receiving maintenance is able to increase his or her income does not, in itself, make the initial award unconscionable. In re Weibel, 965 P.2d 126 (Colo. App. 1998).

The evidence did not support the husband's allegations with reference to his income or inability to pay, where he

had the same employer and there was a very negligible difference in his income, and the substantial increase in his expenses was brought about by obligations incurred through entering into a new marriage, since this type of change was not, by itself, a ground for modification. Beddoes v. Beddoes, 155 Colo. 115, 393 P.2d 1 (1964).

Improved ability to pay support insufficient for modification. Evidence of the father's ability to pay an increased amount of child support is insufficient alone to justify modification. In re Hughes, 635 P.2d 933 (Colo. App. 1981).

Nor does it provide a basis for reduction. Where a father's income exceeds that which he was earning at the time of entry of the original decree, there was no basis for reduction of future support payments. In re Anderson, 638 P.2d 826 (Colo. App. 1981).

Child's needs more compelling than father's. Despite the fact that the father had left the military and enrolled in college, the trial court erred when it denied the mother's motion for an increase in child support where there was a reasonable inference from the evidence that the father's military experience qualified him for civilian employment. In re Mizer, 683 P.2d 382 (Colo. App. 1984).

Applications for a reduction in child support payments based on such a change in the mother's financial condition as her gainful employment, an increase in her earnings, her acquisition of property, or the like, have been denied in many cases, where no other circumstances warranted a reduction in the payments, because a mother's employment or income does not relieve the father of the obligation to support his children under a support order, and the mother's employment or property would not inure to the father's benefit as a change of circumstances diminishing his obligation to support children. Beddoes v. Beddoes, 155 Colo. 115, 393 P.2d 1 (1964).

In equitably adjusting financial obligations of parties based upon changed circumstances, the property division remains fixed and requisite adjustments to achieve fairness are to be made in the maintenance provisions of a decree. In re Jones, 627 P.2d 248 (Colo. 1981).

In making a determination of changed circumstances that are substantial and continuing, the statutory child support guidelines must be considered in conjunction with the other evidence presented. In re Miller, 790 P.2d 890 (Colo. App. 1990).

The courts have not created a rigid rule precluding reduction in support or maintenance payments when both incomes have increased. In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

Inflation may be considered. The effects of inflation are a proper factor to be considered in an action for child support modification. Nevertheless, there must be proper proof of the rate of inflation and its specific effects on the petitioner's circumstances. In re Hughes, 635 P.2d 933 (Colo. App. 1981).

Social security payments made to a dependent child as a result of the

supporting parent's death must be considered by the court on a motion to terminate or modify its order for child support. In re Meek, 669 P.2d 628 (Colo. App. 1983).

Voluntarily accepted reduction due to temporarily reduced income not relevant. The fact that a custodial parent has voluntarily agreed to a reduction of child support during the time when the noncustodial parent's income was temporarily reduced has no relevance to the situation, where that parent's income later increases. In re Anderson, 638 P.2d 826 (Colo. App. 1981).

Where there was no showing of change in the circumstances of the parties subsequent to a prior hearing as would justify a modification of orders for the payment of alimony, a motion therefor was properly denied. Brownfield v. Brownfield, 143 Colo. 262, 352 P.2d 674 (1960).

Nothing in the statute precludes the trial court from ordering a support payment that exceeds the known needs of the child. In re McCord, 910 P.2d 85 (Colo. App. 1995).

Subsection (1)(a) no longer requires a finding of unconscionability for modification of child support. In re Ehlert, 868 P.2d 1168 (Colo. App. 1994).

Even if there was no change, as such, in the circumstances, the trial court could modify a support order where it resulted solely from an agreement between the parties, and was not an order entered after contested hearing before the court, because the parties could not tie the hands of a court as concerns the issue of support for minor children. Wright v. Wright, 31 Colo. App. 381, 504 P.2d 1119 (1972), rev'd on other grounds, 514 P.2d 73 (1973).

Application of new child support guidelines resulting in more than a 10 percent change in support due creates a rebuttable presumption that existing support award must be modified. In re Pugliese, 761 P.2d 277 (Colo. App. 1988); In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Language in subsection (1)(b) requiring courts to evaluate motions to modify child support in view of "the circumstances of the parties at the time of the filing of a motion for modification" does not limit a court to consider only the actual, not potential, income of the parties. Such an interpretation is undermined by the preceding text in subsection (1)(b) requiring the application of the child support guidelines to the parties circumstances at the time the motion was filed, which guidelines include the requirement that child support be calculated based upon a determination of potential income where a parent is voluntarily unemployed or underemployed. People ex rel. J.R.T., 55 P.3d 217 (Colo. App. 2002), aff'd on other grounds sub nom. People v. Martinez, 70 P.3d 474 (Colo. 2003).

Presumption regarding 10 percent change set forth in subsection (1)(b) is rebuttable, not conclusive. Where change in presumed support under guideline based on gross income is less than 10 percent, the parent seeking modification may nonetheless establish a substantial and continuing change in circumstances, justifying a deviation from the guideline,

due to an increase in the parent's personal medical expenses. In re Ford, 851 P.2d 295 (Colo. App. 1993).

If the party requesting modification demonstrates that an increase in the obligor's income would result in at least a 10 percent change in the amount of child support, the child's needs are presumed. In re McCord, 910 P.2d 85 (Colo. App. 1995).

A rebuttable presumption exists that a modification of child support must be granted whenever application of the child support guidelines would result in more than a 10 percent change in the amount due. In re Lishnevsky, 981 P.2d 609 (Colo. App. 1999).

Increase in parties' income constitutes a substantial change of circumstances sufficient to justify increased child support. In re Anderson, 761 P.2d 293 (Colo. App. 1988).

Unmarried cohabitation does not constitute "remarriage" for the purposes of a suspension, reduction, or termination of spousal maintenance. In re Dwyer, 825 P.2d 1018 (Colo. App. 1991).

Original support decree anticipated continual support for children while attending school past age 21, and, therefore, the court was without authority to change decree under auspices of changed circumstances. In re Channell, 797 P.2d 819 (Colo. App. 1990).

Court did not make findings required by § 14-10-115 (14.5) to modify the allocation of federal income tax exemptions between the parties. Order allocating exemptions to the parties in alternating years, therefore, was reversed and the cause remanded to the trial court. In re Trout, 897 P.2d 838 (Colo. App. 1994).

The court is without authority to create a presumption of changed circumstances that alone would require modification of a support order. The court's order in effect creates such a presumption only as to the husband's income. While the court may order both parties to exchange relevant financial information, it may not order an automatic increase in child support based solely upon a cost of living raise that the husband might receive. In re Trout, 897 P.2d 838 (Colo. App. 1994).

Obligor spouse's reduced income as a result of a job change in anticipation of or in connection with early retirement may be considered by court in reducing maintenance, and the obligor shall not be considered voluntarily underemployed if (1) the obligor's decision was made in good faith and not with the motivation to decrease or eliminate maintenance, and (2) the decision was objectively reasonable based on factors such as the obligor's age, health, and the practice of the industry in which the obligor was employed. A similar analysis would apply to an obligee spouse who took an early retirement and sought to increase maintenance on that basis. In re Swing, 194 P.3d 498 (Colo. App. 2008).

Although court must consider the interests of both parties in determining whether the maintenance established in the original order has become unfair as a result of a change in circumstances, nothing precludes an obligor from making a

decision that serves the obligor's own interests, nor does the section require that modification be denied solely because an obligor's decision disadvantages the obligee by reducing the ability to pay maintenance. In re Swing, 194 P.3d 498 (Colo. App. 2008).

Court should compare child support order currently in effect with child support guidelines to determine whether a substantial and continuing change of circumstances exists. Although the parties' current child support order was the result of the parties' agreement to a reduced amount of child support, the court should have compared the current child support order with the presumed child support obligation under the guidelines at the time of mother's motion to determine if mother had shown a substantial and continuing change of circumstances sufficient to maintain her motion for modification. In re M.G.C.-G., 228 P.3d 271 (Colo. App. 2010).

Court could consider husband's income from second job in determination of wife's motion to modify maintenance. While § 14-10-114 references the child support guidelines, the child support guidelines require a determination of income for purposes of applying a mathematical formula. Conversely, maintenance is determined by a discretionary balancing of factors. The court did not err in failing to recalculate husband's income according to the child support guidelines and could properly consider husband's income from his second job as indicative of his ability to meet his own needs while meeting the needs of the payee-spouse. In re Nelson, 2012 COA 205, 292 P.3d 1214.

Evidence sufficient to constitute "changed circumstances". Where neither party had ever followed original support order and instead had made their own agreement and operated under it for several years, it was appropriate for the trial court to modify the child support provision specified in the original decree. In re Menu, 719 P.2d 742 (Colo. App. 1986).

For evidence insufficient to constitute "changed circumstances", see In re Corbin, 42 Colo. App. 200, 591 P.2d 1046 (1979); In re Soderquist, 44 Colo. App. 131, 608 P.2d 851 (1980); McVay v. Johnson, 727 P.2d 416 (Colo. App. 1986).

Subsection (5) does not require a written agreement between the parties for a change in physical care, only a mutual agreement. Court erred, therefore, in requiring a written agreement and in failing to hold a hearing when it acknowledged that there was a disputed issue of fact as to the existence of a mutual agreement. In re Paige, 2012 COA 83, 282 P.3d 506.

D. Discretion of Court.

Modification of decree allowing alimony is clearly discretionary and discretion depends upon the facts. Weydeveld v. Weydeveld, 100 Colo. 301, 67 P.2d 72 (1937); Huber v. Huber, 143 Colo. 255, 353 P.2d 379 (1960); Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963).

In exercising jurisdiction to change or modify an alimony decree courts should

proceed with caution, and unless the evidence clearly shows that the original decree is no longer fair and just, it should not be changed. Harris v. Harris, 113 Colo. 41, 154 P.2d 617 (1944); Beddoes v. Beddoes, 155 Colo. 115, 393 P.2d 1 (1964).

A trial court does not have the power to retroactively modify child support arrearages which accrue prior to the filing of a motion to modify. In re Greenblatt, 789 P.2d 489 (Colo. App. 1990).

Although a trial court has broad discretion in determining the amount and duration of a maintenance award, a trial court's order will not be upheld if it produces an unfair or inequitable result. Sinn v. Sinn, 696 P.2d 333 (Colo. 1985).

No authority of court to modify permanent orders without findings supported by evidence justifying modification. In re Mattson, 694 P.2d 1285 (Colo. App. 1984).

Payment of alimony in full to date of application for reduction was not a condition precedent to the court's power to reduce. Weydeveld v. Weydeveld, 100 Colo. 301, 67 P.2d 72 (1937).

Where an action was on the motion of a defendant for modification of support and visitation orders, the trial court was under no duty to make written findings of fact and conclusions of law. Garrow v. Garrow, 152 Colo. 480, 382 P.2d 809 (1963).

Child support provisions of separation agreement are not binding on court. In re Corbin, 42 Colo. App. 200, 591 P.2d 1046 (1979).

Maintenance and attorney fee provisions considered together to determine court's abuse of discretion. In cases where an appeal has been taken from the property division, maintenance and attorney's fee provisions of a dissolution of marriage decree as a whole, they must be considered together to determine whether the trial court abused its discretion. In re Jones, 627 P.2d 248 (Colo. 1981).

Where the husband's annual salary had not decreased since the entry of the decree, his voluntary assumption of obligations incident to his second marriage did not constitute such a change in circumstances as to require a modification of the original order, the court did not abuse its discretion in denying his motion to modify. Watson v. Watson, 29 Colo. App. 449, 485 P.2d 919 (1971).

Where financial status changed between date motion filed and date of hearing. While the trial court is authorized to consider the needs of the parties as they appear on the date the motion is filed, where the financial status of a party had changed materially between the date the motion was filed and the date of the hearing, the court must take into consideration the circumstances present on each date in determining what relief should be granted. In re Edwards, 39 Colo. App. 26, 560 P.2d 849 (1977).

Trial judge lacked authority to order husband's assets transferred and sold where husband sought modification of decree due to changed circumstances and former wife made no challenge to property disposition and did not establish conditions

justifying such relief. Mackey v. Hall, 694 P.2d 1275 (Colo. 1985).

Where only 12 days elapsed between the denial of a motion for modification of a final decree fixing support payments and the filing of a new motion, no change of circumstances being shown since the denial of the former motion, it was error for trial court to modify the decree on a showing that the husband had remarried and assumed additional obligations as a result thereof. Haase v. Haase, 151 Colo. 168, 376 P.2d 698 (1962).

Burden of proof for request for modification was not circumvented by court by requiring automatic reinstatement of original spousal maintenance award at end of period of reduction. In re Ward, 740 P.2d 18 (Colo. 1987).

Trial court has discretion to determine on a case by case basis whether the best interests of the child require it to raise guideline factors on its own motion in a proceeding for modification of child support. In re Aldrich, 945 P.2d 1370 (Colo. 1997).

Court did not abuse discretion by refusing to modify maintenance amount so that it would stay at higher level which was intended to be temporary while the wife completed her education and obtained employment even though wife had not obtained suitable employment. In re Wolford, 789 P.2d 459 (Colo. App. 1989).

Court did not abuse discretion in requiring husband to reimburse wife for deficiencies created by temporarily reduced spousal maintenance payments. In re Ward, 740 P.2d 18 (Colo. 1987).

Trial court erred in modifying judgment on its own motion to allow payment of attorney fees and home sale proceeds in installments without evidence, argument, or finding of "existence of conditions that justify reopening of a judgment." In re Connell, 831 P.2d 913 (Colo. App. 1992).

Trial court erred in denying mother's motion to set aside ex parte judgment in favor of father for medical and college expenses and attorney fees since subsection (1)(c) applies to child support payments, which mature under a decree without modification and become a judgment debt similar to any other judgment for money, but not to medical and college expenses, which are subject to additional elements of proof. In re Jacobs, 859 P.2d 914 (Colo. App. 1993).

Although subsection (1)(c) restricts a trial court's discretion to modify retroactively an accrued child support obligation, the restriction does not extend to the authority to set aside such a judgment on an appropriate basis. Remand to the district court is appropriate where the mother's motion to set aside the judgment contested her liability for further payments of child support, including the medical and college expenses, because of the emancipation of the children. In re Jacobs, 859 P.2d 914 (Colo. App. 1993).

The provisions of any decree respecting child support may be modified only as to installments accruing after the filing for

modification. Thus, the trial court's ability to modify retroactively an accrued child support obligation is severely restricted. In re Wright, 924 P.2d 1207 (Colo. App. 1996).

Equitable estoppel doctrine did not bar relief from accrued child support arrearages. While the trial court found that father made reduced child support payments in reliance upon his agreement with mother, there were no findings that father was either unaware of the continuing obligations under the original support order or lacked the knowledge or means to seek modification of it. Further, the father did not detrimentally rely on mother's acts or representations, such as incurring additional expenses for either the child or himself or by giving up a benefit based upon the agreement. Accrued child support arrearages will be abated only under extremely limited circumstances, such as concealment of the child or uncompleted adoption proceedings. In re Beatty, 2012 COA 71, 279 P.3d 1225.

Laches is recognized as a defense to the collection of maintenance arrearages or interest or both. Trial court must consider whether wife's twenty-six-year delay in enforcing the maintenance order was unreasonable given the circumstances and whether husband suffered prejudice as a result of not paying for that period of time. The concepts of delay and prejudice are interrelated and must be considered together. In re Kann, 2017 COA 94, 488 P.3d 245.

E. Jurisdiction of Court.

The former section, under which jurisdiction was retained by the court to make revisions of its orders in divorce proceedings, did not provide for a retrial procedure, such was not its purpose, as an application for modification of a divorce decree in pursuance of the statute was neither a rehearing of the original case nor a review of the equities. Peercy v. Peercy, 154 Colo. 575, 392 P.2d 609 (1964).

Such rule applied to the incidental fact of paternity in a divorce proceeding. Peercy v. Peercy, 154 Colo. 575, 392 P.2d 609 (1964).

The trial court's jurisdiction in divorce actions, for the purpose of later revisions of its orders, including division of property, "because of fraud, misrepresentation, or concealment", was controlled by statute rather than by C.R.C.P. 60(b). Ingels v. Ingels, 29 Colo. App. 585, 487 P.2d 812 (1971).

A court had jurisdiction to modify a decree as to permanent alimony at a term subsequent to that at which the decree was entered and before the completion of the payments therein provided, without regard to the section of the code of civil procedure dealing with relief from judgments. Stevens v. Stevens, 31 Colo. 188, 72 P. 1061 (1903); Huff v. Huff, 77 Colo. 15, 234 P. 167 (1925).

It was held a court rendering a decree of divorce retained jurisdiction to modify provisions thereof relating to alimony, division of property or a money judgment. Diegel v. Diegel, 73 Colo. 330, 215 P. 143 (1923); Rodgers v. Rodgers, 102 Colo. 94, 76 P.2d 1104 (1938); Mockelmann v. Mockelmann, 121 P.3d 337 (Colo. App. 2005).

The court has continuing jurisdiction for the purpose of such later revisions of its order pertaining to child support as changing circumstances may require. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

The holding that the trial court retained jurisdiction to hear an application for modification of the judgment for permanent alimony, where an agreement was incorporated in the decree, was overruled. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

Where there had been a change in circumstances before approving an application for a reduction, in matters of that kind the trial court had jurisdiction, notwithstanding the fact that prior to the modification order a writ of error had been issued by this court. Michaelson v. Michaelson, 167 Colo. 58, 445 P.2d 211 (1968).

Continuing jurisdiction as to child support. After jurisdiction of the parties in a divorce action attaches, the court retains jurisdiction over matters concerning the support of the minor children, and may, without notice to husband, enter judgment for arrearages in child support payments. Sauls v. Sauls, 40 Colo. App. 275, 577 P.2d 771 (1977); In re Warner, 719 P.2d 363 (Colo. App. 1986).

Formerly, terms of agreement not subject to modification absent court's reservation of such powers. Where a separation agreement was adopted and incorporated into the decree of divorce, and the agreement did not reserve to the court jurisdiction to modify the terms of the alimony provision, nor did the court in its order adopting and incorporating the agreement into the divorce decree specifically reserve the right to modify the terms thereof, the court cannot later modify such an agreement. Burleson v. District Court, 196 Colo. 445, 586 P.2d 665 (1978).

Specific agreement that court would retain jurisdiction controls. Where the parties specifically agreed that the trial court would retain jurisdiction to reopen the proceedings if any undisclosed assets were subsequently discovered, that agreement is binding, notwithstanding the provisions of C.R.C.P. 60(b) and this section. In re Hiner, 669 P.2d 135 (Colo. App. 1983), aff'd in part, rev'd in part on other grounds, 710 P.2d 488 (Colo. 1985).

Court has the power to reserve the right to modify its judgment based upon the occurrence of an expressly anticipated change of circumstances and is not required to find that the statutory threshold as contained in this section has been met. In re Mirise, 673 P.2d 803 (Colo. App. 1983).

The court retains jurisdiction to modify an award of limited maintenance even after the term for maintenance has passed where an actual need for continued support may not have been evident during the term of limited maintenance and the parties have provided for further court orders. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

The court should not be deprived of the authority to modify an award of support based solely on the desire of promoting the goals of finality and permanency of a

dissolution decree, even though the term for limited maintenance has expired. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

The court has jurisdiction to consider a motion to modify maintenance which is filed after the original maintenance obligation has ended where maintenance was awarded as part of a decree of dissolution and the parties have not by agreement expressly precluded the court's jurisdiction. Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

A trial court may expressly reserve jurisdiction to review, adjust, or extend a maintenance award if: (1) An important contingency exists, the outcome of which may significantly affect the amount or duration of the maintenance award; (2) the contingency is based upon an ascertainable, future event or events; (3) the contingency can be resolved within a reasonable and specific period time. In re Caufman, 829 P.2d 501 (Colo. App. 1992).

If a trial court intends to reserve jurisdiction over maintenance pursuant to this section it should: (1) State its intent to do so on the record; (2) briefly outline its reasons for doing so, stating what the ascertainable future event upon which the reservation of maintenance jurisdiction is based; and (3) set forth a reasonably specific future time within which maintenance may be reconsidered under this section. In re Caufman, 829 P.2d 501 (Colo. App. 1992).

Only where the parties have expressly agreed to preclude modification under § 14-10-112 (6), should maintenance be incapable of modification. Sinn v. Sinn, 696 P.2d 333 (Colo. 1985); In re Lee, 781 P.2d 102 (Colo. App. 1989); Aldinger v. Aldinger, 813 P.2d 836 (Colo. App. 1991).

By accepting the parties' separation agreement, incorporating it into the decree of dissolution, and granting the decree of dissolution that specified that the court retained jurisdiction "as provided by law", the court retained jurisdiction even though the contractual maintenance agreement specified that at the end of a three-year period, maintenance would be waived forever. In re Burke, 39 P.3d 1226 (Colo. App. 2001).

Any effort to limit or preclude the authority of a district court to modify the maintenance provision of a separation agreement must be articulated in language that is specific and unequivocal; if the parties are silent or if the parties reserve such power to the court, a district court may modify the maintenance provisions of a separation agreement incorporated into a decree. In re Burke, 39 P.3d 1226 (Colo. App. 2001).

District court did not have the power to void a separation agreement that was incorporated in an Illinois judgment. Upon remand, if the conditions for modification of child support are shown, the district court may modify the Illinois decree but it must recognize the Illinois judgment as the standard against which a change sought under this section must be measured. Rae v. Rubin, 719 P.2d 743 (Colo. App. 1986).

This section authorizes the modification of those awards traditionally labeled as

maintenance in gross, even though the decree does not expressly reserve the power to modify the order. Sinn v. Sinn, 696 P.2d 333 (Colo. 1985).

The characterization of periodic payments as maintenance or property division should be based on the purpose of the payments as determined by the totality of the circumstances. Sinn v. Sinn, 696 P.2d 333 (Colo. 1985).

No authority to award "equitable reimbursement" of past expenses. The court does not have the authority in a dissolution of marriage action to award to the wife an "equitable reimbursement" of expenses incurred and paid by wife for the past support of the children. In re Serfoss, 642 P.2d 44 (Colo. App. 1981).

Separation agreement provision that was incorporated into the dissolution of marriage decree requiring husband to pay part of his future social security benefits to wife is void. State courts lack subject matter jurisdiction to divide parties' social security benefits in a property distribution. In re Anderson, 252 P.3d 490 (Colo. App. 2010).

It was formerly well-established in this state that a property settlement agreement which was approved and incorporated in a divorce decree could not subsequently be modified, in the absence of fraud or overreaching. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967); In re Corley, 38 Colo. App. 319, 558 P.2d 450 (1976).

Where the agreement of the parties specifically stated that no modification of any term in the agreement would be valid unless in writing and signed by both parties and there was no reservation to the court of the power to modify the maintenance provisions, nor did the court, as a condition of approval of the agreement, reserve the power to modify, the maintenance aspect of the property settlement provision in the decree could only be modified upon proof of fraud or overreaching, or by the subsequent agreement of the parties. In re Corley, 38 Colo. App. 319, 558 P.2d 450 (1976).

A provision in an agreement which obligated the husband to make fixed monthly payments to the wife, where the agreement was approved by the court and incorporated in the decree of divorce, was not subject to subsequent modification. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

The parties could, in an agreement, reserve to the court the power to modify the "alimony" provision, and the court, as a condition to approval of the agreement, could reserve such power to itself, and it could also be modified by the subsequent agreement of the parties. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

The law is well settled in Colorado that a decree determining property rights in a divorce matter is final and cannot be subsequently modified by reason of changed circumstances. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

Formerly, where parties to a divorce action enter into an agreement settling their property rights, which agreement was incorporated in the final decree, the court was thereafter without jurisdiction, no fraud in procuring the settlement appearing, to

modify the terms of the decree concerning such property rights in the absence of consent of the parties. Hall v. Hall, 105 Colo. 227, 97 P.2d 415 (1939).

Although a former section gave the courts jurisdiction to enforce separate maintenance agreements, it was not to be construed to mean that parties to such agreements could not modify them by mutual consent. Gavette v. Gavette, 104 Colo. 71, 88 P.2d 964 (1939).

Trial court's modification of property division, to pay home sale proceeds and attorney fees in installments, limited wife's collection remedies and was therefore in excess of its jurisdiction. In re Greenblatt, 789 P.2d 489 (Colo. App. 1990); In re Connell, 831 P.2d 913 (Colo. App. 1992).

Where child was disabled and unable to support herself, an agreement between the parties that child support would terminate when the child reached 21 did not divest the court of jurisdiction to order continuing child support. In re Salas, 868 P.2d 1180 (Colo. App. 1994).

F. Effective Date of Modification.

Annotator's note. Cases decided under subsection (5) prior to its 2016 amendment have been included in the annotations to this section.

Formerly a modifying order or decree relates only to future support payments and can be effective only from the time of its entry. Lopez v. Lopez, 148 Colo. 404, 366 P.2d 373 (1961); Drazich v. Drazich, 153 Colo. 218, 385 P.2d 259 (1963).

The general rule that an order reducing the amount of support money operates only in futuro was not always applicable. Griffith v. Griffith, 152 Colo. 292, 381 P.2d 455 (1963).

Docketing delays do not excuse or reduce a child support obligation. Without specific findings of hardship or injustice under subsection (1)(d), modification must be made retroactive. However, amounts awarded retroactively are not arrearages requiring payment of interest under § 14-14-106. In re Armit, 878 P.2d 101 (Colo. App. 1994).

Generally the modification of support orders must be based on the needs of the parties at the time of the hearing thereon, rather than on what such conditions may have been in the past or may be in the future. Huber v. Huber, 143 Colo. 255, 353 P.2d 379 (1960).

Court may now modify support payments back to date of filing of motion, rather than only from the date of the hearing on the motion as was the case under the earlier statute. In re Walsh, 44 Colo. App. 502, 614 P.2d 913 (1980).

But the trial court has discretion in determining whether to back date a reduction order to the time motion was filed, and trial court's determination will stand absent an abuse of discretion. In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

The amendment to subsection (5) that was effective January 1, 2017, was intended by its plain language to operate on motions filed after its effective date, even if the change in physical care

predated the amendment. Subsection (5) is remedial in nature and its limitation provision is simply a limitation on the remedy: Regardless of when the change in custody occurred, relief is limited to the five years preceding the filing of the motion. The application of a limitation on a remedy to an existing claim for relief does not violate the prohibition against retroactive legislation. In re Weekes, 2020 COA 16, 459 P.3d 1216.

Under subsection (5), modification of support must date from the change in physical custody. Mother was not liable for child support arrearages based on a stipulation between the parties under which she agreed to pay child support, because she regained physical custody of the child and the child continued to live with her for the entire period for which support was claimed. In re Foley, 879 P.2d 452 (Colo. App. 1994).

Provisions of subsection (1) and subsection (5) relating to retroactivity of modification date are irreconcilable. The subsection enacted latest, which states that modification should be effective as of the date of the filing of the motion for modification of child support, read together with the consistent provisions of the statutory section, prevails. The conflicting subsection relating to retroactive modification back to the date of change of physical custody is repealed by implication. In re Pickering, 967 P.2d 164 (Colo. App. 1997) (decided prior to 1998 amendments to subsection (1) and (5)).

Subsection (5) provides that when children change their primary residence, the provisions for obligor's child support under the existing child support order will be modified as of the date when the physical care was changed. It does not provide that either parent's obligation terminates for a time; instead, the existing order is to be modified as of the date the children switch residences. In re Emerson, 77 P.3d 923 (Colo. App. 2003).

The general assembly legislatively overruled In re White, 240 P.3d 534 (Colo. App. 2010), when it amended subsection (5) in 2013. It intended to change the statute in favor of the statutory interpretation of In re Emerson. In re Garrett, 2018 COA 154, 444 P.3d 812.

Subsection (5) allows a court to retroactively enter a child support order against either parent, as of the date of a change in physical care of a child, regardless of the parent's status as an obligor or obligee under the existing child support order. In re Garrett, 2018 COA 154, 444 P.3d 812.

The inability to calculate the amount of support due does not change the fact that mother became the obligor as of the date of the change in residence. In re Emerson, 77 P.3d 923 (Colo. App. 2003).

Subsection (5) relates only to provisions for child support for the obligor under the existing order. Where parents agreed that child could live with father who is the obligor under the existing child support order, child support may be ordered for mother effective the date of filing of a motion, not retroactive to the date when physical care was changed. In re White, 240 P.3d 534 (Colo. App. 2010) (holding contrary to In re Emerson annotated above).

But see In re Garrett, 2018 COA 154, 444 P.3d 812, annotated above.

Mother does not become "obligor" under existing child support order by virtue of a mutually agreed upon change in physical care. The statute encourages parties in such cases to modify or update the child support order. Mother's obligation commences at the time of filing of the motion. In re White, 240 P.3d 534 (Colo. App. 2010) (holding contrary to In re Emerson annotated above). But see In re Garrett, 2018 COA 154, 444 P.3d 812, annotated above.

Subsection (5) provides a limited exception to the general rule that child support may only be modified retroactive to the date of filing of a motion and was designed to protect the obligor in an existing order who has accepted the physical care of the child. In re White, 240 P.3d 534 (Colo. App. 2010) (holding contrary to In re Emerson annotated above). But see In re Garrett, 2018 COA 154, 444 P.3d 812, annotated below.

After a voluntary change in parenting time, retroactive child support may be awarded to the obligor of the previous order beginning on the date when the physical care was changed. Despite the persistent ambiguity of the statute after it was amended in 2013, the general assembly appears to have attempted to overrule In re White, 240 P.3d 534, and affirm In re Emerson, 77 P.3d 923 (Colo. App. 2003), both annotated above. In re Garrett, 2018 COA 154, 444 P.3d 812.

G. Scope of Review.

Application of the provisions of this section by the court for the modification of a prior child support order entered under the Uniform Parentage Act was error as a matter of law. Ashcraft v. Allis, 747 P.2d 1274 (Colo. App. 1987).

One who has accepted benefits of judgment may not seek reversal of that judgment on appeal. In re Jones, 627 P.2d 248 (Colo. 1981).

Unless it clearly appeared that the trial court, in resolving the problems arising under the evidence appearing in the record, acted unreasonably or arbitrarily in making the orders and awards of which complaint is made, it was not proper for the supreme court to modify or set them aside. Rodgers v. Rodgers, 102 Colo. 94, 76 P.2d 1104 (1938); Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

There was no difficulty in laying down the rule that governed, but there was difficulty in applying it, because what was, and what was not, reasonable and where a reasonable discretion ended and arbitrary action began was not susceptible of mathematical demonstration, and the application of the rule necessarily introduced the factor of individual judgment, which, as between different persons in the same case, was a variable quantity. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

A decree of divorce which had been modified by the supreme court on the determination of an appeal in respect to the amount and payment of alimony could have been further modified on petition for

rehearing as to provide for the acceptance of the husband's tender of a deed of real estate in lieu of all pecuniary allowances of alimony. Luthe v. Luthe, 12 Colo. 421, 21 P. 467 (1889).

Where a mother through her attorney in open court, disclaimed any interest in upholding a judgment for cumulated support payments and recommended that the judgment be set aside and lesser sum substituted in justice to both parties, she could not change her position in the supreme court because dissatisfied with amount of reduction by the trial court. Griffith v. Griffith, 152 Colo. 292, 381 P.2d 455 (1963).

Referee's findings concerning whether a sufficient change of circumstances has occurred to justify modification of child support order is binding upon the court, unless such findings are without evidentiary support. McVay v. Johnson, 727 P.2d 416 (Colo. App. 1986).

Judgment which took into consideration the proceeds of moneys embezzled by the husband set aside. In re Allen, 724 P.2d 651 (Colo. 1986).

III. TERMINATION OF MAINTENANCE AND CHILD SUPPORT.

Annotator's note. Since §§ 14-10-122 (2) and 14-10-122 (3) are similar to repealed § 46-1-5 (5), C.R.S. 1963, and § 46-1-5, CRS 53, and because repealed § 46-2-5, C.R.S. 1963, and § 46-2-5, CRS 53 have some relevance, relevant cases decided under those provisions have been included in the annotations to this section.

The "writing" referred to in subsection (2) must expressly or by clear implication provide that maintenance payments will continue after the death of the obligor. In re Williams, 2017 COA 120M, 410 P.3d 1271.

A general provision at the end of a premarital or separation agreement providing that the agreements are binding on and inure to the benefit of the parties' heirs, assigns, and personal representatives does not bind the estate to continue the maintenance payments to the obligee without a clear indication in the maintenance provision of the agreement that such payments are intended to continue after obligor's death. In re Williams, 2017 COA 120M, 410 P.3d 1271.

Without a clear expression of intent to continue a payment obligation beyond husband's lifetime, the period that husband was obligated to pay, during which the amount of the payments was nonmodifiable, ended with his death. In re Williams, 2017 COA 120M, 410 P.3d 1271.

Section inapplicable where agreement provides that only wife's death would absolve husband's liability. Although the language of a separation agreement does not explicitly provide for the continuation or termination of maintenance in the event of remarriage where it indicates that it was the contemplation of the parties that only the wife's death would absolve the husband of liability for payment of maintenance, the provisions of this section do not apply. In re Hahn, 628 P.2d 175 (Colo. App. 1981).

The presence of a general nonmodification clause in the separation

agreement is sufficient to overcome the statutory presumption that maintenance terminates upon the recipient's remarriage. While express language concerning termination is preferable, the absence of that language is not fatal if the intent is evident from the agreement or decree as a whole. In re Parsons, 30 P.3d 868 (Colo. App. 2001). But see In re Cerrone, 2021 COA 116, 499 P.3d 1064.

The court declined to follow the holding in In re Parsons annotated above to the extent that it holds that the mere presence of a nonmodification clause alone is sufficient to continue a maintenance under the statute after the recipient spouse's remarriage. Further, the court distinguished the maintenance agreement in In re Parsons. In re Cerrone, 2021 COA 116, 499 P.3d 1064.

The court declined to follow the holding in In re Cerrone annotated above to the extent that it holds that a separation agreement or decree must include an "express provision" that maintenance will continue even if the recipient spouse remarries. Instead, the court held that the agreement must only expressly or by clear implication indicate the parties' intent that the payments continue. In re Clark, 2025 COA 75, 578 P.3d 853.

The public policy which provides an obligation for one spouse to support the other spouse when there is a need and an ability to pay applies equally to reinstate a support obligation following annulment of a subsequent marriage where the equities dictate. In re Cargill & Rollins, 843 P.2d 1335 (Colo. 1993).

Ordinarily alimony ceased upon the death of the husband, or the wife. Elmer v. Elmer, 132 Colo. 57, 285 P.2d 601 (1955); Doll v. Doll, 140 Colo. 546, 345 P.2d 723 (1959); Menor v. Menor, 154 Colo. 475, 391 P.2d 473 (1964); In re Piper, 820 P.2d 1198 (Colo. App. 1991).

Child support obligation of noncustodial parent continues after death of custodial parent. When a noncustodial parent's child support obligation is incorporated into a dissolution decree, and the custodial parent dies and the child is not in the physical custody of the noncustodial parent, the child support obligation of the noncustodial parent continues beyond the death of the custodial parent in accordance with the terms of the dissolution decree. Abrams v. Connolly, 781 P.2d 651 (Colo. 1989).

Legal obligation expanded. In effect, by this section the general assembly has expanded the legal obligation of the parent of a minor child entitled to receive support pursuant to a dissolution of marriage decree. In re Icke, 189 Colo. 319, 540 P.2d 1076 (1975).

Parent was not divested of child support obligation based on payments that accrued prior to a final adoption decree. In addition, father was denied equitable relief from child support obligation where record did not reflect evidence of representations upon which the father relied or that an evidentiary hearing was requested. In re Murray, 790 P.2d 868 (Colo. App. 1989).

Unless otherwise provided, the obligation to support minor children

survives the death of the parent. In re Icke, 189 Colo. 319, 540 P.2d 1076 (1975).

There was no authority under which a husband could be compelled to carry insurance on his life to the end that a divorced wife could from that source continue to receive alimony after the death of the husband, as this obligation to pay alimony ends with death. Ferguson v. Olmsted, 168 Colo. 374, 451 P.2d 746 (1969).

Carrying life insurance as means of continuing alimony permitted. Subsection (2) changes the rule under prior law that an order requiring a husband to carry life insurance as a means of continuing alimony after his death was not permitted. In re Koktavy, 44 Colo. App. 305, 612 P.2d 1161 (1980).

Court may order spouse to obtain life insurance to secure future maintenance payments even though the obligation to pay maintenance terminated upon the death of the spouse. In re Graff, 902 P.2d 402 (Colo. App. 1994).

Under subsection (5) of former § 46-1-5, C.R.S. 1963, where there is no written agreement or stipulation to the contrary, the right to alimony automatically terminated by operation of law upon remarriage of the wife without the necessity of the husband's affirmative action for termination by court order. Spratlen v. Spratlen, 30 Colo. App. 91, 491 P.2d 608 (1971).

Where an agreement to pay alimony was indefinite in time, and merely provided that the reduction of husband's obligations at his father's death would be taken into consideration in fixing the amount of periodic alimony payments due thereafter, since there was no written agreement to the contrary, the trial court should have ruled that the husband's obligation to pay alimony ceased at the wife's remarriage. Spratlen v. Spratlen, 30 Colo. App. 91, 491 P.2d 608 (1971).

The term "remarriage" as used in this section means the status of remarriage, including both common law and ceremonial marriage. In re Cargill & Rollins, 843 P.2d 1335 (Colo. 1993).

Remarriage does not terminate property right adjustment. Court order constituting an adjustment of property rights between a former husband and wife did not terminate upon remarriage of wife. Greer v. Greer, 32 Colo. App. 196, 510 P.2d 905 (1973).

An annulment of a marriage does not automatically reinstate a maintenance obligation from a previous marriage as a matter of law, but the obligation may be reinstated depending on the facts and equities of the situation. In re Cargill & Rollins, 843 P.2d 1335 (Colo. 1993).

Remarriage may warrant reduction in "child support" payments to eliminate that portion of the payment actually intended as maintenance. Gebhardt v. Gebhardt, 198 Colo. 28, 595 P.2d 1048 (1979).

Duty to support dependent adult child. Where an adult child, subject to proof of her alleged incapacity, is still dependent on her parents, then the child is not emancipated under this article and the duty of support

continues. In re Koltay, 646 P.2d 405 (Colo. App. 1982), aff'd, 667 P.2d 1374 (Colo. 1983).

Provision for post-emancipation support may be made by written agreement of the parties or, in proper circumstances, may be included in a decree entered before the child's 21st birthday and guided by consideration of the factors listed in § 14-10-115. In re Huff, 834 P.2d 244 (Colo. 1992).

What constitutes emancipation is a question of law. In re Robinson, 629 P.2d 1069 (Colo. 1981); Baker v. Baker, 667 P.2d 767 (Colo. App. 1983).

Establishment of emancipation. When, by express or implied agreement between a child and a parent, a child who is capable of providing for his own care and support undertakes to leave his parent's home, earn his own living and do as he wishes with his earnings, emancipation occurs. In re Robinson, 629 P.2d 1069 (Colo. 1981).

Whether emancipation has been established must be determined in light of all the relevant facts and circumstances of the case. In re Robinson, 629 P.2d 1069 (Colo. 1981).

Emancipation ordinarily occurs upon the attainment of majority. Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983).

Burden of proving emancipation is on the one asserting it. In re Robinson, 629 P.2d 1069 (Colo. 1981).

Minor unemancipated child's earnings from summer employment do not affect the noncustodial parent's obligation to provide support. In re Anderson, 638 P.2d 826 (Colo. App. 1981).

Emancipation does not occur where child incapable of self-support. If a child is physically or mentally incapable of self-support when he attains the age of majority, "emancipation" does not occur, and the duty of parental support continues for the duration of the child's disability. Koltay v. Koltay, 667 P.2d 1374 (Colo. 1983).

Emancipation automatic upon child's marriage. Emancipation occurs automatically upon the valid marriage of child, and the validity of a marriage is tested under the laws of the jurisdiction where the marriage took place. In re Fetters, 41 Colo. App. 281, 584 P.2d 104 (1978).

Child, once emancipated by marriage, could become unemancipated by the subsequent annulment of that marriage. In re Fetters, 41 Colo. App. 281, 584 P.2d 104 (1978).

A minor may be emancipated for some purposes but not for others. In re Robinson, 629 P.2d 1069 (Colo. 1981).

For evidence insufficient to support finding that child emancipated, see In re Clay, 670 P.2d 31 (Colo. App. 1983).

For evidence insufficient to establish temporary emancipation during summer vacation, see In re Robinson, 629 P.2d 1069 (Colo. 1981).

Support payments for a child who is emancipated by marriage do not automatically terminate unless there is a specific amount separately stated for the support of the particular child emancipated.

Ferguson v. Ferguson, 32 Colo. App. 145, 507 P.2d 1110 (1973).

Change in the age of emancipation and duty of support in § 14-10-115 did not automatically modify a parent's existing obligation of support and plain language of subsection (4) makes clear that the changes in the age of emancipation will affect a support obligation only if a motion to modify is filed and only with respect to those support payments coming due after such filing. In re Dion, 970 P.2d 968 (Colo. App. 1997).

This section plainly establishes substantial and continuing changed circumstances as the prerequisite to modification of all postsecondary education support orders. While the parties can agree to postsecondary education support, the terms of their agreement do not bind the court, and the parties cannot preclude or limit subsequent court modification of terms concerning child support. In re Ludwig, 122 P.3d 1056 (Colo. App. 2005).

A defendant who sought reduction in support payments had burden of proving that the payments should be reduced by any particular amount. Ferguson v. Ferguson, 32 Colo. App. 145, 507 P.2d 1110 (1973).

Good faith retirement does not create a reason that automatically terminates a payor's duty to pay maintenance. Subsection (2)(b) creates a "rebuttable presumption" that a payor who retires "after reaching full retirement age" has retired in "good faith." This rebuttable presumption is not conclusive on the question of whether the court should terminate the payor's maintenance obligation. Because the presumption is rebuttable, the spouse who is receiving maintenance must have the opportunity to rebut the presumption. Once the payor satisfies the rebuttable presumption created by subsection (2)(b), the presumption shifts the burden of going forward to the recipient to show that the payor's decision to retire was not made in good faith. If the recipient does not meet this burden, then the court will presume, as a matter of law, that the payor's decision to retire was made in good faith. In re Thorstad, 2019 COA 13, 434 P.3d 165.

If a payor asks a court to modify or to terminate a maintenance obligation because he or she intends to retire, then the court should follow a general rule. First, applying subsections (2)(b) and (2)(c), it should decide whether the payor's decision to retire was made in good faith. Second, it should then incorporate its findings concerning the payor's decision to retire as one of the factors to consider in deciding whether, under subsection (1)(a), circumstances have changed in such a substantial and continuing way as to make the original order unfair. In re Thorstad, 2019 COA 13, 434 P.3d 165.

Formerly, the necessity for a separate maintenance could have terminated at any time by reconciliation of the parties, or by the death of one of them. Vines v. Vines, 137 Colo. 449, 326 P.2d 662 (1958).

The general rule was that reconciliation did not automatically terminate property settlement agreements, and the courts in such cases looked to the intent of the parties

to determine if reconciliation was meant to revoke the property settlement agreement, and the question of whether or not reconciliation affects a property settlement agreement was a question of fact to be determined by the evidence. Larson v. Goodman, 28 Colo. App. 418, 475 P.2d 712 (1970).

It is error as a matter of law to fail to weigh the evidence giving due consideration and thought to all of the statutory factors of § 14-10-115 (1) where the noncustodial parent has ample resources with which to contribute to his children's education, and their ability to acquire and their need for an education are established by the evidence. In re Pring, 742 P.2d 343 (Colo. App. 1987).

Hence, the trial court erred in requiring these children to exhaust their own assets for educational purposes before requiring either parent to contribute to their education. In re Pring, 742 P.2d 343 (Colo. App. 1987).

Absent a finding that a motion for custody evaluation was made for purpose of delay, the court must order an evaluation upon request of one of the parties. Kuyatt v. District Court, 817 P.2d 116 (Colo. 1991).

Where the agreement fails to expressly provide for the termination of child support or educational costs, the court must interpret and enforce the implied obligation to render it lawful. In re Meisner, 807 P.2d 1205 (Colo. App. 1990); In re Wisdom, 833 P.2d 884 (Colo. App. 1992).

When court interprets an implied obligation, it must consider all of the provisions of the agreement as well as the circumstances at the time it was made, consonant with its dominant purpose. In re Wisdom, 833 P.2d 884 (Colo. App. 1992).

14-10-123. Commencement of proceedings concerning allocation of parental responsibilities - jurisdiction - automatic temporary injunction - enforcement - definitions.

(1) A proceeding concerning the allocation of parental responsibilities is commenced in the district court or as otherwise provided by law:

(a) By a parent:

(I) By filing a petition for dissolution or legal separation; or

(II) By filing a petition seeking the allocation of parental responsibilities with respect to a child in the county where the child is permanently resident or where the child is found; or

(III) By filing a motion seeking the allocation of parental responsibilities with respect to a child in an existing juvenile court case filed pursuant to article 4 or 6 of title 19 or article 13.5 of title 26; or

(b) By a person other than a parent, by filing a petition seeking the allocation of parental responsibilities for the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical care of one of the child's parents;

(c) By a person other than a parent who has had the physical care of a child for a period of one hundred eighty-two days or more, if such action is commenced within one hundred eighty-two days after the termination of such physical care; or

(d) By a parent or person other than a parent who has been granted custody of a child or who has been allocated parental responsibilities through a juvenile court order entered pursuant to section 19-1-104 (6), C.R.S., by filing a certified copy of the juvenile court order in the county where the child is permanently resident. Such order shall be treated in the district court as any other decree issued in a proceeding concerning the allocation of parental responsibilities.

(1.3) As used in this section, excluding subsection (1.5) of this section:

(a) "Child" has the same meaning as set forth in section 19-1-103.

(b) "Parent" has the same meaning as set forth in section 19-1-103.

(1.5) (a) For purposes of this subsection (1.5) only, "child" means an unmarried individual who has not attained twenty-one years of age.

(b) The court may enter an order for allocation of parental responsibilities for a child, as defined in subsection (1.5)(a) of this section, and a determination of whether the child shall be reunified with a parent or parents, when the requirements of subsection (1) of this section are met, the order is in the child's best interests, and:

(I) The child has not attained twenty-one years of age;

(II) The child is residing with and dependent upon a caregiver; and

(III) A request is made for findings from the court to establish the child's eligibility for classification as a special immigrant juvenile pursuant to 8 U.S.C. sec. 1101 (a)(27)(J).

(c) If a request is made for findings from the court to establish the child's eligibility for classification as a special immigrant juvenile under federal law and the court determines there is sufficient evidence to support the findings, the court shall enter an order, including factual findings and conclusions of law, determining that:

(I) The child has been placed under the custody of an individual appointed by the court pursuant to an order for allocation of parental responsibilities;

(II) Reunification of the child with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found pursuant to state law. For purposes of this subsection (1.5)(c)(II), "abandonment" includes, but is not limited to, the death of one or both parents.

(III) It is not in the best interests of the child to be returned to the child's or parents' previous country of nationality or country of last habitual residence.

(1.8) The court shall make all necessary persons parties to the proceeding pursuant to the requirements of section 19-4-110 and shall make a determination pursuant to section 19-4-105 as to legal parentage.

(2) Except for a proceeding concerning the allocation of parental responsibilities commenced pursuant to paragraph (d) of subsection (1) of this section, notice of a proceeding concerning the allocation of parental responsibilities shall be given to the child's parent, guardian, and custodian or person allocated parental responsibilities, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

(2.5) Upon the filing of a petition pursuant to subsection (1) of this section, each party shall provide to the court, in the manner prescribed by the court, his or her social security number and the social security number of each child named in the petition.

(3) (a) Upon the filing of a petition concerning the allocation of parental responsibilities pursuant to this section and upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent, a temporary injunction shall be in effect against both parties:

(I) Enjoining each party from molesting or disturbing the peace of the other party;

(II) Restraining each party from removing a minor child who is the subject of the proceeding from the state without the consent of all other parties or an order of the court modifying the injunction; and

(III) Restraining each party, without at least fourteen days' advance notification and the written consent of all other parties or an order of the court modifying the injunction, from canceling, modifying, terminating, or allowing to lapse for nonpayment of premiums a policy of health insurance or life insurance that provides coverage to a minor child who is the subject of the proceeding or that names the minor child as a beneficiary of a policy.

(b) The provisions of the temporary injunction shall be printed upon the summons and the petition. The temporary injunction shall be in effect upon personal service of the petition and summons on a respondent or upon waiver and acceptance of service by a respondent and shall remain in effect against each party until the court enters the final decree, dismisses the petition, or enters a further order modifying the injunction. A party may apply to the court for further temporary orders pursuant to section 14-10-125, an expanded temporary injunction, or modification or revocation of the temporary injunction.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (3), the temporary injunction described in this subsection (3) shall not apply to a proceeding concerning

the allocation of parental responsibilities commenced pursuant to paragraph (d) of subsection (1) of this section or to a proceeding concerning the allocation of parental responsibilities commenced by a parent that is governed by the automatic temporary injunction pursuant to section 14-10-107 (4)(b).

(d) For purposes of enforcing the automatic temporary injunction that becomes effective in accordance with this subsection (3), if the respondent shows a duly authorized peace officer, as described in section 16-2.5-101, C.R.S., a copy of the petition and summons filed and issued pursuant to this section, or if the petitioner shows the peace officer a copy of the petition and summons filed and issued pursuant to this section together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and the peace officer has cause to believe that a violation of the part of the automatic temporary injunction that enjoins a party from molesting or disturbing the peace of the other party has occurred, the peace officer shall use every reasonable means to enforce that part of the injunction against the petitioner or respondent, as applicable. A peace officer shall not be held civilly or criminally liable for his or her actions pursuant to this subsection (3) if the peace officer acts in good faith and without malice.

Source: L. 71: R&RE, p. 529, § 1. **C.R.S. 1963:** § 46-1-23. **L. 73:** p. 554, § 10. **L. 97:** Entire section amended, p. 515, § 1, effective July 1. **L. 98:** Entire section amended, p. 1377, § 3, effective February 1, 1999. **L. 2010:** (3) added, (HB 10-1097), ch. 39, p. 159, § 2, effective August 15. **L. 2011:** (2.5) added, (SB 11-123), ch. 46, p. 119, § 3, effective August 10. **L. 2012:** (1)(c) amended, (SB 12-175), ch. 208, p. 832, § 29, effective July 1. **L. 2019:** (1.5) added, (HB 19-1042), ch. 55, p. 193, § 5, effective March 28. **L. 2021:** (1.3) and (1.8) added, (HB 21-1220), ch. 212, p. 1119, § 2, effective July 1. **L. 2023:** (1)(a)(III) added, (SB 23-173), ch. 330, p. 1974, § 4, effective July 1. **L. 2024:** IP(1.5)(c) and (1.5)(c)(II) amended, (SB 24-119), ch. 33, p. 102, § 1, effective August 7.

Cross references: For procedure for intervention of other parties generally, see C.R.C.P. 24; for procedure in a custody proceeding, see § 14-13-209.

ANNOTATION

Law reviews. For note, "The Puzzle of Jurisdiction in Child Custody Actions", see U. Colo. L. Rev. 541 (1966). For article, "Mediation of Contested Child Custody Disputes", see 11 Colo. Law. 336 (1982). For article, "The Role of the Guardian ad Litem in Custody and Visitation Disputes", see 17 Colo. Law. 1301 (1988). For article, "Custody Evaluations in Colorado", see 18 Colo. Law. 1523 (1989). For article, "Legal

Protection of Children in Nontraditional Families", see 29 Colo. Law. 79 (Nov. 2000). For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001). For article, "The Constitutionality of Colorado's Grandparent Visitation and Third-Party Standing Statutes", see 32 Colo. Law. 51 (Feb. 2003). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (Oct. 2008). For article, "Constitutional Issues and Legal Standards in Parental Responsibility Matters", see 42 Colo. Law. 33 (Jan. 2013). For article, "Who's Their Daddy: Navigating Allocation of Parental Responsibilities and Paternity Actions", see 45 Colo. Law. 29 (May 2016). For article, "Psychological Parents and Child Support", see 51 Colo. Law. 24 (Nov. 2022).

No jurisdiction. Colorado court lacks jurisdiction to hear a petition for custody filed by a parent when a child is not a permanent resident nor located in the state when the petition is filed. In re Barnes, 907 P.2d 679 (Colo. App. 1995).

This section permits the intervention of interested parties; it does not mandate that they be made parties. In re Trouth, 631 P.2d 1183 (Colo. App. 1981).

Court retains jurisdiction over child custody issues until the child reaches the age of emancipation. In re Hartley, 886 P.2d 665 (Colo. 1994).

Petition need not be incidental to dissolution of marriage. Petitions for legal custody do not have to be incidental to a dissolution of marriage proceeding for the district court to have jurisdiction. In re Davis, 656 P.2d 42 (Colo. App. 1982); In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Applications for parental responsibilities by a nonparent implicate the fundamental constitutional right to family autonomy and privacy, and a legislative enactment that infringes on a fundamental right is constitutionally permissible only if it is necessary to promote a compelling state interest and does so in the least restrictive manner possible. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Subsection (1)(c) limits jurisdiction to the class of nonparents who may seek parental responsibilities to only those individuals who have had a recent or continuing role as a caretaker and thereby protects against undue interference with the parent-child relationship. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Subsection (1)(c) is the legislature's recognition of psychological parenting, and a determination of "physical care" includes the amount of time a child has spent in the actual, physical possession of a nonparent and the psychological bonds nonparents develop with children who have been in their physical possession and control for a significant period of time and does not require that this be exclusive physical care; but the jurisdictional requirements of this paragraph (c), which creates standing for non-parents, must be applied narrowly. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Subsection (1)(c) gives a psychological parent, as a nonparent, the ability to seek an allocation of parental responsibilities but does not vest a nonparent with an absolute right to an allocation of parental responsibilities. In re R.M.C., 2022 COA 46, 514 P.3d 963.

Nothing in subsection (1)(c) requires that a legal relationship exist between the nonparent and the child, but only that the nonparent had physical care of the child for at least six months. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Neither exclusive physical care nor parental consent is required for a nonparent to establish standing to petition for an allocation of parental responsibilities under subsection (1)(c). In re E.K., 2022 CO 34, 511 P.3d 605.

Nonparent, stepfather, met the standard of having physical care of child for at least 182 days because, while not exclusive physical care, the stepfather lived in the same house as child for eight years; aided in the child's education; was involved in the child's extracurricular activities; took the child on family vacations; and paid for her daily living expenses. In re E.K., 2022 CO 34, 511 P.3d 605.

Parental consent is not necessary for a nonparent to establish standing under subsections (1)(b) and (1)(c). The plain language of the statute does not require parental consent to a nonparent caring for a child to satisfy the constitution. In re B.B.O., 2012 CO 40, 277 P.3d 818.

To establish standing, however, the nonparent must show that the natural parent or parents voluntarily relinquished custody of the child. The nonparent bears the burden of proving that the natural parent voluntarily permitted the nonparent to share in or assume the parent's responsibility to provide physical care to the child. In re C.R.C., 148 P.3d 458 (Colo. App. 2006).

Under any definition of psychological parent, emotional harm to a young child is intrinsic in the termination or significant curtailment of the child's relationship with the person who is the psychological parent. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Once a petition under this section is certified to be determined as part of a pending dependency and neglect action under the Children's Code, dissolution-of-marriage statutes cease to apply. Instead, provisions of the Children's Code govern, in view of the differing policies behind the respective statutes. People in Interest of D.C., 851 P.2d 291 (Colo. App. 1993).

This section does not give standing to a person on the basis that he is a presumptive father under the Uniform Parentage Act. In re Ohr, 97 P.3d 354 (Colo. App. 2004).

Nonparents who had physical custody of child beginning immediately after his birth had standing to seek custody under this section where, in adopting subsection (1)(b), the general assembly intended that a literal meaning be applied to the term "physical custody" and did not intend to equate "physical custody" with either "legal custody" or the "parental right to continued physical or legal custody". Thus, in keeping

with the overriding policy of promoting the best interests of children, Colorado has adhered to a liberalized view as to the standing of nonparents to commence and participate in custody proceedings. In re Custody of C.C.R.S., 872 P.2d 1337 (Colo. App. 1993), aff'd, 892 P.2d 246 (Colo. 1995).

To establish standing, however, the nonparent must show that the natural parent or parents voluntarily relinquished custody of the child. The nonparent bears the burden of proving that the natural parent voluntarily permitted the nonparent to share in or assume the parent's responsibility to provide physical care to the child. In re C.R.C., 148 P.3d 458 (Colo. App. 2006).

Person fitting criteria in subsection (1) of this section may qualify as an "appropriate party" within the meaning of § 19-4-116. In re Ohr, 97 P.3d 354 (Colo. App. 2004).

To determine whether a nonparent had "physical care" and, thus, standing to seek allocation of parental responsibilities, courts should consider the nature, frequency, and duration of contacts between the child and the parent and between the child and the nonparent, including the amount of time the child has spent in the actual, physical possession of the nonparent and the parent, which physical care need not be uninterrupted or exclusive. In re L.F., 121 P.3d 267 (Colo. App. 2005).

The court should consider the manner in which a child came into the nonparent's physical possession in determining the threshold issue of whether the nonparent has standing under this section, and the nonparent must show that the natural parent voluntarily relinquished custody of the child. The nonparent bears the burden of proving that the natural parent voluntarily permitted the nonparent to share in or assume the parent's responsibility to provide physical care to the child. In re C.R.C., 148 P.3d 458 (Colo. App. 2006).

A maternal grandmother who received parental responsibilities through a dependency and neglect proceeding is not a "psychological parent" under In re A.C.H., 2019 COA 43, 440 P.3d 1266, and therefore not a parent under § 14-10-115 and therefore cannot be ordered to pay child support. The maternal grandmother voluntarily assumed parental responsibilities for the child through a dependency and neglect proceeding and never sought permanent custody through an adoption proceeding. Her willingness to assume responsibilities while parents were unfit did not transform her into a permanent custodian or psychological parent. Therefore, the court did not err in not imposing a child support obligation on her after father became fit. In re Bergeson-Flanders, 2022 COA 18, 509 P.3d 1083.

The existence of a bond between a caregiver and a child, or the lack of a bond between the parents and the child, where the parents continue to exercise their personal rights by directing the caregiver, is irrelevant to the determination of whether the caregiver had "physical care" of the child as required by subsection (1)(c). In re L.F., 121 P.3d 267 (Colo. App. 2005).

Granting standing under subsection (1)(c) to those who care for and nurture a child at the request of and under the ongoing direction and control of the parents could be disruptive of the parent-child relationship and implicate the parents' decision-making rights, regardless of whether the caregiver developed a bond with the child; it could also burden parents who continue to exercise their decision-making rights with the threat that those who provide care at their discretion and under their direction would be able to initiate emotionally and financially costly litigation. In re L.F., 121 P.3d 267 (Colo. App. 2005).

Nonparent did not have physical care of the child for purposes of standing to seek parental rights where nonparent's care was provided at mother's direction and under mother's supervision. Despite child's frequent overnights with the nonparent, mother acted as the child's parent with the nonparent serving as a mentor to the young mother and a grandmother-like figure to the child. In re D.T., 2012 COA 142, 292 P.3d 1120.

Subsection (1)(b) creates a basis for standing that is independent of subsection (1)(c), and, because it was not disputed that the child was in the care of her grandmother, stepfather met the requirements of subsection (1)(b). Based on the plain language of the statute, stepfather was eligible to bring the action even though child was not in his physical care. In re K.M.B., 80 P.3d 914 (Colo. App. 2003).

Nothing within the plain language of either subsection (1)(b) or (1)(c) requires the two subsections to be applied together or engrafts the physical care requirement imposed in the latter subsection upon nonparents who seek standing under the former subsection. By its terms, subsection (1)(b) establishes that any nonparent has standing as long as the child is not in the physical care of a parent. In re K.M.B., 80 P.3d 914 (Colo. App. 2003).

Both subsection (1)(b) and subsection (1)(c) are limited by the requirement that the biological parent consent or acquiesce in the transfer of physical care to the party seeking standing. Both subsections require volition on the part of the biological parents. In re C.R.C., 148 P.3d 458 (Colo. App. 2006).

Proof that the nonparent had become the psychological parent of the child is not a condition precedent to standing under either subsection (1)(b) or (1)(c). In re Custody of A.D.C., 969 P.2d 708 (Colo. App. 1998).

The fact that reported cases under this section involved step-parents or blood relatives of the child or his parents does not mean that only those persons should be accorded standing as "person(s) other than a parent" where no language in the statute or in any Colorado appellate decision indicates that such relationship is a legal requirement for nonparent standing to commence custody proceedings. In re Custody of C.C.R.S., 872 P.2d 1337 (Colo. App. 1993), aff'd, 892 P.2d 246 (Colo. 1995).

Petition filed within six months of child's nonparent's departure from the joint residence was timely, and court

properly exercised jurisdiction over motion for parental responsibilities by second mother to child when both mothers lived with child for six and one-half years, both shared financial cost of supporting the child, and both shared in major decisions involving the child, even though only one mother was listed as the child's mother on the child's adoption papers. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Colorado district court had no jurisdiction under this section when it issued order granting full faith and credit to Wyoming court order. Gutierrez v. District Court, 183 Colo. 264, 516 P.2d 647 (1973).

Proceedings under the Uniform Dissolution of Marriage Act are not preempted by the Colorado Children's Code where mother placed child with non-parents in contemplation of relinquishment and adoption proceedings under the Children's Code, but such proceedings later became impossible when the mother withdrew her consent and did not honor her agreement to obtain counseling as required by the Children's Code. In re Custody of C.C.R.S., 872 P.2d 1337 (Colo. App. 1993), aff'd, 892 P.2d 246 (Colo. 1995).

Showing of unfitness of biological parent is not required before parental responsibilities can be allocated to nonparent. People ex rel. A.M.K., 68 P.3d 563 (Colo. App. 2003).

Due process does not require a showing of parental unfitness or the use of an enhanced standard of proof in a case that does not involve the termination or relinquishment of parental rights nor their abrogation by adoption. In re Custody of C.C.R.S., 872 P.2d 1337 (Colo. App. 1993), aff'd, 892 P.2d 246 (Colo. 1995).

Due process does not require clear and convincing evidence to support the award of custody to a nonparent with standing to seek custody of a child, but, rather, a showing by a preponderance of the evidence that it is in the best interests of the child. In re Custody of A.D.C., 969 P.2d 708 (Colo. App. 1998).

Child is not an "other" party who may intervene through independent counsel pursuant to this section. Since a child is represented by a guardian ad litem in custody, visitation, and parenting time proceedings, a child is already fully represented and is not a party able to intervene in such proceedings. In re Hartley, 886 P.2d 665 (Colo. 1994).

Stepfather lacked standing to seek parenting time, even under argument of "psychological parent", under subsection (1)(c) because he did not have physical care of the child in the six months prior to filing his motion as required by subsection (1). In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

Presumption favoring a parent's determination regarding the best interests of the child may be rebutted by proof of clear and convincing evidence of either: (1) The parent's unfitness; or (2) the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006); In re Reese, 227 P.3d 900 (Colo. App. 2010).

Nonparent need not show demonstrated harm to child to satisfy

"special weight" accorded to parental determinations. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006); In re Reese, 227 P.3d 900 (Colo. App. 2010).

Court may not allocate parental responsibilities to a nonparent unless it accords "special weight" to the parent's determination of the best interests of the child. Application of the clear and convincing proof standard is necessary to accord special weight to a parent's determination of best interests. In re Reese, 227 P.3d 900 (Colo. App. 2010).

A court meets the due process requirement in Troxel v. Granville, 530 U.S. 57 (2000), to accord "special weight" to a parent's determination of the best interests of a child by considering all relevant factors set forth in § 14-10-124 and entering findings based on clear and convincing proof that the best interests of the child justify the award of parental responsibilities to the nonparent. In re Reese, 227 P.3d 900 (Colo. App. 2010).

Nonparent need not prove that child's parents are unfit. Court may award parental rights to a nonparent if the nonparent can rebut the presumption in favor of the parents by proving by clear and convincing evidence that granting parental responsibilities to the nonparent is in the child's best interests. In re M.W., 2012 COA 162, 292 P.3d 1158.

In allocation of parental responsibilities proceedings involving nonparents, before granting nonparent's request for parental responsibilities, a court must consider the following: (1) A presumption exists favoring the parental determination regarding parental responsibilities; (2) to rebut this presumption, the nonparent must show by clear and convincing evidence that the parental determination is not in the child's best interests; and (3) the nonparent must show that the nonparent's requested allocation is in the child's best interests. Finally, a court allocating parental responsibilities to a nonparent must make factual findings and legal conclusions identifying the "special factors" on which the court relies. In re M.W., 2012 COA 162, 292 P.3d 1158.

Although whether the mother and father are fit parents, or whether they generally make decisions in the child's best interests, is relevant, it is not a dispositive or conclusive factor in determining whether it would be in the child's best interests to allocate parental responsibilities to the nonparent. In re M.W., 2012 COA 162, 292 P.3d 1158.

When a nonparent is involved in a child's life to the degree that he or she becomes a psychological parent and meets the strict standing requirements under subsection (1), a court may intervene, without violating Troxel v. Granville, 530 U.S. 57 (2000), and determine, after according special weight to the parent's determination, whether it is in the child's best interests to allocate parental responsibilities to the nonparent. In re M.W., 2012 COA 162, 292 P.3d 1158.

The intrinsic threat of emotional harm to child from curtailment or termination of relationship with psychological parent is not, in itself, sufficient to satisfy the

requirement that the court give special weight to the presumption that a parent's determination is in the best interests of the child. Section 14-10-124 identifies non-exclusive statutory factors courts should consider in determining the best interests of the child. In re Reese, 227 P.3d 900 (Colo. App. 2010).

Husband and wife who sought and were granted custody of a nonbiological child under a parental responsibility order owed a duty of support to the child, and trial court had the authority in their dissolution of marriage proceeding to order husband to pay child support pursuant to § 14-10-115 (1) and (17). In re Rodrick, 176 P.3d 806 (Colo. App. 2007).

Applied in In re Pilcher, 628 P.2d 126 (Colo. App. 1980); Deeb v. Morris, 14 B.R. 217 (Bankr. D. Colo. 1981); In re Johnson, 634 P.2d 1034 (Colo. App. 1981); In re Matter of V.R.P.F., 939 P.2d 512 (Colo. App. 1997).

14-10-123.3. Requests for parental responsibility for a child by grandparents.

Whenever a grandparent seeks parental responsibility for his or her grandchild pursuant to the provisions of this article, the court entering such order shall consider any credible evidence of the grandparent's past conduct of child abuse or neglect. Such evidence may include, but shall not be limited to, medical records, school records, police reports, information contained in records and reports of child abuse or neglect, and court records received by the court pursuant to section 19-1-307 (2)(f), C.R.S.

Source: L. 91: Entire section added, p. 261, § 1, effective May 31. **L. 98:** Entire section amended, p. 1378, § 4, effective February 1, 1999. **L. 2003:** Entire section amended, p. 1401, § 4, effective January 1, 2004.

Cross references: For the legislative declaration contained in the 2003 act amending this section, see section 1 of chapter 196, Session Laws of Colorado 2003.

ANNOTATION

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001).

14-10-123.4. Rights of children in matters relating to parental responsibilities.

(1) The general assembly hereby declares that children have certain rights in the determination of matters relating to parental responsibilities, including:

(a) The right to have such determinations based upon the best interests of the child;

(b) The right to be emotionally, mentally, and physically safe when in the care of either parent; and

(c) The right to reside in and visit in homes that are free of domestic violence and child abuse or neglect.

Source: L. 87: Entire section added, p. 574, § 1, effective July 1. **L. 98:** Entire section amended, p. 1378, § 5, effective February 1, 1999. **L. 2013:** Entire section amended, (HB 13-1259), ch. 218, p. 995, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "The Constitutionality of Colorado's Grandparent Visitation and Third-Party Standing Statutes", see 32 Colo. Law. 51 (Feb. 2003).

This section, coupled with the permissive language found throughout §§ 14-10-123.5 and 14-10-124, indicates that the best interests of the child, and not the rights or wishes of either parent, must dictate the outcome of any custody dispute. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

An award of custody to a nonparent with standing may be made upon a showing by a preponderance of the evidence that it is in the best interests of the child. In re Custody of A.D.C., 969 P.2d 708 (Colo. App. 1998).

No right to participate through chosen counsel. This section does not include a right for a child to participate in custody matters through counsel chosen by the child. In re Hartley, 886 P.2d 665 (Colo. 1994).

To protect rights of the child, the court may interview the child or appoint a guardian ad litem to represent the child's interests. In re D.R.V-A, 976 P.2d 881 (Colo. App. 1999).

14-10-123.5. Joint custody. (Repealed)

Source: L. 83: Entire section added, p. 645, § 2, effective June 10. **L. 84:** (4) amended, p. 1118, § 10, effective June 7. **L. 87:** (1) and (6) amended and (8) added, pp. 574, 575, §§ 5, 2,

effective July 1; (6) repealed, p. 577, § 2, effective July 1. **L. 98:** (9) added by revision, pp. 1378, 1415, §§ 6, 85.

Editor's note: Subsection (9) provided for the repeal of this section, effective February 1, 1999. (See L. 98, pp. 1378, 1415.)

14-10-123.6. Required notice of prior restraining orders to prevent domestic abuse - proceedings concerning parental responsibilities relating to a child - resources for family services.

(1) The general assembly hereby finds, determines, and declares that domestic violence is a pervasive problem in society and that a significant portion of domestic violence in society occurs in or near the home. The general assembly further recognizes research demonstrating that children in a home where domestic violence occurs are at greater risk of emotional, psychological, and physical harm. Studies have found that eighty to ninety percent of the children living in homes with domestic violence are aware of the violence. The general assembly finds that emerging research has established that these children are at greater risk of the following: Psychological, social, and behavioral problems; higher rates of academic problems; more physical illnesses, particularly stress-associated disorders; and a greater propensity to exhibit aggressive and violent behavior, sometimes carrying violent and violence-tolerant roles to their adult relationships. Studies have also noted that children are affected to varying degrees by witnessing violence in the home, and each child should be assessed on an independent basis. Accordingly, the general assembly determines that it is in the best interests of the children of the state of Colorado for the courts to advise the parents or guardians of children affected by domestic violence about the availability of resources and services and for such persons to be provided with information concerning the resources and services available to aid in the positive development of their children. It is the intent of the general assembly that such information would increase the awareness of the possible effects of domestic violence on children in the home, while providing the parents and legal guardians of these children with a comprehensive resource of available children's services as well as potential financial resources to assist parents and legal guardians seeking to retain services for their children affected by domestic violence.

(2) When filing a proceeding concerning the allocation of parental responsibilities relating to a child pursuant to this article, the filing party shall have a duty to disclose to the court the existence of any prior temporary or permanent restraining orders to prevent domestic abuse issued pursuant to article 14 of title 13, C.R.S., and any emergency protection orders issued pursuant to section 13-14-103, C.R.S., entered against either party by any court within two years prior to the filing of the proceeding. The disclosure required pursuant to this section shall address

the subject matter of the previous restraining orders or emergency protection orders, including the case number and jurisdiction issuing such orders.

(3) After the filing of the petition, the court shall advise the parties concerning domestic violence services and potential financial resources that may be available and shall strongly encourage the parties to obtain such services for their children, in appropriate cases. If the parties' children participate in such services, the court shall apportion the costs of such services between the parties as it deems appropriate.

(4) The parties to a domestic relations petition filed pursuant to this article shall receive information concerning domestic violence services and potential financial resources that may be available.

Source: L. 95: Entire section added, p. 83, § 1, effective July 1. **L. 98:** Entire section amended, p. 1379, § 7, effective February 1, 1999. **L. 99:** Entire section amended, p. 502, § 10, effective July 1. **L. 2001:** Entire section amended, p. 979, § 2, effective August 8. **L. 2004:** (2) amended, p. 555, § 11, effective July 1.

14-10-123.7. Parental education - legislative declaration.

(1) The general assembly recognizes research that documents the negative impact divorce and separation can have on children when the parents continue the marital conflict, expose the children to this conflict, or place the children in the middle of the conflict or when one parent drops out of the child's life. This research establishes that children of divorce or separation may exhibit a decreased ability to function academically, socially, and psychologically because of the stress of the divorce or separation process. The general assembly also finds that, by understanding the process of divorce and its impact on both adults and children, parents can more effectively help and support their children during this time of family reconfiguration. Accordingly, the general assembly finds that it is in the best interests of children to authorize courts to establish, or contract with providers for the establishment of, educational programs for separating, divorcing, and divorced parents with minor children. The intent of these programs is to educate parents about the divorce process and its impact on adults and children and to teach coparenting skills and strategies so that parents may continue to parent their children in a cooperative manner.

(2) A court may order a parent whose child is under eighteen years of age to attend a program designed to provide education concerning the impact of separation and divorce on children in cases in which the parent of a minor is a named party in a dissolution of marriage proceeding, a legal separation proceeding, a proceeding concerning the allocation of parental responsibilities, parenting time proceedings, or postdecree proceedings involving the allocation

of parental responsibilities or parenting time or proceedings in which the parent is the subject of a protection order issued pursuant to this article.

(3) Each judicial district, or combination of judicial districts as designated by the chief justice of the Colorado supreme court, may establish an educational program for divorcing and separating parents who are parties to any of the types of proceedings specified in subsection (2) of this section or arrange for the provision of such educational programs by private providers through competitively negotiated contracts. The educational program shall inform parents about the divorce process and its impact on adults and children and shall teach parents coparenting skills and strategies so that they may continue to parent their children in a cooperative manner. Any such educational program shall be administered and monitored by the implementing judicial district or districts and shall be paid for by the participating parents in accordance with each parent's ability to pay.

Source: L. 96: Entire section added, p. 249, § 1, effective July 1. **L. 97:** (2) amended, p. 80, § 1, effective March 24. **L. 98:** (2) amended, p. 1380, § 8, effective February 1, 1999. **L. 2003:** (2) amended, p. 1012, § 17, effective July 1.

14-10-123.8. Access to records.

Access to information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to any party allocated parental responsibilities, unless otherwise ordered by the court for good cause shown.

Source: L. 98: Entire section added, p. 1380, § 9, effective February 1, 1999.

ANNOTATION

Because father receives parenting time, this section entitles him to have access to his child's records absent a showing of good cause for depriving him of that right, despite fact that mother is sole custodian. In re Schenck, 39 P.3d 1250 (Colo. App. 2001).

14-10-124. Best interests of the child.

(1) **Legislative declaration.** While co-parenting is not appropriate in all circumstances following dissolution of marriage or legal separation, the general assembly finds and declares that, in most circumstances, it is in the best interest of all parties to encourage frequent and

continuing contact between each parent and the minor children of the marriage after the parents have separated or dissolved their marriage. In order to effectuate this goal when appropriate, the general assembly urges parents to share the rights and responsibilities of child-rearing and to encourage the love, affection, and contact between the children and the parents.

(1.3) Repealed.

(1.5) **Allocation of parental responsibilities.** The court shall determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child, giving paramount consideration to the child's safety and the physical, mental, and emotional conditions and needs of the child as follows:

(a) **Determination of parenting time.** The court, upon the motion of either party or upon its own motion, may make provisions for parenting time that the court finds are in the best interests of the child, with the child's safety always paramount, unless the court finds, after a hearing, that parenting time by the party would endanger the child's physical health or significantly impair the child's emotional development. In addition to a finding that parenting time would endanger the child's physical health or significantly impair the child's emotional development, in any order imposing or continuing a parenting time restriction, the court shall make findings imposing the restriction, including findings related to domestic violence, child abuse or neglect, sexual assault that resulted in the conception of a child, or child sexual abuse, and may enumerate the conditions that the restricted party could fulfill in order to seek modification in the parenting plan. In determining the best interests of the child for purposes of parenting time, the court shall consider all relevant factors, including:

(I) The wishes of the child's parents as to parenting time;

(II) The wishes of the child if he or she is sufficiently mature to express reasoned and independent preferences as to the parenting time schedule;

(III) The interaction and interrelationship of the child with his or her parents, his or her siblings, and any other person who may significantly affect the child's best interests;

(III.5) For any evidence submitted to the court by a party, a child and family investigator appointed pursuant to section 14-10-116.5, a parental responsibilities evaluator appointed pursuant to section 14-10-127, or a legal representative of the child appointed pursuant to section 14-10-116 that a party has committed domestic violence, child abuse or neglect, or sexual assault that resulted in the conception of a child, the court may consider any relevant and admissible evidence, including testimony from the parties, experts, therapists for any parent or child, the department of human services, parenting time supervisors, school personnel, or other lay witnesses. The court shall make findings on the record by a preponderance of the evidence whether a party has committed domestic violence, child abuse or neglect, or sexual assault that resulted in the conception of a child.

(IV) The child's adjustment to his or her home, school, and community;

(V) The mental and physical health of all individuals involved, except that a disability alone shall not be a basis to deny or restrict parenting time;

(VI) The ability of the parties to encourage the sharing of love, affection, and contact between the child and the other party; except that, if the court determines that a party is acting to protect the child from witnessing domestic violence or from being a victim of child abuse or neglect or domestic violence, the party's protective actions shall not be considered with respect to this factor;

(VII) Whether the past pattern of involvement of the parties with the child reflects a system of values, time commitment, and mutual support;

(VIII) The physical proximity of the parties to each other as this relates to the practical considerations of parenting time;

(IX) and (X) Repealed.

(XI) The ability of each party to place the needs of the child ahead of his or her own needs.

(a.5) In determining the best interests of the child for purposes of parenting time, the court shall strive not to consider as a relevant factor information or recommendations that are biased, including bias regarding religion, gender, gender identity, gender expression, sexual orientation, culture, race, ethnicity, national origin, or disability.

(b) **Allocation of decision-making responsibility.** The court, upon the motion of either party or its own motion, shall allocate the decision-making responsibilities between the parties based upon the best interests of the child. In determining decision-making responsibility, the court may allocate the decision-making responsibility with respect to each issue affecting the child mutually between both parties or individually to one or the other party or any combination thereof. In determining the best interests of the child for purposes of allocating decision-making responsibilities, the court shall consider, in addition to the factors set forth in subsection (1.5) of this section, all relevant factors, including:

(I) Credible evidence of the ability of the parties to cooperate and to make decisions jointly;

(II) Whether the past pattern of involvement of the parties with the child reflects a system of values, time commitment, and mutual support that would indicate an ability as mutual decision makers to provide a positive and nourishing relationship with the child;

(III) Whether an allocation of mutual decision-making responsibility on any one or a number of issues will promote more frequent or continuing contact between the child and each of the parties.

(IV) and (V) Repealed.

(c) (I) If a court determines by a preponderance of the evidence that a party has committed domestic violence, child abuse or neglect, or sexual assault that resulted in the conception of a child, it is not in the best interests of the child to allocate mutual decision-making responsibility over the objection of the other party or the legal representative of the child unless the court makes specific findings that mutual decision-making can occur without coercion, intimidation, retaliation, or risk of harm to the abused party or the child; and

(II) The court shall not appoint a parenting coordinator solely to ensure that mutual decision-making can be accomplished.

(1.6) (a) If a court determines by a preponderance of the evidence that a party has committed domestic violence, child abuse or neglect, or sexual assault that resulted in the conception of a child, the court shall consider as the primary concern the safety and well-being of the child and the abused party. The court shall impose conditions on parenting time that ensure the safety of the child and abused party, giving paramount consideration to the safety and needs of the child and abused party. The parenting plan for a case described in this subsection (1.6) may include, but is not limited to, the following:

(I) An order limiting contact between the parties to contact that the court deems is safe and that minimizes unnecessary communication between the parties;

(II) An order that requires the exchange of the child for parenting time to occur in a protected setting determined by the court;

(III) An order for supervised parenting time;

(IV) An order restricting overnight parenting time;

(V) An order that restricts the party who has committed domestic violence, child abuse or neglect, or sexual assault that resulted in the conception of a child from possessing or consuming alcohol, intoxicating substances, or controlled substances during parenting time or for twenty-four hours prior to the commencement of parenting time;

(VI) An order directing that the address of the child or of any party remain confidential;

(VII) An order that imposes any other condition on one or more parties that the court determines is necessary to protect the safety of the child, another party, or any other family or household member of a party; and

(VIII) An order that requires child support payments to be made through the child support registry to avoid the need for any related contact between the parties and an order that the payments be treated as a nondisclosure of information case.

(b) When the court finds by a preponderance of the evidence that one of the parties has committed domestic violence, child abuse or neglect, or sexual assault that resulted in the conception of a child, the court may order the party to submit to a domestic violence evaluation

and any recommended treatment at the sole expense of the party. If the court determines, based upon the results of the evaluation, that treatment is appropriate, the court may order the party to participate in domestic violence treatment. At any time, the court may require a subsequent evaluation to determine whether additional treatment is necessary. If the court awards parenting time to a party who has been ordered to participate in domestic violence treatment, the court may order the party to obtain a report from the treatment provider concerning the party's progress in treatment and addressing any ongoing safety concerns regarding the party's parenting time.

(c) If the court finds by a preponderance of the evidence that a party has committed domestic violence, child abuse or neglect, or sexual assault that resulted in the conception of a child, the court shall consider whether it is in the best interests of the child to prohibit or restrict the parenting time of that party with the child.

(d) If a party is absent or leaves home because of domestic violence, child abuse or neglect, or sexual assault that resulted in the conception of a child committed by the other party, the absence or leaving is not a factor in determining the best interests of the child.

(1.7) Pursuant to section 14-10-123.4, children have the right to have the determination of matters relating to parental responsibilities based upon the best interests of the child. In contested hearings on final orders regarding the allocation of parental responsibilities, the court shall make findings on the record concerning the factors the court considered and the reasons why the allocation of parental responsibilities is in the best interests of the child.

(2) The court shall not consider conduct of a party that does not affect that party's relationship to the child.

(3) In determining parenting time or decision-making responsibilities, the court shall not presume that any person is better able to serve the best interests of the child because of that person's sex.

(3.5) A request by either party for genetic testing shall not prejudice the requesting party in the allocation of parental responsibilities pursuant to subsection (1.5) of this section.

(4) and (5) Repealed.

(6) In the event of a medical emergency, either party shall be allowed to obtain necessary medical treatment for the minor child or children without being in violation of the order allocating decision-making responsibility or in contempt of court.

(7) In order to implement an order allocating parental responsibilities, both parties may submit a parenting plan or plans for the court's approval that shall address both parenting time and the allocation of decision-making responsibilities. If no parenting plan is submitted or if the court does not approve a submitted parenting plan, the court, on its own motion, shall formulate a parenting plan that shall address parenting time and the allocation of decision-making responsibilities. When issues relating to parenting time are contested, and in other cases where

appropriate, the parenting plan must be as specific as possible to clearly address the needs of the family as well as the current and future needs of the aging child. In general, the parenting plan may include, but is not limited to, the following provisions:

(a) A designation of the type of decision-making awarded;

(b) A practical schedule of parenting time for the child, including holidays and school vacations;

(c) A procedure for the exchanges of the child for parenting time, including the location of the exchanges and the party or parties responsible for the child's transportation;

(d) A procedure for communicating with each other about the child, including methods for communicating and frequency of communication;

(e) A procedure for communication between a parent and the child outside of that parent's parenting time, including methods for communicating and frequency of communication; and

(f) Any other orders in the best interests of the child.

(8) The court may order mediation, pursuant to section 13-22-311, C.R.S., to assist the parties in formulating or modifying a parenting plan or in implementing a parenting plan specified in subsection (7) of this section and may allocate the cost of said mediation between the parties.

(9) If the court orders unsupervised parenting time for a parent and there is any information, including an accusation by a child, that the parent has committed domestic violence, child abuse, or child sexual abuse, or if the parent is accused by the child of domestic violence, child abuse, child sexual abuse, child emotional abuse, or coercive control, the court shall make a statement in writing or orally on the proceeding record regarding why unsupervised parenting time for the parent was determined to be in the best interests of the child with paramount consideration given to the child's safety and the physical, mental, and emotional conditions and needs of the child.

Source: L. 71: R&RE, p. 529, § 1. **C.R.S. 1963:** § 46-1-24. **L. 79:** (3) added, p. 645, § 1, effective March 2. **L. 81:** (4) added, p. 904, § 1, effective May 22. **L. 83:** (1) R&RE and (1.5) and (5) added, p. 647, §§ 3, 4, effective June 10. **L. 87:** (1.5)(g) to (1.5)(m) added and (5) repealed, pp. 574, 576, §§ 3, 6, effective July 1; (1.5)(m) repealed, p. 1578, § 22, effective July 1. **L. 98:** Entire section amended, p. 1380, § 10, effective February 1, 1999. **L. 2005:** (1.5)(b)(IV) and (1.5)(b)(V) amended, p. 961, § 6, effective July 1; (3.5) added, p. 377, § 2, effective January 1, 2006. **L. 2010:** (1.3) added and (1.5)(a)(X), (1.5)(b)(V), and (4) amended, (HB 10-1135), ch. 87, p. 290, § 1, effective July 1. **L. 2013:** (1), IP(1.5), IP(1.5)(a), (1.5)(a)(VI), IP(1.5)(b), (4), and (7) amended, (1.5)(a)(IX), (1.5)(a)(X), (1.5)(b)(IV), and (1.5)(b)(V) repealed, and (1.7) added, (HB 13-1259), ch. 218, p. 995, § 2, effective July 1; IP(1.5)(a) amended, (HB 13-1243), ch. 124,

p. 418, § 1, effective August 7. **L. 2014:** (1.3)(c), (4)(a)(III), and (4)(a)(IV) added and IP(1.5)(a), IP(1.5)(b), IP(4)(a), (4)(b), (4)(d), and (4)(e) amended, (HB 14-1162), ch. 167, p. 591, § 7, effective July 1. **L. 2021:** IP(1.5)(a) amended and (1.5)(a)(III.5) added, (HB 21-1228), ch. 292, p. 1731, § 5, effective June 22; (1.3)(c) amended, (SB 21-059), ch. 136, p. 712, § 19, effective October 1. **L. 2024:** (1.3) and IP(4)(e) amended and (1.5)(a.5) and (9) added, (HB 24-1350), ch. 344, p. 2336, § 3, effective August 7. **L. 2026:** (1.3) and (4) repealed; IP(1.5)(a), (1.5)(a)(III.5), and IP(1.5)(b) amended; and (1.5)(c) and (1.6) added, (HB 26-1309), ch. 163, p. 975, § 3, effective May 27.

Editor's note: (1) Amendments to the introductory portion to subsection (1.5)(a) by House Bill 13-1259 and House Bill 13-1243 were harmonized.

(2) Subsections (4)(a)(I) and (4)(a)(II) are similar to former § 14-10-124 (1.5)(b)(IV) and (1.5)(b)(V) as they existed prior to August 7, 2013.

Cross references: (1) For the "Uniform Child-custody Jurisdiction and Enforcement Act", see article 13 of this title 14.

(2) For the legislative declarations contained in the 2005 act amending subsections (1.5)(b)(IV) and (1.5)(b)(V), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005. For the legislative declaration in HB 21-1228, see section 1 of chapter 292, Session Laws of Colorado 2021. For the legislative declaration in HB 24-1350, see section 1 of chapter 344, Session Laws of Colorado 2024. For the legislative declaration in HB 26-1309, see section 1 of chapter 163, Session Laws of Colorado 2026.

ANNOTATION

I. General Consideration.

III. Tender Years Doctrine.

IV. Jurisdiction of Court.

V. Motions and Orders.

I. GENERAL CONSIDERATION.

Law reviews. For note, "Legislation: Domestic Relations — New Colorado Statutes Govern Procedure in Contested Child Custody Cases", see 40 U. Colo. L. Rev. 485 (1968). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983). For article, "Moving the Children Out of State", see 12 Colo. Law. 1450 (1983). For article, "Helping Joint Custody Work", see 14 Colo. Law. 1984 (1985). For article, "Dealing with Sexual Abuse Allegations in Custody and Visitation Disputes — Parts I and II", see 16 Colo. Law. 1005 and 1225 (1987). For article, "Children of Divorce", see 16 Colo. Law. 1853 (1987). For article, "The Role of the Guardian ad Litem in

Custody and Visitation Disputes", see 17 Colo. Law. 1301 (1988). For article, "Custody Evaluations in Colorado", see 18 Colo. Law. 1523 (1989). For article, "Drafting the Joint Parenting Plan", see 18 Colo. Law. 2117 (1989). For article, "Custody Cases and the Theory of Parental Alienation Syndrome", see 20 Colo. Law. 53 (1991). For article, "Relocation: An Issue In Need of Clarification in Colorado", see 20 Colo. Law. 2517 (1991). For article, "Elimination of 'Custody' in Colorado: The Impact of H.B.1183", see 27 Colo. Law. 83 (Sept. 1998). For article, "How to Explain the New Parental Responsibility Law to Clients", see 27 Colo. Law. 85 (Oct. 1998). For article, "Addressing New Standards for Modification Under the Parental Responsibility Act", see 28 Colo. Law. 67 (June 1999). For article, "Representing Children When There Are Allegations of Domestic Violence", see 28 Colo. Law. 77 (Nov. 1999). For article, "Parenting Time in Divorce", see 31 Colo. Law. 25 (Oct. 2002). For article, "The Child's Wishes in APR Proceedings: An Evidentiary Conundrum", see 36 Colo. Law. 33 (Jan. 2007). For article, "Domestic Violence Intervention: 2010 Update", see 39 Colo. Law. 83 (Sept. 2010). For article, "Emerging Spousal Support and Parenting Issues", see 41 Colo. Law. 45 (Oct. 2012). For article, "Parenting Plans for the COVID-19 Pandemic Era", 49 Colo. Law. 41 (Nov. 2020). For article, "At the Intersection: Handling Dependency and Neglect and Juvenile Delinquency Issues in Family Law Cases", see 51 Colo. Law. 28 (Feb. 2022). For article, "Managing High-Conflict Dissolutions in Mediation and Court", see 51 Colo. Law. 18 (Aug.-Sept. 2022). For article, "The Algorithmic Family", see 53 Colo. Law. 44 (Sept.-Oct. 2024).

Annotator's note. Since § 14-10-124 is similar to repealed § 46-1-5 (1)(b), C.R.S. 1963, § 46-1-5, CRS 53, and CSA, C. 56, § 8, relevant cases construing those provisions have been included in the annotations to this section.

Trial court should have applied the standard for an original determination of visitation, which is based on the best interests of the child, where the order awarding parenting time to stepfather was a temporary order. Although paternity decree operated as a final order and permanent allocation as to paternity and custody, its award of parenting time to stepfather was a temporary order because the parties had not reached an agreement on a permanent parenting time schedule but had agreed to maintain the interim schedule and work toward a permanent one. The fact that the parties adhered to the schedule for nearly three years did not change the nature of the order. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

Trial court erred by failing to afford parents their due process rights because court did not presume parents were acting in the child's best interests, but instead placed upon them the burden of demonstrating that visitation with stepfather would endanger the child; the court did not find that "special circumstances" existed which justified the intrusion on the parents' rights; and the court did not apply a clear and convincing evidence standard. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

Even if stepfather was a psychological parent, stepfather failed to present evidence to rebut presumption that parents were acting in their child's best interests by terminating stepfather's visitation and failed to show or proffer evidence of special circumstances that would justify trial court's order allowing visitation against the wishes of the parents. The visitation order infringed upon parents' fundamental right to direct the upbringing of their child. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

A court meets the due process requirement in Troxel v. Granville, 530 U.S. 57 (2000), to accord "special weight" to a parent's determination of the best interests of a child by considering all relevant factors set forth in this section and entering findings based on clear and convincing proof that the best interests of the child justify the award of parental responsibilities to the nonparent. In re Reese, 227 P.3d 900 (Colo. App. 2010).

The intrinsic threat of emotional harm to child from curtailment or termination of relationship with psychological parent is not, in itself, sufficient to satisfy the requirement that the court give special weight to the presumption that a parent's determination is in the best interests of the child. This section identifies non-exclusive statutory factors courts should consider in determining the best interests of the child. In re Reese, 227 P.3d 900 (Colo. App. 2010).

Applied in Woodhouse v. District Court, 196 Colo. 558, 587 P.2d 1199 (1978); In re Pilcher, 628 P.2d 126 (Colo. App. 1980); In re Rinow, 624 P.2d 365 (Colo. App. 1981); Dawson v. Pub. Employees' Retirement Ass'n, 664 P.2d 702 (Colo. 1983).

II. DETERMINATION OF BEST INTERESTS.

A. In General.

B. Evidence.

C. Discretion of Court.

D. Custody and Visitation.

A. In General.

Law reviews. For article, "Psychological Parents and Child Support", see 51 Colo. Law. 24 (Nov. 2022). For article, "The Identity Factor", see 96 U. Colo. L. Rev. 955 (2025).

Applications for parental responsibilities by a nonparent implicate the fundamental constitutional right to family autonomy and privacy, and a legislative enactment that infringes on a fundamental right is constitutionally permissible only if it is necessary to promote a compelling state interest and does so in the least restrictive manner possible. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

The constitutional presumption that a fit parent acts in the best interests of the child applies to all stages of an allocation of parental responsibilities proceeding. The applicable standard for consideration of an order granting any parenting time to non-parents in the face of the parent's objection includes a presumption in favor of the parental determination; an opportunity to rebut this presumption with a showing by the non-parents through clear and convincing evidence that the parental

determination is not in the child's best interests; and placement of the ultimate burden on the non-parents to establish by clear and convincing evidence that allocation of parenting time to them is in the best interests of the child. In re B.J., 242 P.3d 1128 (Colo. 2010).

Before a court can restrict or compel a parent's speech in public as to their child's name, the court must point to evidentiary support that there is substantial harm to the child. A court's restriction of a parent's speech about their child's name, in public or private, is a content-based restriction that cannot simply be subject to the best interests of the child standard without meeting other heightened constitutional standards. In re Javernick, 2025 COA 96M, 585 P.3d 257.

Determining whether to apply the best interest standard or the endangerment standard may involve inquiry into both the quantitative and the qualitative aspects of the proposed change to parenting time, as well as the reason or reasons advanced for the change. In re West, 94 P.3d 1248 (Colo. App. 2004).

The principal issue before the courts is the welfare of the child, and to that welfare the rights and personal desires of the parents are subservient. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954); Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956); Jensen v. Jensen, 142 Colo. 420, 351 P.2d 387 (1960); Grosso v. Grosso, 149 Colo. 183, 368 P.2d 561 (1962); Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

The prime criterion of a custody award in the court's determination is the welfare of the children. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

The primary focus of any custody determination, including one involving separation of children, must be the best interests of the children. In re Dickey, 658 P.2d 276 (Colo. App. 1982).

The best interests of the child must predominate in any custody determination. In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

It is the well-being of the child rather than the reward or punishment of a parent that ought to guide every aspect of a custody determination, including visitation. In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

Where trial court made no finding that father's conduct in his homosexual lifestyle endangered the child physically or impaired the child's emotional development, father could not be precluded from having overnight guests during his parenting time or taking child to gay environment of father's church. In re Dorworth, 33 P.3d 1260 (Colo. App. 2001).

The best interests of a child as an individual, and not as a sibling, are the controlling factors in divided custody determinations. In re Barnthouse, 765 P.2d 610 (Colo. App. 1988).

In cases involving child custody the principal issue before the court is not the convenience of the parents. Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

Section 14-10-123.4 coupled with the permissive language found throughout § 14-10-123.5 and this section indicates that the best interests of the child, and not the rights or wishes of either parent, must dictate the outcome of any custody dispute. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

In determining a custodial dispute between a parent and a nonparent, Colorado courts recognize that the best interests standard is subject to a presumption that the biological parent has a first and prior right to custody. Abrams v. Connolly, 781 P.2d 651 (Colo. 1989); In re Custody of C.C.R.S., 892 P.2d 246 (Colo. 1995); In re C.M., 74 P.3d 342 (Colo. App. 2002); People ex rel. A.M.K., 68 P.3d 563 (Colo. App. 2003).

Natural parents have a fundamental liberty interest in the companionship, care, custody, and management of their children. This fundamental liberty interest gives rise to a presumption that the best interests of the child will be furthered by a fit natural parent. People ex rel. A.M.K., 68 P.3d 563 (Colo. App. 2003).

This presumption may be rebutted by evidence establishing that the welfare of the child, i.e., the best interests of the child, is better served by granting custody to a nonparent. Abrams v. Connolly, 781 P.2d 651 (Colo. 1989); In re Custody of C.C.R.S., 892 P.2d 246 (Colo. 1995); In re C.M., 74 P.3d 342 (Colo. App. 2002); In re M.J.K., 200 P.3d 1106 (Colo. App. 2008).

The right of a parent to have the custody of his child must give way where the welfare of the child requires it. Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

When it is conducive to the child's best interests, a trial court may refuse to award custody to either parent and may award custody to someone other than a natural parent of the child and even to a nonresident of the state. Rippere v. Rippere, 157 Colo. 29, 400 P.2d 920 (1965).

In determining the best interests of the child, the court must consider all relevant factors, including those enumerated in subsection (1.5). In re Lester, 791 P.2d 1244 (Colo. App. 1990); In re Finer, 920 P.2d 325 (Colo. App. 1996); In re Fickling, 100 P.3d 571 (Colo. App. 2004).

When the court is determining the best interests of the child, the analysis must consider the least detrimental alternative. In re Martin, 42 P.3d 75 (Colo. App. 2002).

The phrase "best interests of the child" has identical meaning in this section and § 19-1-101 et seq. People in Interest of A.A.G., 902 P.2d 437 (Colo. App. 1995), aff'd in part, rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

Factors enumerated in subsection (1.5) may be considered in dependency action pursuant to the Colorado Children's Code. People in Interest of A.A.G., 902 P.2d 437 (Colo. App. 1995), aff'd in part, rev'd in part on other grounds, 912 P.2d 1385 (Colo. 1996).

The general assembly did not intend to bar or presumptively bar an abusive parent or spouse from exercising individual decision-making responsibility

with respect to children by enacting subsections (1.5)(b)(IV) and (1.5)(b)(V). The general assembly chose to either prohibit or presumptively prohibit only mutual decision-making responsibility. In re Bertsch, 97 P.3d 219 (Colo. App. 2004).

The general assembly's failure to amend bill following testimony from proponent noting that there was nothing in the bill requiring or prohibiting court from giving sole decision-making on every issue to one party or the other led court to conclude that the general assembly did not mean to preclude as a matter of law abusive parents or spouses from exercising individual, or even sole, decision-making responsibility. In re Bertsch, 97 P.3d 219 (Colo. App. 2004).

The court is to consider whether a parent has been a perpetrator of child or spouse abuse as but two, albeit important, factors in assessing the best interests of the child in determining whether to award parenting time or individual decision-making responsibility. In re Bertsch, 97 P.3d 219 (Colo. App. 2004); In re Yates, 148 P.3d 304 (Colo. App. 2006).

This construction does not lead to an absurd result. Because the court makes a finding that a person has abused a child or spouse in the past does not necessarily and inevitably mean either that history is doomed to repeat itself or that the individual is capable of becoming a fit, or even the more fit, parent of a child. In re Bertsch, 97 P.3d 219 (Colo. App. 2004).

Allocation of parental responsibilities to wife was proper where wife, despite being previously convicted of child abuse, had since received and benefitted from counseling, and there was no suggestion of prospective child abuse; however, there was a greater concern about husband's parenting skills. In re Yates, 148 P.3d 304 (Colo. App. 2006).

Authority of court. A court has authority under the uniform act to award custody of a natural child of one spouse to the other spouse who is neither a natural, nor adoptive, parent of that child. In re Tricamo, 42 Colo. App. 493, 599 P.2d 273 (1979).

A court has authority under the uniform act to order a change of name of a minor child. In re Nguyen, 684 P.2d 258 (Colo. App. 1983).

Custody cases are not adversary proceedings, but hearings to determine what placement of the child will be in the child's best interests. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

The question as to whether a court may permit a child to be taken from the state first having jurisdiction to another jurisdiction was, like all other questions affecting the welfare and best interests of the child, vested in the sound legal discretion of a trial court. Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956).

Policy of law in state is to permit removal of child from jurisdiction where it will serve the well-being and future interests of the child. In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

In an initial determination to allocate parental responsibilities, a court has no

statutory authority to order a parent to live in a specific location. The court, rather, must accept the location in which each party intends to live and allocate parental responsibilities accordingly in the best interests of the child. Spahmer v. Gullette, 113 P.3d 158 (Colo. 2005); In re Morgan, 2018 COA 116M, 428 P.3d 550.

Mother's admission that she would not move without her children did not make ambiguous her repeated statements, both oral and written, that she intended to move out of state. Court erred in fashioning an order for weekly shared parenting time with father that effectively coerced mother into abandoning her plans to relocate. In re Morgan, 2018 COA 116M, 428 P.3d 550.

Where the custody of a child was awarded in a divorce proceeding, the child became a ward of the court, and it was against the policy of the law to permit its removal to another jurisdiction unless its well-being and future welfare were served thereby. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

A change of custody should not be awarded as punishment for a parent's disregard of the court's orders prohibiting removal of the child from the jurisdiction, since the best interests of the child were paramount. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

"Joint selection of schools" provision in separation agreement is unenforceable because such a provision promotes discord between the parents and is not, therefore, "in the best interests of the child". Custodial parent retains the ultimate authority to select the child's school. Griffin v. Griffin, 699 P.2d 407 (Colo. 1985).

Guardian ad litem represents wishes of child. This section does not require representation of the child's wishes by an attorney chosen by the child rather than a court appointed guardian ad litem. In re Hartley, 886 P.2d 665 (Colo. 1994).

Representation of child's wishes by attorney chosen by child unnecessary and duplicative. The statutory safeguards inherent in the obligations of the guardian ad litem as well as the ability of the court to interview the child concerning the child's wishes provide sufficient opportunity for a child to be heard. In re Hartley, 886 P.2d 665 (Colo. 1994).

Permanent orders restriction on religious upbringing of minor child in dissolution of marriage unconstitutional. Permanent orders in a dissolution of marriage action that adopted the special advocate's recommendation to place a restriction on the mother's right to influence her child's upbringing, absent a finding of substantial harm to the child, violate the mother's constitutional right to free exercise of religion. In re McSoud, 131 P.3d 1208 (Colo. App. 2006).

Absent a clear showing of substantial harm to the child, a parent who does not have decision-making authority with respect to religion nevertheless retains a constitutional right to educate the child in that parent's religion. However, harm to the child will be found if one parent disparages the other parent's religion, thus justifying a limitation on that parent's right

to religious education of the child. In re McSoud, 131 P.3d 1208 (Colo. App. 2006).

Harm to the child from conflicting religious instructions or practices must be demonstrated in detail and be substantial to warrant limitations on either parent's instructions or practices. In the absence of a demonstrated harm to the child, the best interests of the child standard is insufficient to serve as a compelling state interest that overrules the parents' fundamental rights to freedom of religion. In re McSoud, 131 P.3d 1208 (Colo. App. 2006).

B. Evidence.

The court did not err in determining under the rules of civil procedure and by a preponderance of the evidence that the criminal child abuse statute was violated. The use of the preponderancy standard in domestic proceedings does not offend due process and is adequate to protect a parent from false accusations of child abuse while serving the strong societal interest in protecting children from abusive parents. In re McCaulley-Elfert, 70 P.3d 590 (Colo. App. 2003).

Although subsections (1.5)(a)(IX) and (1.5)(b)(IV) do not say a factor must be proven by a preponderance of the evidence, those subsections do state that it shall be "supported by credible evidence". "Supported by credible evidence" means no more than supported by a preponderance of the evidence. In re McCaulley-Elfert, 70 P.3d 590 (Colo. App. 2003).

Because the presumption that a child's welfare is best served through custody of the natural parent is rebuttable, and where the evidence establishes that the best interest of the child will not be promoted by such custody, it will not be granted. Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

That the natural parents have a first and prior right to custody does not require that custody be awarded to the parent or parents merely because the evidence shows fitness and ability to care for the child. Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959); Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

When considering non-parents' assertions of parental rights, Colorado rejects a requirement that a parent be found unfit before interfering with the parent's parenting plan. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Proof that a fit parent's exercise of parental responsibilities poses actual or threatened emotional harm to the child establishes a compelling state interest sufficient to permit state interference with parental rights. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

The fitness of the mother was not in issue when it was not established that the welfare of her children would be better served by changing the custody back to her. Munson v. Munson, 155 Colo. 427, 395 P.2d 103 (1964).

Where wife living with man to whom she is not married. It is an abuse of discretion for the trial court to impose its own standard in regard to the wife living with a man to whom she is not married in the face of the clear and mandatory language of the statute, where there was no evidence

to infer that such conduct was detrimental to the children's welfare. In re Moore, 35 Colo. App. 280, 531 P.2d 995 (1975).

A natural father, shown to be a fit and proper person to have custody of his minor child, could have been denied custody where findings of trial court, amply supported by evidence, determined that such custody would not be in the best interests of the child. Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

Court presumed to disregard incompetent evidence. The presumption is that in making its decision to award custody of a child, the trial court disregards any incompetent evidence, or additional information to which it might have had access. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Conduct of proposed custodian not affecting children is not to be considered. The general assembly has directed that in determining child custody the court shall not consider conduct of a proposed custodian that does not affect the children. In re Moore, 35 Colo. App. 280, 531 P.2d 995 (1975).

Inquiry into religious practices. Evidence of a party's religious beliefs or practices is relevant and admissible in a custody proceeding if it is shown that such beliefs or practices are reasonably likely to present or future harm to the physical or mental development of the child. In re Short, 698 P.2d 1310 (Colo. 1985).

Court order requiring children be returned to Colorado one year following the dissolution of marriage decree cannot stand since court made no finding that such a move would be in the best interests of the children. In re Hoffman, 701 P.2d 129 (Colo. App. 1985).

Record supported the trial court's determination that sole custody by mother was in children's best interests. Among the factors favoring this determination were the mother's status as primary-caretaker and the parties' lack of communication and poor ability to agree with each other. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

It is not necessary that the trial court make specific findings on each and every factor included in subsection (1.5). All that is required is an indication that the trial court considered those factors which were pertinent and that the findings are sufficient to enable this court to determine the grounds for the trial court's decision and whether the decision was supported by competent evidence. In re Lester, 791 P.2d 1244 (Colo. App. 1990); In re Finer, 920 P.2d 325 (Colo. App. 1996).

It is not necessary that a trial court make specific findings on each and every factor included in the statute, but there must be some indication in the record that the trial court considered those factors that were pertinent. In re Garst, 955 P.2d 1056 (Colo. App. 1998); In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001).

A party is entitled to an evidentiary hearing before a court may prohibit parenting time. In re D.R.V-A, 976 P.2d 881 (Colo. App. 1999).

Trial court did not err in entering findings with respect to husband's stepdaughter even though it did not have jurisdiction over her. Although the trial court had no jurisdiction over the stepdaughter, jurisdiction over the stepdaughter was not necessary for the trial court to consider evidence of the husband's sexual misconduct regarding the stepdaughter in determining the parental responsibility issues raised with respect to husband's son. Nothing precludes the court's inquiry into alleged child abuse or neglect when determining the best interests of the child, even if the alleged abuse or neglect involves other children. In re McCaulley-Elfert, 70 P.3d 590 (Colo. App. 2003).

Trial court did not err in granting parental responsibilities to nonparent when trial court applied best interests standard and incorporated all relevant factors and further found clear and convincing evidence that the parent filed for joint custody of the child with the nonparent, requested co-parenting responsibilities with the nonparent, entered into a plan for joint parenting with the nonparent, permitted the nonparent to jointly parent the child during the course of their relationship, and encouraged the nonparent's participation in raising the child and that the child equally recognizes both parties as her parents and is doing extremely well both academically and socially. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Trial court's order granting the child's psychological parent, a nonparent, equal parental responsibilities was proper when curtailment and eventual termination of parental responsibilities threatened emotional harm to the child and constituted a compelling state interest justifying modification of parent's proposed parenting plan by the court. In re E.L.M.C., 100 P.3d 546 (Colo. App. 2004).

Presumption favoring a parent's determination regarding the best interests of the child may be rebutted by proof by clear and convincing evidence of either: (1) The parent's unfitness; or (2) the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006); In re Reese, 227 P.3d 900 (Colo. App. 2010).

Nonparent need not show demonstrated harm to child to satisfy "special weight" accorded to parental determinations. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006); In re Reese, 227 P.3d 900 (Colo. App. 2010).

Court may not allocate parental responsibilities to a nonparent unless it accords "special weight" to the parent's determination of the best interests of the child. Application of the clear and convincing proof standard is necessary to accord special weight to a parent's determination of best interests. In re Reese, 227 P.3d 900 (Colo. App. 2010).

A court meets the due process requirement in Troxel v. Granville, 530 U.S. 57 (2000), to accord "special weight" to a parent's determination of the best interests of a child by considering all relevant factors set forth in this section and entering findings based on clear and convincing proof that the best interests of the child justify the award of parental

responsibilities to the nonparent. In re Reese, 227 P.3d 900 (Colo. App. 2010).

The intrinsic threat of emotional harm to child from curtailment or termination of relationship with psychological parent is not, in itself, sufficient to satisfy the requirement that the court give special weight to the presumption that a parent's determination is in the best interests of the child. This section identifies non-exclusive statutory factors courts should consider in determining the best interests of the child. In re Reese, 227 P.3d 900 (Colo. App. 2010).

C. Discretion of Court.

Questions of custody must of necessity rest upon the judgment of the trier of facts; hence are best left in the hands of the trial court, and its determination should not be disturbed if there is sufficient competent evidence to support its conclusion. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954); Harris v. Harris, 140 Colo. 591, 345 P.2d 1061 (1959); Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960); Jensen v. Jensen, 142 Colo. 420, 351 P.2d 387 (1960); Flor v. Flor, 148 Colo. 514, 366 P.2d 664 (1961); Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962); Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970); Meene v. Meene, 194 Colo. 304, 572 P.2d 472 (1977).

The trial court is best able to appraise the circumstances of the parties and best fitted to make the factual determinations regarding custody. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

The determination of custody is left to the discretion of the trial judge, and in the absence of an abuse of that discretion, an appellate court will not disturb these determinations. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973); In re Dickman, 670 P.2d 20 (Colo. App. 1983).

Custody awards in dissolution of marriage proceedings are a matter to be determined within the sound discretion of the trial court. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

Question of custody is a matter within the discretion of the trial court after taking into consideration the various factors outlined in this section for the purpose of determining the best interest of the child. Rhoades v. Rhoades, 188 Colo. 423, 535 P.2d 1122 (1975).

In a custody and support proceeding, where a defendant presented his entire case and made no request for a further hearing, fact that trial court did not hold additional hearing after indicating it might do so, did not deprive defendant of his day in court. Grosso v. Grosso, 149 Colo. 183, 368 P.2d 561 (1962).

Prior to the enactment of subsection (1.5) in its present form, an imposition of joint custody over the objection of either parent constituted an abuse of discretion. However, that subsection now permits the trial court to order joint or sole custody after determining which form of custody is in the best interest of the child. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

The general assembly did not intend to state a preference or a mandate for joint custody under subsection (1.5). In re Lester, 791 P.2d 1244 (Colo. App. 1990).

Where one expert testified that he felt the mother to be the best guardian for the child at his current age of one year, but felt that the mother's psychiatric problems would begin to tell on the child as he reached four or five, the trial court did not err in ruling that it must look at the whole picture, and decided that it would be best to merely allow the mother liberal visitation rights for the first few years. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Where the record revealed absolutely nothing as to the conditions in a home maintained by the paternal grandparents in New Jersey, or that the paternal grandparents ever desired custody of their grandchild, there quite clearly was an abuse of discretion by the trial court in awarding them custody. Rippere v. Rippere, 157 Colo. 29, 400 P.2d 920 (1965).

Where the trial court did not make any finding of fact or even assert the conclusion of law that the mother was unfit to have custody of the minor children of the parties, and the findings were also deficient in that there were no facts set forth or determination made that it was for the best interests of the children that their custody be given to the father, the court could not have ordered an award of custody to any party, because such findings and conclusions were necessary. Cacic v. Cacic, 164 Colo. 103, 432 P.2d 768 (1967).

A statement by a trial judge, disclosing that his decision in a custody matter was based largely on irritation and aggravation, and not on the evidence, indicated such failure to exercise a sound judicial discretion as to require reversal. Crites v. Crites, 137 Colo. 220, 322 P.2d 1045 (1958).

Court improperly restricted the visitation rights of the mother where court made no finding that her instability was so severe as to endanger the child physically or impair his emotional development. In re Jarman, 752 P.2d 1068 (Colo. App. 1988).

Visitation orders are within the sound discretion of the trial court. This discretion must, however, be exercised consistently with the express public policy of encouraging contact between each parent and the children. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

The trial court abused its discretion by effectively reducing father's visitation rights where court limited the father to four days per four-week period where he previously had portions of eight days in any four-week period and there was no evidence that the children would benefit by this reduction in visitation. This restriction was both contrary to the public policy of encouraging frequent visitation and to the evidence in the record. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

Court not precluded from awarding joint decision-making over mother's objection after finding that father committed domestic violence. Presumption that mutual decision-making was not in the children's best interest was overcome by evidence of the parents' ability to make decisions concerning the children in a manner that considered mother's safety. In re Morgan, 2018 COA 116M, 428 P.3d 550.

The court may break an impasse between joint decision-makers by making the decision that it determines to be in the best interests of the child even if there is no endangerment. In re E.E.L-T., 2024 COA 12, 548 P.3d 679.

D. Custody and Visitation.

Award of joint custody absent agreement of the parties is contrary to the best interests of the child. In re Lampton, 677 P.2d 352 (Colo. App. 1983); In re Posinoff, 683 P.2d 377 (Colo. App. 1984) (decided prior to 1987 amendment).

Joint custody warranted only in the most exceptional cases. In re Lampton, 704 P.2d 847 (Colo. 1985) (decided prior to 1983 amendment).

Division of the children between the parents was not generally proper unless the paramount interest of the children required it. Songster v. Songster, 150 Colo. 466, 374 P.2d 197 (1962).

The trial court does not abuse its discretion in separating the children by awarding custody of the youngest son to the wife. In re Dickey, 658 P.2d 276 (Colo. App. 1982).

General visitation order does not meet purposes for which visitation intended when evidence shows a total lack of cooperation. In re Plummer, 709 P.2d 1388 (Colo. App. 1985).

Although the stability of the environment is a valid consideration in awarding custody, instability alone is not sufficient to justify a restriction on visitation. In re Jarman, 752 P.2d 1068 (Colo. App. 1988).

Where evidence shows a lack of cooperation between the parties or between the therapists for the mother and the child, the general visitation order does not meet the purposes for which the visitation was intended and is in essence a nullity. In re Sepmeier, 782 P.2d 876 (Colo. App. 1989).

In determining custody in dependency and neglect hearing, juvenile court committed reversible error by failing to consider any purposes of §19-1-101 et seq. and in relying solely on a limited number of purposes set forth in this section. L.A.G. v. People in Interest of A.A.G., 912 P.2d 1385 (Colo. 1996).

Where neither party submitted a plan for implementing previously ordered joint custody, court acted properly in ordering the parties to contact a parenting-time coordinator to facilitate and improve the parties' communication in the exercise of joint custody and to establish father's parenting time, given mother's move out of state. In re Garst, 955 P.2d 1056 (Colo. App. 1998) (decided under former §14-10-123.5 prior to its 1999 repeal).

Applied in In re Murphy, 834 P.2d 1287 (Colo. App. 1992).

III. TENDER YEARS DOCTRINE.

In its concern for children, particularly those of tender years, the supreme court formerly enunciated guides for trial courts in the disposition of controversies regarding their custody. Songster v. Songster, 150 Colo. 466, 374 P.2d 197 (1962).

Formerly, courts did not deprive the mother of the custody of her children of tender years, unless it was clearly shown that she was so unfit a person as to endanger the welfare of the minors. Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956); Evans v. Evans, 136 Colo. 6, 314 P.2d 291 (1957); Green v. Green, 139 Colo. 551, 342 P.2d 659 (1959).

A mother's love, care, and affection for a child of tender years were considered the most unselfish of all factors in human relations, and a child was not to be deprived thereof unless for a very good reason, founded on lack of moral fitness and proper home surroundings. Hayes v. Hayes, 134 Colo. 315, 303 P.2d 238 (1956).

Mere fact of motherhood is not sufficient to give a mother any special standing in the proceeding or preference as to custody. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Court's undue emphasis on motherly instincts reversible error. Court's undue emphasis on "motherly instincts" constituted a presumption that the mother was better able to serve the best interests of the child because of her sex and was both an abuse of discretion and reversible error. In re Miller, 670 P.2d 819 (Colo. App. 1983).

Sufficient findings unrelated to parental gender. Although the court states that one of its considerations in making a custody award is a belief in the importance of a "meaningful relationship" between a father and son, the remark does not rise to the level of a presumption where the court makes sufficient findings unrelated to parental gender to support the award. In re Clarke, 671 P.2d 1334 (Colo. App. 1983).

IV. JURISDICTION OF COURT.

The trial court had a continuing jurisdiction and control based upon the welfare of the child. Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959).

Where the court could provide for custody of children by orders made "before or after" the entry of a final decree, the trial court could provide for the custody of the child even though the subject was not mentioned in the original decree. Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

When the wife-defendant died before any divorce decree had entered, the divorce action thereupon abated, and thereafter the court was without jurisdiction to enter any order concerning custody or right of visitation. Wood v. Parkerson, 163 Colo. 271, 430 P.2d 467 (1967).

If one parent dies before a permanent order is entered in an allocation of parental responsibilities proceeding exclusively between two fit parents, the district court loses jurisdiction and the case must be dismissed. Having lost jurisdiction upon the death of the parent, a district court may not create a new case by subsequently allowing another party to intervene. In re Parental Responsibilities Concerning C.E.S.K., 2025 COA 51, 573 P.3d 119.

Contempt for failure to comply with custody order was not separate procedure, but continuance of divorce

action. Brown v. Brown, 31 Colo. App. 557, 506 P.2d 386 (1972).

The district court in a divorce action could not acquire exclusive jurisdiction over custody of minor children residing in a foreign jurisdiction. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

A custody award entered by one court is not binding on courts of another state under the full faith and credit clause of the federal constitution after the child has become domiciled in the latter state, because when a child's domicile is changed he is no longer subject to the control of the court which first awarded his custody. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

A child's domicile is that of the parent with whom it lives. Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961).

While appeal is pending, trial court cannot modify orders concerning parental responsibilities or parenting time that are material to the appeal. Sections 14-10-129 (1)(a)(I) and 14-10-131 (2) do not specifically grant trial courts continuing jurisdiction to rule on motions to modify orders already on appeal. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

The trial court does not have jurisdiction in this case because father's motions were material to the appeal because they sought to modify the very orders on appeal. The court did not consider whether an emergency exception to grant a trial court jurisdiction would be appropriate if father had alleged imminent physical or emotional harm to the child due to the orders. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

V. MOTIONS AND ORDERS.

The court could make an order for the care and custody of minor children, and make provision for their maintenance, and this in the same decree making an award for alimony. Brown v. Brown, 131 Colo. 467, 283 P.2d 951 (1955).

Motions for determination of custody of children are different in kind from actions to enforce wholly personal rights as property or alimony, because the question of custody of children deals with a status and the issue on such a motion is the welfare of the children. Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

An order determining custody of children, like an order determining alimony, was reviewable in the supreme court. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954).

Trial court findings necessary for review. While it is not necessary that a trial court make specific findings on each and every factor included in this section, there must be some indication in the record that the trial court considered such of those factors as were pertinent, and the findings thereon must be sufficient to enable this court to determine on what ground the trial court reached its decision, and whether that decision was supported by competent evidence. In re Jaramillo, 37 Colo. App. 171, 543 P.2d 1281 (1975).

C.R.C.P. 52 is applicable to judgments in custody proceedings. In re Jaramillo, 37 Colo. App. 171, 543 P.2d 1281 (1975).

In a divorce action involving the custody of minor children, where no reporter was present and no record made of the evidence, and the written conclusions of the trial judge indicate that the orders entered were arbitrary and unsupported by evidence, the judgment must be reversed. Crites v. Crites, 137 Colo. 220, 322 P.2d 1045 (1958).

Where custodial orders of the trial court were silent on the question of character and fitness of either parent to have custody of the children, the trial court should have made findings of fact thereon, because lacking such findings the supreme court was without compass to ascertain whether trial court acted properly. Songster v. Songster, 150 Colo. 466, 374 P.2d 197 (1962).

14-10-124.3. Stay of proceedings - criminal charges of allegations of sexual assault. (Repealed)

Source: L. 2013: Entire section added, (SB 13-227), ch. 353, p. 2059, § 4, effective July 1. **L. 2014:** Entire section repealed, (HB 14-1162), ch. 167, p. 586, § 2, effective July 1.

14-10-124.4. Family time for grandparents or great-grandparents - legislative declaration - definitions.

(1) (a) The general assembly finds and declares that:

(I) A close relationship between grandparents or great-grandparents and grandchildren or great-grandchildren can be beneficial for the health and well-being of grandchildren or great-grandchildren; and

(II) Grandparents or great-grandparents may provide acceptance, patience, love, stability, wisdom, and support to grandchildren or great-grandchildren.

(b) The general assembly further finds that it may be in the best interests of grandchildren or great-grandchildren for grandparents or great-grandparents to be granted grandparent or great-grandparent family time because of the positive effects the relationship may have on a grandchild's or great-grandchild's health and well-being.

(2) As used in this section, unless the context otherwise requires:

(a) "Grandparent" means a person who is or, if the child's father or mother is deceased, was the parent of a child's father or mother, who is related to the child by blood, in whole or by half,

adoption, or marriage; except that "grandparent" does not include the parent of a child's legal father or mother whose parental rights have been terminated in accordance with sections 19-5-101 and 19-1-104 (1)(d).

(b) "Great-grandparent" means a person who is or, if the child's father or mother or grandparent is deceased, was the grandparent of a child's father or mother, who is related to the child by blood, in whole or by half, adoption, or marriage; except that "great-grandparent" does not include the grandparent of a child's legal father or mother whose parental rights have been terminated in accordance with sections 19-5-101 and 19-1-104 (1)(d).

(c) "Grandparent or great-grandparent family time" or "grandparent family time" means any form of contact or engagement between grandparents or great-grandparents and their grandchildren or great-grandchildren for the purposes of preserving and strengthening family ties.

(3) Any grandparent or great-grandparent of a child may, in the manner set forth in this section, seek a court order granting reasonable grandparent family time with a grandchild or great-grandchild when there is or has been a child custody case or a case concerning the allocation of parental responsibilities with respect to that child. Because cases arise that do not directly deal with child custody or the allocation of parental responsibilities but nonetheless have an impact on the custody of, or parental responsibilities with respect to a child, for the purposes of this section, a "case concerning the allocation of parental responsibilities with respect to a child" includes any of the following, whether or not child custody was or parental responsibilities were specifically an issue:

(a) The marriage of the child's parents has been declared invalid or has been dissolved by a court or a court has entered a decree of legal separation with regard to such marriage;

(b) Legal custody of or parental responsibilities with respect to the child have been given or allocated to a party other than the child's parent or the child has been placed outside of and does not reside in the home of the child's parent, excluding any child who has been placed for adoption or whose adoption has been legally finalized; or

(c) The child's parent, who is the child of the grandparent or grandchild of the great-grandparent, has died.

(4) A party seeking a grandparent family time order shall submit, together with the party's petition for grandparent family time, to the district court for the district in which the child resides, an affidavit setting forth facts supporting the requested order and shall give notice, together with a copy of the party's affidavit, to each party involved in the allocation of parental responsibilities proceedings as determined by a court pursuant to this article 10. The party with legal custody or parental responsibilities as determined by a court pursuant to this article 10 may file opposing affidavits. If neither party requests a hearing, the court shall enter an order granting grandparent family time to the petitioning grandparent or great-grandparent only upon a finding

that the grandparent family time is in the best interests of the child. A hearing must be held if either party so requests or if it appears to the court that it is in the best interests of the child that a hearing be held. At the hearing, parties submitting affidavits are allowed an opportunity to be heard. If, at the conclusion of the hearing, the court finds it is in the best interests of the child to grant grandparent family time to the petitioning grandparent or great-grandparent, the court shall enter an order granting grandparent family time. In determining the best interests of the child for the purpose of grandparent or great-grandparent family time, the court shall presume the parental determination regarding grandparent family time is in the best interests of the child. A grandparent or great-grandparent may overcome the presumption upon a showing by clear and convincing evidence that the grandparent family time is in the child's best interests. In making this determination, the court shall consider the factors described in section 14-10-124 (1.5)(a).

(5) The court may appoint a legal representative of a child pursuant to section 14-10-116 to represent the best interests of the child in a proceeding pursuant to subsection (4) of this section.

(6) A grandparent or great-grandparent shall not file a petition seeking an order granting grandparent family time more than once every two years absent a showing of good cause. If the court finds there is good cause to file more than one such petition, it shall allow such additional petition to be filed and shall consider it. The court may order reasonable attorney fees to the prevailing party. The court may not make any order restricting the movement of the child if such restriction is solely for the purpose of allowing the grandparent or great-grandparent the opportunity to exercise the grandparent's or great-grandparent's family time with the grandchild or great-grandchild.

(7) The court may establish, modify, or terminate grandparent family time if the order would serve the best interests of the child.

(8) An order establishing, granting, or denying parenting time rights to the parent of a child does not affect grandparent family time granted to a grandparent or great-grandparent as long as the grandparent family time is in the best interests of the child pursuant to this section.

Source: L. 2023: Entire section added with relocations, (HB 23-1026), ch.243, p. 1302, § 2, effective August 7. **L. 2024:** (4) amended, (HB 24-1450), ch. 490, p. 3407, § 20, effective August 7. **L. 2026:** (2)(a) and (2)(b) amended, (HB 26-1314), ch. 271, p. 1532, § 2, effective June 1.

Editor's note: Subsection (3) is similar to § 19-1-117 (1); subsection (4) is similar to § 19-1-117 (2); subsection (6) is similar to § 19-1-117 (3); subsection (7) is similar to § 19-1-117 (4); and subsection (8) is similar to § 19-1-117 (5) as they existed prior to 2023.

Cross references: (1) For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of Colorado 2023.

(2) For the legislative declaration in HB 26-1314, see section 1 of chapter 271, Session Laws of Colorado 2026.

ANNOTATION

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001). For article, "The Constitutionality of Colorado's Grandparent Visitation and Third-Party Standing Statutes", see 32 Colo. Law. 51 (Feb. 2003). For article, "Securing the Nonparent's Place in a Child's Life Through Adoption and Adoption Alternatives", see 37 Colo. Law. 27 (Oct. 2008). For article, "Constitutional Issues and Legal Standards in Parental Responsibility Matters", see 42 Colo. Law. 33 (Jan. 2013).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section not unconstitutional on its face. This section may be construed to embody the protections required by Troxel v. Granville, 530 U.S. 57 (2000). The court read this section as requiring that the biological parent's decisions concerning grandparent visitation must carry special weight and significance in the adjudication of the grandparent's visitation petition. The burden of proof must be such that the parent need not prove that the grandparent visitation would adversely affect the child. In re C.M., 74 P.3d 342 (Colo. App. 2002); In re R.A., 66 P.3d 146 (Colo. App. 2002).

Section does not violate due process clause of the United States Constitution merely because it authorizes visitation rights for grandparents. In re M.G., 58 P.3d 1145 (Colo. App. 2002).

Due process does not require a showing of parental unfitness prior to applying the best interest of the child standard to determine custody of a child. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Adoptive parents not similarly situated to biological parents for purposes of an equal protection analysis when determining the threshold circumstances under which grandparents could be permitted to seek court-enforced visitation rights. In re Petition of R.A., 66 P.3d 146 (Colo. App. 2002).

The wishes of adoptive parents should be given "special significance" like those of biological parents in determining the merits of a grandparents' visitation request, since the intent underlying the adoption statutes is to place the adopted child in the same position as the natural child and, correspondingly, bestow upon the adoptive parents the same rights and duties of natural parents. In re Petition of R.A., 121 P.3d 295 (Colo. App. 2005), rev'd on other grounds sub nom. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Appropriate standard for issuance of an order of grandparent visitation requires: (1) A presumption in favor of the parental visitation determination; (2) to rebut this presumption, a showing by grandparents through clear and convincing evidence that the parental determination is not in the child's best interests; and (3) placement of the ultimate burden on grandparents to establish by clear and convincing evidence that the visitation they seek is in the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

In applying the best interest of the child standard in grandparent visitation petitions, the court must, if it orders grandparent visitation, make findings of fact and conclusions of law identifying those "special factors" upon which it relied. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

Colorado statute is construed to contain a presumption that parental determinations about grandparent visitation are in the child's best interest. This is a rebuttable presumption, however, when the grandparent presents clear and convincing evidence that the parent is either unfit to make the grandparent visitation determination or that the grandparent visitation decision made by the parent is not in the best interests of the child. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006).

When one parent opposes grandparents' request for court-ordered visitation, the grandparents must overcome the Troxel presumption of the opposing parent. In re O'Connor, 2023 COA 35, 533 P.3d 226 (decided under former § 19-1-117).

Grandparent bears same burden of proof in resisting subsequent motion to terminate grandparent visitation as in seeking initial order for grandparent visitation. Mother and adoptive father, as movants, have burden to present some evidence of a material change in circumstances affecting the child's best interests to support their motion to terminate grandparent visitation, and the marriage of the mother, the adoption of the child by stepfather, the reports of the child's therapist, and evidence of the child's difficulties in school met this burden. Grandparent must then rebut the presumption, by clear and convincing evidence, that mother's request to terminate visitation is in the best interests of the child. In re A.M., 251 P.3d 1119 (Colo. App. 2010).

Nonparent need not show demonstrated harm to child to satisfy "special weight" accorded to parental determinations. In re Adoption of C.A., 137 P.3d 318 (Colo. 2006); In re Reese, 227 P.3d 900 (Colo. App. 2010).

Trial court correctly determined that the filing requirement set forth in this section did not affect the court's subject matter jurisdiction; instead, this section is a venue provision and, as such, is subject to waiver. In re Villalva, 56 P.3d 1214 (Colo. App. 2002).

Hearing required if custodial parent requests. Subsection (2) requires the trial court to hold a hearing if the custodial parent

so requests. In re Seright, 649 P.2d 730 (Colo. App. 1982).

Filing of an opposing affidavit is not a condition precedent to the exercise of the right to require the holding of such a hearing. In re Seright, 649 P.2d 730 (Colo. App. 1982).

No time limitation for hearing request. This section does not specify any time limitation upon the abilities of the custodial parent to request a hearing. In re Seright, 649 P.2d 730 (Colo. App. 1982).

Denial of visitation rights held in the best interests of the children. Kudler v. Smith, 643 P.2d 783 (Colo. App. 1981).

Proceeding under article 4 of this title is a custody case for purposes of this section. F.H. v. K.L.M., 740 P.2d 1006 (Colo. App. 1987).

Dependency and neglect proceeding is a custody case for purposes of this section. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997).

Father did not have standing to argue the inadequacy of visitation rights of child's grandparents. In Interest of D.R.V., 885 P.2d 351 (Colo. App. 1994).

After a child is adopted, the parents of a deceased mother or father lack standing to seek grandparent visitation. Grandparent visitation is limited to a person who is the present parent of the child's mother or father pursuant to the definition of "grandparent" in subsection (2)(a). In re K.M.S., 2025 CO 35, 569 P.3d 1215.

Grandmother lacked standing on the sole basis that the children did not reside with their father, who was never married to the children's mother, as the plain meaning of this section does not authorize the court to hear grandmother's petition unless there has been a judicial intervention into the marriage of the children's parents, a judicial placement of the children outside their family, or the death of the grandparent's child. In re D.C., 116 P.3d 1251 (Colo. App. 2005).

A paternity proceeding is a "child custody case" within the meaning of this section and, therefore, grants grandparent standing to seek visitation under the statute. Although paternity actions are not enumerated in this section, the statute has been construed to include paternity actions within its definition of a child custody case. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

"Great-grandmother" does not fall within the definition of "grandparent", therefore, great-grandmother lacked standing to seek visitation under this section. In re M.D.E., 2013 COA 13, 297 P.3d 1058.

Mother may make determinations about the level of contact her children have with her own family without fear of court intervention when the children are in the care and custody of their mother, grandmother's daughter, and there has been no prior court intervention. In re D.C., 116 P.3d 1251 (Colo. App. 2005).

Visitation is primarily a right of the child and only secondarily a right of the visiting party. Conditions on visitation are

within the sound discretion of the trial court, taking the best interests of the child into consideration. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Order under this section expressly allowing noncustodial grandparent to take children to church, contrary to wishes of custodial parent, was invalid and unconstitutional. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Because trial court made no findings concerning child's best interests, did not accord special weight to mother's visitation proposal nor address whether mother's proposal would fail to meet the child's interests, and made no findings supporting its order allowing grandparent to take child to Wyoming over mother's objections, the visitation issue must be redetermined. In re C.M., 74 P.3d 342 (Colo. App. 2002).

This section does not authorize an order impinging on custodial parent's rights under § 14-10-130. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

The presumption giving custodial preference to biological parent need not be accorded to a legal guardian. In re M.G., 58 P.3d 1145 (Colo. App. 2002).

No irreconcilable conflict between subsections (1)(b) and (1)(c). The so-called "adoption exclusion" in subsection (1)(b) has been construed to apply only when a child becomes available for adoption because the natural parents' rights have been legally terminated. Thus, subsection (1)(b) creates an interim statutory right in favor of grandparents to visit grandchildren until placement of the child for adoption or entry of a final decree of adoption. Under subsection (1)(c), a grandparent may seek visitation even after an adoption if a parent is deceased. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Grandparents' visitation rights not subject to exclusion under subsection (1)(b). Exclusionary statutory phrase concerning a child for whom adoption is pending or final pertains only to situations in which legal custody is vested in someone other than child's natural parents or in which child is place out of the natural parents' home. In re Aragon, 764 P.2d 419 (Colo. App. 1988).

Grandparents' visitation rights not automatically terminated by adoption of child by natural parent's new spouse. Paternal grandparents' right to visitation with grandchild after dissolution of parents' marriage was not automatically divested when child was subsequently adopted by mother's new spouse. In re Aragon, 764 P.2d 419 (Colo. App. 1988).

Grandparents' visitation rights automatically terminate upon completion of adoption, regardless of whether adoption is by strangers or a natural relative. Thus, paternal grandparents' visitation rights terminated upon completion of adoption by maternal grandparents. People in Interest of N.S., 821 P.2d 931 (Colo. App. 1991).

Grandparent's visitation rights terminated and grandparent did not have standing to assert rights under this section where she did not seek to intervene

in dependency and neglect proceeding and no order granting her leave to do so was entered by the trial court. People in Interest of J.W.W., 936 P.2d 599 (Colo. App. 1997).

Grandparent's visitation rights terminated and grandparent did not have standing in the relinquishment proceedings where the child had been placed for adoption with the family designated by the birth parents. Petition of B.D.G., 881 P.2d 375 (Colo. App. 1993).

Grandparent's visitation rights are lapsed, not terminated because of death of biological parents. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Adoptive parents and biological parents not treated differently when grandparents are allowed visitation rights of an adopted child unless a custody case has taken place. In re R.A., 66 P.3d 146 (Colo. App. 2002).

Marriage dissolved for purposes of subsection (1)(a) speaks to the marriage between persons who were parties to child custody case. In re Davisson, 797 P.2d 809 (Colo. App. 1990).

Applicability of statute is not limited by parents' marital status at the time visitation motion is filed. In re Davisson, 797 P.2d 809 (Colo. App. 1990).

An administrative paternity proceeding is a child custody case within the meaning of subsection (1). People in Interest of A.M.B., 946 P.2d 607 (Colo. App. 1997).

A paternity proceeding is a "child custody case" within the meaning of this section and, therefore, grants grandparent standing to seek visitation under the statute. Although paternity actions are not enumerated in this section, the statute has been construed to include paternity actions within its definition of a child custody case. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

This section does not confer an unconditional right to intervene in a paternity action under C.R.C.P. 24(a)(1) or as of right under 24(a)(2). Because the statute requires a grandparent to rebut the presumption that the parent's decision regarding visitation is in the child's best interest, it does not give rise to an absolute right to visitation. Because the statute does not vest a grandparent with an absolute right to visitation and issues concerning grandparent visitation are not inherent in a paternity action, there is no absolute or unconditional right for a grandparent to intervene in a paternity action. In re K.L.O-V., 151 P.3d 637 (Colo. App. 2006).

Subsection (3) does not authorize court to award attorney fees in all requests for grandparent visitation. Subsection (3) does not apply to initial requests for visitation; rather, it applies only when visitation rights have been established in a prior dissolution proceeding. In re Gallegos, 251 P.3d 1086 (Colo. App. 2010).

14-10-124.5. Disputes concerning grandparent or great-grandparent family time.

(1) Upon a verified motion by a grandparent or great-grandparent who has been granted grandparent or great-grandparent family time or upon the court's own motion alleging that the person with legal custody or parental responsibilities of the child as determined by a court pursuant to this article 10 with whom grandparent family time has been granted is not complying with a grandparent or great-grandparent family time order or schedule, the court shall determine from the verified motion, and response to the motion, if any, whether there has been or is likely to be a substantial and continuing noncompliance with the grandparent or great-grandparent family time order or schedule and either:

(a) Deny the motion, if there is an inadequate allegation; or

(b) Set the matter for hearing with notice to the grandparent or great-grandparent and the person with legal custody or parental responsibilities of the child as determined by the court of the time and place of the hearing; or

(c) Require said parties to seek mediation and report back to the court on the results of the mediation within sixty days. Mediation services must be provided in accordance with section 13-22-305. At the end of the mediation period, the court may approve an agreement reached by the parties or shall set the matter for hearing.

(2) After the hearing, if a court finds that the person with legal custody or parental responsibilities of the child as determined by the court has not complied with the grandparent or great-grandparent family time order or schedule and has violated the court order, the court, in the best interests of the child, may issue orders that may include but need not be limited to:

(a) Imposing additional terms and conditions that are consistent with the court's previous order;

(b) Modifying the previous order to meet the best interests of the child;

(c) Requiring the violator to post bond or security to ensure future compliance;

(d) Requiring that makeup grandparent or great-grandparent family time be provided for the aggrieved grandparent or great-grandparent and child under the following conditions:

(I) That such grandparent or great-grandparent family time is of the same type and duration of grandparent or great-grandparent family time as that which was denied, including but not limited to grandparent or great-grandparent family time during weekends, on holidays, and on weekdays and during the summer;

(II) That such grandparent or great-grandparent family time is made up within one year after the noncompliance occurs; or

(III) That such grandparent or great-grandparent family time is in the manner chosen by the aggrieved grandparent or great-grandparent if it is in the best interests of the child;

(e) Finding the person who did not comply with the grandparent or great-grandparent family time schedule in contempt of court and imposing a fine or jail sentence; and

(f) Awarding to the aggrieved party, when appropriate, actual expenses, including attorney fees, court costs, and expenses incurred by a grandparent or great-grandparent because of the other person's failure to provide or exercise court-ordered grandparent or great-grandparent family time. Nothing in this section precludes a party's right to a separate and independent legal action in tort.

(3) As used in this section, unless the context otherwise requires:

(a) "Grandparent" has the same meaning as set forth in section 14-10-124.4.

(b) "Great-grandparent" has the same meaning as set forth in section 14-10-124.4.

(c) "Grandparent or great-grandparent family time" or "grandparent family time" has the same meaning as set forth in section 14-10-124.4.

Source: L. 2023: Entire section added with relocations (HB 23-1026), ch. 243, p. 1302, § 2, effective August 7.

Editor's note: This section is similar to § 19-1-117.5 as it existed prior to 2023.

Cross references: For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of Colorado 2023.

ANNOTATION

Law reviews. For article, "Parental Rights and Responsibilities of Grandparents and Third Parties", see 30 Colo. Law. 63 (May 2001).

A grandparent can possess visitation rights. Although the visitation rights of a grandparent are more limited than those of parents, they are still recognized by Colorado law. A limited right remains a right. Thus, a Colorado state court order of visitation rights vests a maternal grandmother with "parental rights" under the plain language of the federal International Parental Kidnapping Crime Act (IPKCA). Further, a grandparent with joint custody or sole custody as defined by state law also has "parental rights" under the IPKCA. U.S. v.

Alahmad, 28 F. Supp. 2d 1273 (D. Colo. 1998) (decided under law in effect prior to the 1998 amendment of former § 19-1-117), aff'd, 211 F.3d 538 (10th Cir. 2000).

14-10-125. Temporary orders.

(1) A party to a proceeding concerning the allocation of parental responsibilities may move for a temporary order. The court may allocate temporary parental responsibilities, including temporary parenting time and temporary decision-making responsibility, after a hearing.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary order concerning the allocation of parental responsibilities is vacated unless a parent or the person allocated parental responsibilities moves that the proceeding continue as a proceeding concerning the allocation of parental responsibilities and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a decree concerning the allocation of parental responsibilities be issued.

(3) If a proceeding concerning the allocation of parental responsibilities commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary order concerning the allocation of parental responsibilities is vacated.

Source: L. 71: R&RE, p. 530, § 1. **C.R.S. 1963:** § 46-1-25. **L. 84:** (1) amended, p. 479, § 1, effective March 16. **L. 98:** Entire section amended, p. 1383, § 11, effective February 1, 1999.

ANNOTATION

Temporary order is not "in any way res judicata" as to permanent order. In re Lawson, 44 Colo. App. 105, 608 P.2d 378 (1980).

Order granting temporary custody of children is not final for purposes of appeal. In re Henne, 620 P.2d 62 (Colo. App. 1980).

14-10-126. Interviews.

(1) Upon a motion, the court may interview the child in chambers to ascertain the child's wishes as to the allocation of parental responsibilities. The court may permit counsel or a licensed legal paraprofessional to be present at the interview. The court shall cause a record of the interview to be made, and the interview must be made part of the record in the case. The court shall make findings in its order that explain the reason why the court granted or denied a request to interview the child in chambers.

(2) The court shall give paramount consideration to cases involving an allegation made by a child regarding domestic violence, child abuse or neglect, or child sexual abuse in determining whether to grant a request to interview a child in chambers.

(3) The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given must be in writing and must be made available by the court to counsel of record or licensed legal paraprofessional of record, parties, and other expert witnesses upon request, but the advice must otherwise be confidential, be sealed, and not be open to inspection, except by consent of the court. Counsel or a licensed legal paraprofessional may call for cross-examination of any professional personnel consulted by the court.

Source: L. 71: R&RE, p. 530, § 1. **C.R.S. 1963:** § 46-1-26. **L. 98:** (1) amended, p. 1384, § 12, effective February 1, 1999. **L. 2024:** Entire section amended, (HB 24-1291), ch. 131, p. 470, § 18, effective August 7; entire section amended, (HB 24-1350), ch. 344, p. 2338, § 4, effective August 7.

Editor's note: Amendments to this section by HB 24-1350 were harmonized in part with and superseded in part by HB 24-1291.

Cross references: For the legislative declaration in HB 24-1350, see section 1 of chapter 344, Session Laws of Colorado 2024.

ANNOTATION

Law reviews. For article, "The Role of Children's Counsel in Contested Child Custody, Visitation and Support Cases", see 15 Colo. Law. 224 (1986). For article, "The Child's Wishes in APR Proceedings: An Evidentiary Conundrum", see 36 Colo. Law. 33 (Jan. 2007).

Section does not mandate interviews. In re Rinow, 624 P.2d 365 (Colo. App. 1981); In re Turek, 817 P.2d 615 (Colo. App. 1991).

Trial court did not abuse its discretion in refusing to interview child in chambers. Court had the benefit of prior interview of child, reports filed with the court, and testimony during the hearing. In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001).

Parent may not cross-examine child at interview. The father is not entitled, as a matter of law, to cross-examine the children at the time of the interview. In re Agner, 659 P.2d 53 (Colo. App. 1982).

Making record is for benefit of parties. Though the language of this section is mandatory in form, the obvious purpose of making a record is for the benefit of the parties. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

Requirement for record of interview concerning child's preference not violated. Where the court conducted a 15-minute interview with the two minor children but did not inquire concerning their preference the requirement of this section for a record of an interview concerning the children's preference was not violated. In re Short, 675 P.2d 323 (Colo. App. 1983), rev'd on other grounds, 698 P.2d 1310 (Colo. 1985).

Requirement of making record may be waived. The requirement of making a record, i.e., a verbatim transcript, of the interview between the court and child may be waived either expressly or by implication. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

Waiver of the requirement of making a record by implication held sufficient. In re Armbeck, 33 Colo. App. 260, 518 P.2d 300 (1974).

For the standard of the common law with respect to interviews, see Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973).

Applied in In re Schulke, 40 Colo. App. 473, 579 P.2d 90 (1978).

14-10-127. Evaluation and reports - training and qualifications of evaluators - disclosure - definitions.

(1) (a) (I) (A) In all proceedings concerning the allocation of parental responsibilities with respect to a child, the court may, upon motion of either party or upon its own motion, order any evaluator to perform an evaluation and file a written report concerning the disputed issues relating to the allocation of parental responsibilities for the child, unless the motion by either party is made for the purpose of delaying the proceedings. The purpose of the evaluation and report is to assist in determining the best interests of the child, with the child's safety always paramount. The evaluation and subsequent report must focus on the best interests of the child and the factors set forth in sections 14-10-124 and 14-10-129 in any post-decree or relocation case. In addition, the evaluator shall assess a party's parenting attributes as those attributes relate to the best interests of the child and consider any psychological needs of the child when making recommendations concerning decision-making and parenting time for the written report. In the written report, the evaluator shall provide to the court, for the court to consider, options that serve the best interests of the child.

(B) Any court or any personnel of a county or district department of human or social services appointed by the court to do an evaluation pursuant to this section must be qualified pursuant to subsection (4) of this section and be selected from an eligibility roster established pursuant to applicable chief justice directive.

(C) When a mental health professional performs the evaluation, the court shall appoint or approve the selection of the mental health professional as the evaluator. Within seven days after the appointment, the evaluator shall comply with the disclosure provisions of subsection (1.2) of this section. The court shall, at the time of the evaluator's appointment, order one or more of the parties to deposit a reasonable sum with the court to pay the cost of the evaluation. The court may order the reasonable charge for the evaluation and report to be assessed as costs between the parties at the time the evaluation is completed.

(I.3) In determining whether to order an evaluation pursuant to this section, in addition to any other considerations the court deems relevant, the court shall consider:

(A) Whether an investigation by a child and family investigator pursuant to section 14-10-116.5 would be sufficient or appropriate given the scope or nature of the disputed issues relating to the allocation of parental responsibilities for the child;

(B) Whether an evaluation pursuant to this section is necessary to assist the court in determining the best interests of the child; and

(C) Whether involving the child in an evaluation pursuant to this section is in the best interests of the child.

(I.5) A party may request a supplemental evaluation to the evaluation ordered pursuant to subsection (1)(a)(I) of this section. The court shall appoint another qualified evaluator to perform the supplemental evaluation at the initial expense of the moving party. The evaluator appointed to perform the supplemental evaluation shall comply with the disclosure provisions of subsection (1.2) of this section. The court shall not order a supplemental evaluation if it determines that any of the following applies, based on motion and supporting affidavits:

(A) Such motion is interposed for purposes of delay;

(B) A party objects, and the party who objects or the child has a physical or mental condition that would make it harmful for such party or the child to participate in the supplemental evaluation;

(C) The purpose of such motion is to harass or oppress the other party;

(D) The moving party has failed or refused to cooperate with the first evaluation;

(E) The weight of the evidence other than the evaluation concerning the allocation of parental responsibilities or parenting time by the mental health professional demonstrates that a second evaluation would not be of benefit to the court in determining the allocation of parental responsibilities and parenting time; or

(F) In addition to the evaluation ordered pursuant to subparagraph (I) of this paragraph (a), there has been an investigation and report prepared by a child and family investigator pursuant to

section 14-10-116.5, and the court finds that a supplemental evaluation concerning parental responsibilities will not serve the best interests of the child.

(II) Each party and the child, if possible, shall cooperate in the supplemental evaluation. If the court finds that the supplemental evaluation was necessary and materially assisted the court, the court may order the costs of such supplemental evaluation to be assessed as costs between the parties. Except as otherwise provided in this section, the report is confidential and is not available for public inspection unless by order of court. The cost of each department of human services evaluation is based on an ability to pay and must be assessed as part of the costs of the action or proceeding, and, upon receipt of such sum by the clerk of court, the clerk of court shall transmit the money to the department or agency performing the evaluation.

(b) The person signing a report or evaluation and supervising its preparation must be a licensed mental health professional. The licensed mental health professional signing a report or evaluation must be qualified as competent, by training and experience, as described in subsection (4) of this section. Unlicensed associates or other persons may work with the mental health professional to prepare the report.

(c) An evaluator shall strive to engage in culturally informed and nondiscriminatory practices, and strive to avoid conflicts of interest or multiple relationships in conducting evaluations.

(1.2) (a) Within seven days after the appointment, the evaluator shall disclose to each party, attorneys or licensed legal paraprofessionals of record, and the court any familial, financial, or social relationship that the evaluator has or has had with the child, either party, the attorneys or licensed legal paraprofessionals of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (1.2), the court may, in its discretion, terminate the appointment and appoint a different evaluator in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(1.5) (a) Prior to performing any duties, an evaluator appointed by the court shall provide a written disclosure to each party and each party's attorney, if applicable. At a minimum, the written disclosure must include:

(I) A description of the evaluator's specific duties, responsibilities, and limitations, which must be consistent with this article 10;

(II) An acknowledgment that the evaluator will comply with applicable state and federal laws in acting as an evaluator, including all laws pursuant to this article 10;

(III) An acknowledgment that the evaluator is compliant with training requirements pursuant to section 14-10-127.5 (5);

(IV) A comprehensive description of the evaluator's financial policies, including billing practices and rates for performance of duties, costs, fees, and disbursements; and

(V) Information on filing a complaint pursuant to subsection (9) of this section and with the state court administrator regarding the evaluator pursuant to section 13-3-101 (3.5), including the current contact information for the state court administrator.

(b) Pursuant to a chief justice directive, the court may cap an evaluator's fees and allocate responsibility for costs.

(2) In preparing the report concerning a child, the evaluator may consult any person who may have information about the child and the child's potential parenting arrangements. Upon order of the court, the evaluator may refer the child to other professional personnel for diagnosis. The evaluator may consult with and obtain information from medical, mental health, educational, or other expert persons who have served the child in the past without obtaining the consent of the parent or the person allocated parental responsibilities for the child; but the child's consent must be obtained if the child has reached the age of fifteen years unless the court finds that the child lacks mental capacity to consent. If the requirements of subsections (3) to (7) of this section are fulfilled, the evaluator's report may be received in evidence at the hearing.

(3) The evaluator shall mail the report to the court and to counsel or a licensed legal paraprofessional, and to any party not represented by counsel or a licensed legal paraprofessional, at least twenty-one days prior to the hearing. The evaluator shall make available to counsel or the licensed legal paraprofessional, and to any party not represented by counsel or a licensed legal paraprofessional, the evaluator's file of underlying data and reports, complete texts of diagnostic reports made to the evaluator pursuant to subsections (2), (5), and (6) of this section, and the names and addresses of all persons whom the evaluator has consulted. Any party to the proceeding may call the evaluator and any person with whom the evaluator has consulted for cross-examination. A party shall not waive the party's right of cross-examination prior to the hearing.

(4) A person shall not testify as an expert witness regarding a parental responsibilities or parenting time evaluation that the person has performed pursuant to this section unless the court finds that the person is qualified as competent, by training and experience, in the areas of:

(a) The effects of divorce and remarriage on children, adults, and families;

(a.5) (I) The effects of domestic violence on children, adults, and families, including the connection between domestic violence and trauma on children, coercive control, child abuse, and

child sexual abuse in accordance with section 14-10-127.5. The person's training and experience must be provided by recognized sources with expertise in domestic violence and the traumatic effects of domestic violence and coercive control in accordance with section 14-10-127.5. Initial and ongoing training must include, at a minimum:

(A) No less than twenty hours of initial training, required pursuant to section 14-10-127.5 (5)(a)(I); and

(B) No less than fifteen hours of ongoing training every five years, required pursuant to section 14-10-127.5 (5)(a)(II).

(II) Notwithstanding subsection (4)(a.5)(I) of this section, an evaluator who completed the initial training required pursuant to section 14-10-127.5 (5)(a)(I) on or before January 1, 2025, is not required to complete supplemental training or the entire training again for the purpose of completing interviewing and forensic report writing training required pursuant to section 14-10-127.5 (5)(b)(IX) and (5)(b)(X).

(b) Appropriate parenting techniques;

(c) Child development, including cognitive, personality, emotional, and psychological development;

(d) Child and adult psychopathology;

(e) Applicable clinical assessment techniques; and

(f) Applicable legal and ethical requirements of parental responsibilities evaluation.

(5) If an evaluation is indicated in an area beyond the training or experience of the evaluator, the evaluator shall consult with a mental health professional qualified by training or experience, as described in subsection (4) of this section, in that area. Such areas may include, but are not limited to, domestic violence, child abuse, child sexual abuse, alcohol or substance abuse, or psychological testing.

(6) (a) An evaluator may make specific reports when the evaluator has interviewed and assessed all parties to the dispute, assessed the quality of the relationship, or the potential for establishing a quality relationship, between the child and each of the parties, and had access to pertinent information from outside sources.

(b) An evaluator may make reports even though all parties and the child have not been evaluated by the same evaluator in the following circumstances, if the evaluator states with particularity the limitations of the evaluator's findings and reports:

(I) Any of the parties reside outside Colorado and it would not be feasible for all parties and the child to be evaluated by the same mental health professional; or

(II) One party refuses or is unable to cooperate with the court-ordered evaluation; or

(III) The mental health professional is a member of a team of professionals that performed the evaluation and is presenting recommendations of the team that has interviewed and assessed all parties to the dispute.

(c) Recommendations should be considered in full context of the report.

(7) (a) A written report of the evaluation shall be provided to the court and to the parties pursuant to subsection (3) of this section.

(b) The report of the evaluation shall include, but need not be limited to, the following information:

(I) A description of the procedures employed during the evaluation;

(II) A report of the data collected;

(III) A conclusion that explains how the resulting recommendations were reached from the data collected, with specific reference to criteria listed in section 14-10-124 (1.5), and, if applicable, to the criteria listed in section 14-10-131, and their relationship to the results of the evaluation;

(IV) Recommendations concerning the allocation of parental responsibilities for the child, including decision-making responsibility, parenting time, and other considerations; and

(V) An explanation of any limitations in the evaluations or any reservations regarding the resulting recommendations.

(b.3) (I) The evaluator shall include in the written report all information acquired during the evaluation concerning domestic violence and child abuse, including:

(A) Child sexual abuse;

(B) Physical abuse;

(C) Emotional abuse;

(D) Coercive control;

(E) Trauma; and

(F) Victim and perpetrator behavioral patterns and relationship dynamics.

(II) The evaluator shall include in the written report all information pursuant to subsection (7)(b.3)(I) of this section, regardless of:

(A) The manner in which the information was acquired, including by accusation; evidence of a criminal charge, plea, deferred judgment, or conviction; or evidence of a protection order; or

(B) Who presented the information, including a child.

(b.7) The evaluator shall strive to ensure that the written report does not include information or recommendations that are biased, including a bias regarding religion, gender, gender identity, gender expression, sexual orientation, culture, race, ethnicity, national origin, or disability.

(8) All evaluations and reports, including but not limited to supplemental evaluations and related medical and mental health information, that are submitted to the court pursuant to this section shall be deemed confidential without the necessity of filing a motion to seal or otherwise limit access to the court file under the Colorado rules of civil procedure. An evaluation or report that is deemed confidential under this subsection (8) shall not be made available for public inspection without an order of the court authorizing public inspection.

(9) On and after January 1, 2022, a party wishing to file a complaint related to a person's duties as an evaluator shall file such complaint in accordance with the applicable provisions in chief justice directives.

(10) The requirements of this section apply only to activities related to work performed that is related to proceedings concerning the allocation of parental responsibilities. All other licensure requirements for mental health professionals, as established by the department of regulatory agencies and set forth in article 245 of title 12, still apply.

(11) As used in this section, unless the context otherwise requires:

(a) "Coercive control" means a pattern of threatening, humiliating, or intimidating actions, including assaults or other abuse, that is used to harm, punish, or frighten an individual. "Coercive control" includes a pattern of behavior that takes away the individual's liberty or freedom and strips away the individual's sense of self, including the individual's bodily integrity and human rights. "Coercive control" includes isolating the individual from support, exploiting the individual, depriving the individual of independence, and regulating the individual's everyday behavior. "Coercive control" includes, but is not limited to, any of the following:

(I) Isolating the individual from friends and family;

(II) Monitoring, surveilling, regulating, or controlling the individual's, or the individual's child's or relative's, finances, economic resources, or access to services;

(III) Monitoring, surveilling, regulating, or controlling the individual's, or the individual's child's or relative's, activities, communications, or movements, including through technology;

(IV) Name-calling, degrading, or demeaning the individual, or the individual's child or relative, on a frequent basis;

(V) Threatening to harm or kill the individual or the individual's child or relative, including wearing, accessing, displaying, using, or cleaning a weapon in an intimidating or threatening manner;

(VI) Threatening to commit suicide or otherwise harm one's own person, when used as a method of coercion, control, punishment, intimidation, or retaliation against the person;

(VII) Threatening to harm or kill an animal with which the individual or the individual's child or relative has an emotional bond;

(VIII) Threatening to publish the individual's, or the individual's child's or relative's, sensitive personal information, including sexually explicit material, or make reports to the police or authorities;

(IX) Damaging the individual's, or the individual's child's or relative's, property or household goods;

(X) Threatening the individual, or the individual's child or relative, with deportation or contacting authorities based on perceived or actual immigration status, withholding essential documents required for immigration, or threatening to withdraw or interfere with an active immigration application or process; or

(XI) Forcing the individual, or the individual's child or relative, to take part in criminal activities or child abuse.

(b) "Evaluator" means any county or district department of human or social services or a licensed mental health professional qualified pursuant to subsection (4) of this section.

Source: L. 71: R&RE, p. 530, § 1. **C.R.S. 1963:** § 46-1-27. **L. 76:** (1) amended, p. 529, § 1, effective April 16. **L. 79:** (1) amended, p. 646, § 1, effective March 2. **L. 83:** Entire section amended, p. 649, § 1, effective June 10. **L. 88:** Entire section amended, p. 639, § 1, effective May 11. **L. 93:** IP(1)(a)(I), IP(4), and (7)(b)(IV) amended, p. 577, § 10, effective July 1. **L. 94:** (1)(a)(II) amended, p. 2645, § 108, effective July 1. **L. 96:** (1)(b) amended, p. 1287, § 1, effective January 1, 1997. **L. 98:** IP(1)(a)(I), (2), (3), (4), (6)(b), and (7) amended, p. 1384, § 13, effective February 1, 1999. **L. 2005:** (1)(a) amended, p. 1224, § 1, effective June 3; (1)(a)(I.5)(F) amended, p. 963, § 10, effective July 1. **L. 2006:** (8) added, p. 447, § 1, effective April 13. **L. 2012:** (1)(a)(I) and IP(1)(a)(I.5) amended and (1.2) added, (SB 12-056), ch. 108, p. 368, § 3, effective July 1; (3) amended, (SB 12-175), ch. 208, p. 832, § 30, effective July 1. **L. 2013:** (1)(a)(I) amended and (1)(a)(I.3) added, (HB 13-1259), ch. 218, p. 1000, § 3, effective July 1. **L. 2015:** (1)(a)(II) amended, (SB 15-099), ch. 99, p. 289, § 1, effective August 5. **L. 2018:** (1)(a)(I) amended, (SB 18-092), ch. 38, p. 401, § 15, effective August 8. **L. 2021:** (1)(a)(I), IP(1)(a)(I.5), (1)(a)(II), (1)(b), IP(4), (5), (6)(a), and IP(6)(b) amended and (1)(c), (4)(a.5), (6)(c), (9), and (10) added (HB 21-1228), ch. 292, p. 1732, § 6, effective June 22. **L. 2023:** (4)(a.5) amended, (HB 23-1178), ch. 266, p. 1584, § 3, effective May 25. **L. 2024:** (1)(a)(I)(A), IP(4), and (4)(a.5) amended and (1.5), (7)(b.3), (7)(b.7), and (11) added (HB 24-1350), ch. 344, p. 2339, § 5, effective August 7; (1.2)(a) and (3) amended, (HB 24-1291), ch. 131, p. 471, § 19, effective

August 7. **L. 2025:** (4)(a.5)(I)(B) amended, (SB 25-300), ch. 428, p. 2442, § 15, effective August 6.

Cross references: (1) For the licensing of mental health professionals, see article 245 of title 12.

(2) For the legislative declaration contained in the 1993 act amending the introductory portions to subsections (1)(a)(I) and (4) and subsection (7)(b)(IV), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the 1994 act amending subsection (1)(a)(II), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declarations contained in the 2005 act amending subsection (1)(a)(I.5)(F), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018. For the legislative declaration in HB 21-1228, see section 1 of chapter 292, Session Laws of Colorado 2021. For the legislative declaration in HB 24-1350, see section 1 of chapter 344, Session Laws of Colorado 2024.

ANNOTATION

Law reviews. For article, "Therapist Privilege in Custody Cases", see 15 Colo. Law. 47 (1986). For article, "Helping a Client Handle a Child Custody Evaluation", see 16 Colo. Law. 1991 (1987). For article, "Custody Evaluations in Colorado", see 18 Colo. Law. 1523 (1989). For article, "Evaluating Child Custody Evaluations", see 22 Colo. Law. 2541 (1993). For article, "Considerations Regarding the Role of the Special Advocate", see 29 Colo. Law. 107 (July 2000). For article, "Tips for Working With Evidence in Domestic Relations Cases", see 31 Colo. Law. 87 (June 2002). For article, "The Child's Wishes in APR Proceedings: An Evidentiary Conundrum", see 36 Colo. Law. 33 (Jan. 2007). For article, "CFIs and APR Evaluators—Similarities and Differences", see 37 Colo. Law. 31 (Jan. 2008). For article, "Evaluating the Evaluators: Work Product Reviews as Evidence", see 40 Colo. Law. 35 (May 2011).

Annotator's note. Since § 14-10-127 is similar to repealed § 46-1-5 (7), C.R.S. 1963, relevant cases construing that provision have been included in the annotations to this section.

The purpose of the legislation providing for the preparation and filing of reports in custody proceedings is to make the information contained therein available to assist the court in determining what is in the best interest of the children concerned. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

The purpose of the legislation providing for court assistants in the capacity of investigators of domestic

relations cases to assist the court in the transaction of the judicial business of said court was obviously to assist the court and not to replace it. The general assembly would have no power to substitute an investigator for a judge, and neither would such legislation authorize a trial court to deny to the parties any of the usual attributes of a fair trial in open court upon due notice. Anderson v. Anderson, 167 Colo. 88, 445 P.2d 397 (1968).

Provisions of this section do not apply to custody determination in a dependency proceeding under the Children's Code. People in Interest of D.C., 851 P.2d 291 (Colo. App. 1993).

Provisions of this section do not apply to the child's treating therapist who was designated as a witness to testify as to her observations of the minor child. In re Woolley, 25 P.3d 1284 (Colo. App. 2001).

The act of the general assembly (§ 46-1-5 (7), C.R.S. 1963), which purported to authorize the trial court to call upon the probation department for a report concerning "the ability of each party to serve the best interest of the child", and further directing that "Each report shall be considered by the court" could not be so construed as to deny due process which includes the right to be heard in open court and to have a determination of issues based upon competent evidence offered by persons who submit themselves to cross examination. Anderson v. Anderson, 167 Colo. 88, 445 P.2d 397 (1968).

A probation officer, or other persons, who have been designated to investigate and report to the court in custody hearings matters involving the ability or fitness of parents to best serve the interests of their children, are subject to examination as witnesses concerning matters contained in their reports. Saucerman v. Saucerman, 170 Colo. 318, 461 P.2d 18 (1969).

However, touching upon matters related to them in confidence, the trial court should preliminarily rule in each instance what matters are in fact confidential, and whether the public interest requires the confidence to be preserved, and no examination of the officer should be permitted with respect to such confidential matters. Saucerman v. Saucerman, 170 Colo. 318, 461 P.2d 18 (1969).

Where the trial court received in evidence the investigative reports of welfare and health department employees in reference to conditions found in the respective homes of the two contestants, and in reference to the psychological effects living with the father or the mother might have on one of the children, and the record indicated that at one hearing after the reports were filed the individuals who made the reports were either in court or could have been made available to the parties for cross-examination, there was no unfairness nor a denial of due process. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Opportunity to test report's reliability and offer evidence exists. Because any party has the right to call for cross-examination of the investigator and any person he has consulted, and because the investigator's file is available to counsel, ample opportunity exists for a party to test

the reliability of the report and to offer evidence in explanation of or to disprove any statements or conclusions based on hearsay. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

In making an order changing the custody of children, the trial court is actually making the decision, though such order is based on the recommendations of a psychiatrist and welfare personnel whose reports constitute nothing more than recommendations. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Court did not improperly utilize an investigative report made by an officer of the juvenile probation department in arriving at its decision relative to custody, for while it is true that the investigative report was not formally offered and received in evidence, the report was made a part of the record and had been furnished previously to both parties, and although she did not choose to do so, the wife had the right to call and examine the author of the report. Rayer v. Rayer, 32 Colo. App. 400, 512 P.2d 637 (1973); In re Lorenzo, 721 P.2d 155 (Colo. App. 1986).

The reports simply furnish specific information of a specialized nature for aid and assistance to the trial court, but in the final analysis the judge makes the decision, and whatever recommendations may be made to the judge, be they by experts or counsel, are merely recommendations and nothing more. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Where objections and exceptions were filed to the report of the probation department, since it was a hearsay document, if the conclusions reached therein were objected to by either party, it would be necessary that competent evidence, upon which the conclusions were based, be presented in open court. Anderson v. Anderson, 167 Colo. 88, 445 P.2d 397 (1968).

Waiver of objections to admission of report. Unless a party notifies the court and the opposing party within 10 days after receipt of a copy of the report (or if a copy has not been received at least 10 days prior to the hearing day, then at or prior to the commencement of the hearing at which the report may be used) that he intends to object to the admission of the report on the grounds of noncompliance with the 10-day rule or the hearsay nature of the report, any such objections are waived. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

Where a copy of the report was received by counsel a reasonable time prior to the hearing and no objection was made thereto until after the commencement of the hearing, objections as to hearsay and the 10-day rule were waived. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

Effect of valid objection. If a valid objection is made within the period specified above, then, on motion of either party or of the court, the court shall grant a reasonable continuance of the custody hearing date in order that the parties may obtain appropriate testimony. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

The trial court erred in relying upon the probation report where it afforded no

opportunity for the husband to offer evidence in explanation thereof, or to disprove any conclusions based on hearsay that were contained therein. Anderson v. Anderson, 167 Colo. 88, 445 P.2d 397 (1968).

It was not prejudicial error for the trial court to have received in evidence the hearsay reports of the case worker of the welfare department in custody proceedings, since the nature of the "report" was such that the father could not possibly have been prejudiced by anything contained therein, and furthermore, it affirmatively appeared from the court's decree that it did not in any manner enter into the court's thinking to the prejudice of the father. Suzuki v. Suzuki, 162 Colo. 204, 425 P.2d 44 (1967).

Compliance with the 10-day provisions of this section is not a condition precedent to the reception of the report. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

Effect of noncompliance. Noncompliance with the 10-day rule merely prohibits the court from proceeding with a hearing wherein the report can be considered absent consent of or waiver by the parties. Pacheco v. Pacheco, 38 Colo. App. 181, 554 P.2d 720 (1976).

Communications disclosed pursuant to this section are not privileged under § 13-90-107 since the information was necessary to make an evaluation for the court, not to treat the person disclosing the information. Anderson v. Glismann, 577 F. Supp. 1506 (D. Colo. 1984).

Actions of a court-appointed expert are made under the authority of the state, but not on behalf of the state, and will not sustain a cause of action under 42 U.S.C. § 1983. Anderson v. Glismann, 577 F. Supp. 1506 (D. Colo. 1984).

The language that "the court shall" order an evaluation or a supplemental evaluation is mandatory unless the express conditions apply, and a trial court must make specific findings to support its denial of any requested evaluation in order to insure effective and meaningful review. In re Sepmeier, 782 P.2d 876 (Colo. App. 1989).

Trial court erred when it denied petitioner's request for an evaluation. This section applies to both the determination of parenting time and the allocation of parental decision-making when a court is asked to rule on the intended relocation of one of the parents. Because the statute is mandatory, a trial court must order an evaluation pursuant to this section when requested by either party when one party seeks to relocate. In re Hall, 241 P.3d 540 (Colo. 2010).

The trial court must make specific findings to support its denial of any requested evaluation. In re Chatten, 967 P.2d 206 (Colo. App. 1998).

Denial of supplemental custody evaluation appropriate where court found that a further delay in the resolution of the custody motion would cause emotional stress to the child and that discussions mother had had with the child as to where she was going to live and attend school had already contributed to the child's anxiety,

stress, and resulting stomach aches. In re Chatten, 967 P.2d 206 (Colo. App. 1998).

"Custody proceedings" does not automatically include a motion to modify custody. The threshold requirements of § 14-10-132 must be met before a custody proceeding is established. In re Michie, 844 P.2d 1325 (Colo. App. 1992).

Denying petitioner's motion for custody evaluation based upon inability to pay was abuse of discretion by court. Hernandez v. District Ct., 814 P.2d 379 (Colo. 1991).

Court properly balanced its obligation to accord mother due process against its need to efficiently manage the case when it denied mother's last minute request to call 40 witnesses without providing prior notice to father. In re Hatton, 160 P.3d 326 (Colo. App. 2007).

Applied in In re Schulke, 40 Colo. App. 473, 579 P.2d 90 (1978); In re Agner, 659 P.2d 53 (Colo. App. 1982); In re Kasten, 814 P.2d 11 (Colo. App. 1991).

14-10-127.5. Domestic violence training for court personnel - expert testimony - child placement decisions - legislative declaration - definitions.

(1) (a) The general assembly finds and declares that:

(I) Approximately fifteen million children are exposed each year to domestic violence or child abuse;

(II) Most child abuse is perpetrated in the family and by a parent;

(III) A child's risk of abuse increases after a perpetrator of intimate partner violence separates from the perpetrator's domestic partner, even when the perpetrator had not directly abused the child previously;

(IV) Empirical research indicates that allegations of child physical and sexual abuse are regularly discounted by courts when raised in parental allocation cases. Courts believe fewer than one-fourth of claims that a parent has committed child physical or sexual abuse.

(V) In parental allocation cases in which an alleged or known abusive parent claims alienation from the child, courts are four times more likely to disbelieve the parent who claims child physical or sexual abuse;

(VI) Research shows that courts grant custody or unprotected parenting time to an alleged or known abusive parent;

(VII) Since 2008, nearly eight hundred children have been murdered by a divorcing or separating parent, with more than one hundred murders occurring after a court ordered the child

into contact with the alleged or known abusive parent despite objections from the parent who claimed child physical or sexual abuse;

(VIII) Abusive parents frequently claim that abuse allegations are false to minimize or deny reports of abuse. Experts who testify against abuse allegations often lack expertise in the relevant type of alleged abuse, relying on unproven theories.

(IX) Judges presiding over parental allocation cases with allegations of child abuse, child sexual abuse, and domestic violence are rarely required to receive training on these subjects.

(b) The general assembly therefore declares that:

(I) A child's safety is the first priority of the court in a proceeding affecting the child's care and custody;

(II) Strengthening the ability of the courts to recognize and adjudicate adult and child abuse allegations based on valid, admissible evidence will allow courts to enter orders that protect and minimize risk of harm to the child; and

(III) Court personnel involved in cases containing abuse allegations who receive trauma-informed training on the dynamics, signs, and impacts of child abuse, child sexual abuse, and intimate partner violence will help protect and minimize risk of harm to the child.

(2) As used in this section, unless the context otherwise requires:

(a) "Accused party" means a parent in a case to determine parental responsibilities who has been accused of domestic violence or child abuse, including child sexual abuse.

(a.3) "Coercive control" means a pattern of threatening, humiliating, or intimidating actions, including assaults or other abuse, that is used to harm, punish, or frighten an individual. "Coercive control" includes a pattern of behavior that takes away the individual's liberty or freedom and strips away the individual's sense of self, including the individual's bodily integrity and human rights. "Coercive control" includes isolating the individual from support, exploiting the individual, depriving the individual of independence, and regulating the individual's everyday behavior. "Coercive control" includes, but is not limited to, any of the following:

(I) Isolating the individual from friends and family;

(II) Monitoring, surveilling, regulating, or controlling the individual's, or the individual's child's or relative's, finances, economic resources, or access to services;

(III) Monitoring, surveilling, regulating, or controlling the individual's, or the individual's child's or relative's, activities, communications, or movements, including through technology;

(IV) Name-calling, degrading, or demeaning the individual, or the individual's child or relative, on a frequent basis;

(V) Threatening to harm or kill the individual or the individual's child or relative, including wearing, accessing, displaying, using, or cleaning a weapon in an intimidating or threatening manner;

(VI) Threatening to commit suicide or otherwise harm one's own person, when used as a method of coercion, control, punishment, intimidation, or retaliation against the person;

(VII) Threatening to harm or kill an animal with which the individual or the individual's child or relative has an emotional bond;

(VIII) Threatening to publish the individual's, or the individual's child's or relative's, sensitive personal information, including sexually explicit material, or make reports to the police or authorities;

(IX) Damaging the individual's, or the individual's child's or relative's, property or household goods;

(X) Threatening the individual, or the individual's child or relative, with deportation or contacting authorities based on perceived or actual immigration status, withholding essential documents required for immigration, or threatening to withdraw or interfere with an active immigration application or process; or

(XI) Forcing the individual, or the individual's child or relative, to take part in criminal activities or child abuse.

(b) "Protective party" means a parent in a case to determine parental responsibilities who is competent, protective, not sexually or physically abusive, and with whom a child is bonded or attached.

(c) "Reunification treatment" means a treatment or therapy aimed at reuniting or reestablishing a relationship between a child and an estranged or rejected parent or other family member of the child.

(d) "Task force" means the task force to study victim and survivor awareness and responsiveness training requirements for judicial personnel created in section 24-33.5-534, as enacted in House Bill 23-1108.

(e) "Victim service provider" means a nonprofit, nongovernmental or tribal organization or rape crisis center, including of a state or tribal nation, that is subject to section 13-90-107 (1)(k)(I) and assists or advocates for domestic violence, dating violence, sexual assault, or stalking victims, including domestic violence shelters, faith-based organizations, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(3) (a) In all proceedings brought pursuant to this title 14 concerning the allocation of parental responsibilities with respect to a child in which a claim of domestic violence or child

abuse, including child sexual abuse, has been made to the court, or the court has reason to believe that a party has committed domestic violence or child abuse, including child sexual abuse, the court shall:

(I) Consider the admission of expert testimony and evidence if the expert demonstrates expertise and experience working with victims of domestic violence or child abuse, including child sexual abuse, that is not solely forensic in nature;

(II) Consider evidence of past sexual or physical abuse committed by the accused party, including:

(A) Any past or current protection or restraining orders against the accused party, including protection or restraining orders that raise sexual violence or abuse;

(B) Arrests of the accused party for domestic violence, sexual violence, or child abuse;

(C) Convictions of the accused party for domestic violence, sexual violence, or child abuse; or

(D) Other documentation, including letters from a victim advocate or victim service provider, if the victim has consented pursuant to section 13-90-107 (1)(k)(I); medical records; or a letter to a landlord to break a lease; and

(III) Consider evidence related to the use of coercive control by a party.

(b) In determining allocation of parental responsibilities in proceedings brought pursuant to this title 14 in which a claim of domestic violence or child abuse, including child sexual abuse, has been made to the court, or the court has reason to believe that a party has committed domestic violence or child abuse, including child sexual abuse, a court shall not:

(I) Remove a child from a protective party solely to improve a deficient relationship with an accused party;

(II) Restrict contact between a child and a protective party solely to improve a deficient relationship with an accused party;

(III) Order reunification treatment, unless there is generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment; or

(IV) Order reunification treatment that is predicated on cutting off the relationship between a child and protective party.

(c) If a court issues an order to remediate the resistance of a child to have contact with a party found by the court to have committed domestic violence or child abuse, the order must address the party's behavior. In order for a court to issue an order pursuant to this subsection (3)(c), the party found by the court to have committed domestic violence or child abuse must:

(I) Demonstrate genuine accountability for commission of domestic violence and its effect on the other parent or another person, including a child;

(II) Demonstrate sustained behavioral changes that address underlying patterns of power and control;

(III) Comply with the court's order regarding treatment in order to exercise parenting time, including providing periodic proof of compliance of the treatment if proof of compliance is ordered by the court. Treatment must be with a mental health professional who has:

(A) A master's or doctoral degree and is licensed pursuant to article 245 of title 12; and

(B) Specialized training and expertise in treating survivors and perpetrators of domestic violence and child abuse, and the effects of domestic violence and child abuse on adults and children; and

(IV) A program does not meet the requirements of this subsection (3)(c) if it is not in real-time, is self-directed, or is an anger management course.

(d) In compliance with the federal "Keeping Children Safe From Family Violence Act", 34 U.S.C. sec. 10446, as amended, any neutral professional appointed by a court to express an opinion relating to abuse, trauma, or the behaviors of victims and perpetrators of abuse and trauma during a proceeding to allocate parental responsibilities shall possess demonstrated expertise and experience in working with victims of domestic violence or child abuse, including child sexual abuse, that is not solely of a forensic nature.

(3.5) If allegations of domestic violence, child abuse or neglect, or child sexual abuse have been made, the court shall give strong consideration to a child's stated preference made to the court, child and family investigator, evaluator, or the child's legal advocate, if the stated preference is consistent with the paramount consideration given to the child's safety and the physical, mental, and emotional conditions and needs of the child.

(4) (a) The task force shall study the training requirements in the federal "Keeping Children Safe From Family Violence Act", 34 U.S.C. sec. 10446, as amended, and make recommendations that comply with the federal requirements for any judge or magistrate who presides over parental responsibility proceedings. The task force shall focus on the following:

(I) The hourly training requirements described in subsection (5)(a) of this section;

(II) The recognition of domestic violence and child abuse described in subsection (5)(b) of this section; and

(III) The requirements of a professional trainer to lead the training described in subsections (6)(a) and (6)(b) of this section.

(b) The training must be designed to improve the courts' ability to recognize domestic violence and child abuse in parental allocation proceedings as described in subsection (6)(c) of this section.

(5) (a) Child and family investigators, as described in section 14-10-116.5, parental responsibilities evaluators, as described in section 14-10-127, who are involved in parental responsibility proceedings, and legal representatives of children described in section 14-10-116 who do not contract with the office of the child's representative, shall complete:

(I) No less than twenty hours of initial training; and

(II) No less than fifteen hours of ongoing training every five years.

(b) The required training set forth in subsection (5)(a) of this section must focus on domestic violence and child abuse, including:

(I) Child sexual abuse;

(II) Physical abuse;

(III) Emotional abuse;

(IV) Coercive control;

(V) Implicit and explicit bias, including biases relating to parties with disabilities;

(VI) Trauma;

(VII) Long-term and short-term impacts of domestic violence and child abuse on children;

(VIII) Victim and perpetrator behavioral patterns and relationship dynamics within the cycle of violence;

(IX) Interviewing; and

(X) Forensic report writing.

(b.1) Notwithstanding any provision of this subsection (5) to the contrary, a child and family investigator or a parental responsibilities evaluator who completed the initial training required pursuant to subsection (5)(a)(I) of this section on or before January 1, 2025, is not required to complete supplemental training or the entire training again for the purpose of completing interviewing and forensic report writing training required pursuant to subsections (5)(b)(IX) and (5)(b)(X) of this section.

(b.5) The required training set forth in subsection (5)(a) of this section must be culturally informed and must not include information that is discriminatory because of a child's or parent's disability, race, creed, religion, color, sex, sexual orientation, gender, gender identity, gender expression, culture, national origin, ancestry, or immigration status.

(c) (I) For each fiscal year, the office of the child's representative shall report to the state court administrator a list of trainings on domestic violence and child abuse that the office of the child's representative provides.

(II) Special masters and mediators who are involved in parental responsibility proceedings pursuant to this title 14 shall report to the state court administrator the existing training on domestic violence and child abuse and the hours of training completed.

(6) (a) A professional trainer shall conduct the required training set forth in subsection (5) of this section. The professional trainer shall have substantial experience in assisting survivors of domestic violence or child abuse. A professional trainer may include a professional representing a victim service provider.

(b) The professional trainer described in subsection (6)(a) of this section shall rely on evidence-based and peer-reviewed research conducted by recognized experts or research conducted in the field by recognized domestic violence victim advocates that focuses on the types of abuse described in subsection (5)(b) of this section and shall not include theories, concepts, or belief systems in the required training that are not supported by evidence-based and peer-reviewed research or research conducted in the field by recognized domestic violence victim advocates.

(c) The required training must be designed to improve the ability of courts to:

(I) Recognize and respond to child physical abuse, child sexual abuse, domestic violence, coercive control, and trauma in all family victims, particularly children; and

(II) Make appropriate custody decisions that prioritize child safety and well-being and that are culturally sensitive and appropriate for diverse communities.

(d) A professional trainer is not required to be affiliated with a state agency, including the office of the state court administrator, in order to deliver the training requirements pursuant to subsection (5) of this section and this subsection (6).

(7) As soon as possible after July 1, 2023, the judicial branch shall apply to the federal department of justice's office of the attorney general for a grant increase in compliance with the federal "Keeping Children Safe From Family Violence Act", 34 U.S.C. sec. 10446, as amended.

Source: L. 2023: Entire section added, (HB 23-1178), ch. 266, p. 1578, § 1, effective May 25. **L. 2024:** (2)(a.3), (3)(a)(III), (3.5), (5)(b)(IX), (5)(b)(X), (5)(b.1), (5)(b.5), and (6)(d) added and (3)(a)(I), (3)(a)(II)(D), and (6)(c)(I) amended, (HB 24-1350), ch. 344, p. 2342, § 6, effective August 7; IP(5)(a) amended, (HB 24-1450), ch. 490, p. 3408, § 21, effective August 7. **L. 2026:** (3)(c) amended, (HB 26-1309), ch. 163, p. 981, § 4, effective May 27.

Cross references: For the legislative declaration in HB 24-1350, see section 1 of chapter 344, Session Laws of Colorado 2024. For the legislative declaration in HB 26-1309, see section 1 of chapter 163, Session Laws of Colorado 2026.

14-10-128. Hearings.

(1) Proceedings concerning the allocation of parental responsibilities with respect to a child shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a hearing concerning the allocation of parental responsibilities but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary in order to protect the child's welfare that the record of any interview, report, investigation, or testimony in a proceeding concerning the allocation of parental responsibilities be kept secret, the court shall make an appropriate order sealing the record.

Source: L. 71: R&RE, p. 531, § 1. **C.R.S. 1963:** § 46-1-28. **L. 98:** (1), (3), and (4) amended, p. 1386, § 14, effective February 1, 1999.

ANNOTATION

Award for fees of eight witnesses without specific finding of their necessity held to be error in child custody hearing. Weber v. Wallace, 789 P.2d 427 (Colo. App. 1989).

Applied in In re Agner, 659 P.2d 53 (Colo. App. 1982).

14-10-128.1. Appointment of parenting coordinator - disclosure.

(1) Pursuant to the provisions of this section, at any time after the entry of an order concerning parental responsibilities and upon notice to the parties, the court may, on its own

motion, a motion by either party, or an agreement of the parties, appoint a parenting coordinator as a neutral third party to assist in the resolution of disputes between the parties concerning parental responsibilities, including but not limited to implementation of the court-ordered parenting plan. The parenting coordinator shall be a neutral person with appropriate training and qualifications and an independent perspective acceptable to the court. Within seven days after the appointment, the appointed person shall comply with the disclosure provisions of subsection (2.5) of this section.

(2) (a) Absent agreement of the parties, a court shall not appoint a parenting coordinator unless the court makes the following findings:

(I) That the parties have failed to adequately implement the parenting plan;

(II) That mediation has been determined by the court to be inappropriate, or, if not inappropriate, that mediation has been attempted and was unsuccessful; and

(III) That the appointment of a parenting coordinator is in the best interests of the child or children involved in the parenting plan.

(b) In addition to making the findings required pursuant to subsection (2)(a) of this section, prior to appointing a parenting coordinator, the court may consider the effect of any finding or documented evidence of domestic violence by the other party on the parties' ability to engage in parent coordination.

(2.5) (a) Within seven days after the appointment, the appointed person shall disclose to each party, attorneys or licensed legal paraprofessionals of record, and the court any familial, financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys or licensed legal paraprofessionals of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (2.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(3) A parenting coordinator shall assist the parties in implementing the terms of the parenting plan. Duties of a parenting coordinator include, but are not limited to, the following:

(a) Assisting the parties in creating an agreed-upon, structured guideline for implementation of the parenting plan;

(b) Developing guidelines for communication between the parties and suggesting appropriate resources to assist the parties in learning appropriate communication skills;

(c) Informing the parties about appropriate resources to assist them in developing improved parenting skills;

(d) Assisting the parties in realistically identifying the sources and causes of conflict between them, including but not limited to identifying each party's contribution to the conflict, when appropriate; and

(e) Assisting the parties in developing parenting strategies to minimize conflict.

(4) (a) The court may not appoint a person pursuant to this section to serve in a case as a parenting coordinator if the person has served or is serving in the same case as an evaluator pursuant to section 14-10-127 or a representative of the child pursuant to section 14-10-116. After appointing a person pursuant to this section to serve as a parenting coordinator in a case, the court may not subsequently appoint the person to serve in the same case as an evaluator pursuant to section 14-10-127 or a representative of the child pursuant to section 14-10-116.

(b) The court may appoint a person who has served or is serving in a case as a child and family investigator pursuant to section 14-10-116.5 to serve in the same case as the parenting coordinator, upon the agreement of the parties. After appointing a person pursuant to this section to serve as a parenting coordinator in a case, the court may not subsequently appoint the person to serve as a child and family investigator in the same case pursuant to section 14-10-116.5.

(5) A court order appointing a parenting coordinator shall be for a specified term; except that the court order shall not appoint a parenting coordinator for a period of longer than two years. If an order fails to specify the length of the court-ordered appointment, it shall be construed to be two years from the date of appointment. Upon agreement of the parties, the court may extend, modify, or terminate the appointment, including extending the appointment beyond two years from the date of the original appointment. The court may terminate the appointment of the parenting coordinator at any time for good cause. The court shall allow the parenting coordinator to withdraw at any time.

(6) A court order appointing a parenting coordinator shall include apportionment of the responsibility for payment of all of the parenting coordinator's fees between the parties. The state shall not be responsible for payment of fees to a parenting coordinator appointed pursuant to this section.

(7) (a) A parenting coordinator appointed by the court pursuant to this section shall be immune from civil liability in any claim for injury that arises out of an act or omission of the parenting coordinator occurring on or after April 16, 2009, during the performance of his or her duties or during the performance of any act that a reasonable parenting coordinator would

believe was within the scope of his or her duties unless the act or omission causing the injury was willful and wanton.

(b) Nothing in this subsection (7) shall be construed to bar a party from asserting a claim:

(I) Based upon a parenting coordinator's failure to comply with the provision set forth in subsection (8) of this section;

(II) Related to the reasonableness or accuracy of any fee charged or time billed by a parenting coordinator; or

(III) Based upon a negligent act or omission involving the operation of a motor vehicle by a parenting coordinator.

(c) (I) In a judicial proceeding, administrative proceeding, or other similar proceeding between the parties to the action, a parenting coordinator shall not be competent to testify and may not be required to produce records as to any statement, conduct, or decision that occurred during the parenting coordinator's appointment to the same extent as a judge of a court of this state acting in a judicial capacity.

(II) This paragraph (c) shall not apply:

(A) To the extent testimony or production of records by the parenting coordinator is necessary to determine a claim of the parenting coordinator against a party; or

(B) To the extent testimony or production of records by the parenting coordinator is necessary to determine a claim of a party against a parenting coordinator; or

(C) When both parties have agreed, in writing, to authorize the parenting coordinator to testify.

(d) If a person commences a civil action against a parenting coordinator arising from the services of the parenting coordinator, or if a person seeks to compel a parenting coordinator to testify or produce records in violation of subsection (7)(c) of this section, and the court determines that the parenting coordinator is immune from civil liability or that the parenting coordinator is not competent to testify, the court shall award to the parenting coordinator reasonable attorney fees or reasonable licensed legal paraprofessional fees and reasonable expenses of litigation.

(8) The parenting coordinator shall comply with any applicable provisions set forth in chief justice directives and any other practice or ethical standards established by rule, statute, guideline, or licensing board that regulates the parenting coordinator.

Source: L. 2005: Entire section added, p. 952, § 1, effective June 2; (4)(b) amended, p. 963, § 11, effective July 1. **L. 2009:** (7) and (8) amended, (SB 09-069), ch. 121, p. 502, § 1, effective

April 16. **L. 2012:** (1) and (2)(b) amended and (2.5) added, (SB 12-056), ch. 108, p. 369, § 4, effective July 1. **L. 2024:** (2)(b) amended (HB 24-1350), ch. 344, p. 2345, § 7, effective August 7; (2.5)(a) and (7)(d) amended, (HB 24-1291), ch. 131, p. 471, § 20, effective August 7. **L. 2026:** (2)(b) amended, (HB 26-1309), ch. 163, p. 982, § 5, effective May 27.

Cross references: For the legislative declarations contained in the 2005 act amending subsection (4)(b), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005. For the legislative declaration in HB 24-1350, see section 1 of chapter 344, Session Laws of Colorado 2024. For the legislative declaration in HB 26-1309, see section 1 of chapter 163, Session Laws of Colorado 2026.

ANNOTATION

Law reviews. For article, "Privatizing Family Law Adjudications: Issues and Procedures", see 34 Colo. Law. 95 (Aug. 2005). For article, "Parenting Coordinator: Understanding This New Role", see 35 Colo. Law. 31 (Feb. 2006). For article, "A Brief Overview of Parenting Coordination", see 38 Colo. Law. 61 (July 2009).

This section does not permit the parenting coordinator to make decisions or resolve disputes that the parents are unable to resolve. A grant of decision-making authority to the parenting coordinator is contrary to subsection (3). In re Dauwe, 148 P.3d 282 (Colo. App. 2006).

This section and § 13-22-313 are in conflict and cannot be harmonized with respect to the standards for the appointment of a parenting coordinator if abuse is alleged by one parent by the other. Although § 13-22-313 bars the court from referring a case to any ancillary form of alternative dispute resolution if one of the parties claims abuse by the other party, under this section, a mere claim of abuse by one parent is insufficient to bar the appointment of a parenting coordinator. Even documented evidence of domestic violence does not automatically bar such an appointment. Rather, the court is required only to consider the effect of the evidence on the parties' ability to engage in parenting coordination. In re Rozzi, 190 P.3d 815 (Colo. App. 2008).

Court erred in directing that the parenting coordinator should assume the duties of a special master and follow the procedures set forth in C.R.C.P. 53. However, the court was proper in providing that the parenting coordinator may make nonbinding recommendations to the parties in the event that they are unable to resolve a dispute themselves. In re Rozzi, 190 P.3d 815 (Colo. App. 2008).

14-10-128.3. Appointment of decision-maker - disclosure.

(1) In addition to the appointment of a parenting coordinator pursuant to section 14-10-128.1 or an arbitrator pursuant to section 14-10-128.5, at any time after the entry of an order concerning parental responsibilities and upon written consent of both parties, the court may appoint a qualified domestic relations decision-maker and grant to the decision-maker binding authority to resolve disputes between the parties as to implementation or clarification of existing orders concerning the parties' minor or dependent children, including but not limited to disputes concerning parenting time, specific disputed parental decisions, and child support. A decision-maker shall have the authority to make binding determinations to implement or clarify the provisions of a pre-existing court order in a manner that is consistent with the substantive intent of the court order. The decision-maker appointed pursuant to the provisions of this section may be the same person as the parenting coordinator appointed pursuant to section 14-10-128.1. At the time of the appointment, the appointed person shall comply with the disclosure provisions of subsection (4.5) of this section.

(2) The decision-maker's procedures for making determinations shall be in writing and shall be approved by the parties prior to the time the decision-maker begins to resolve a dispute of the parties. If a party is unable or unwilling to agree to the decision-maker's procedures, the decision-maker shall be allowed to withdraw from the matter.

(3) All decisions made by the decision-maker pursuant to this section must be in writing, dated, and signed by the decision-maker. Decisions of the decision-maker must be filed with the court and mailed to the parties or to counsel or licensed legal paraprofessional for the parties, if any, no later than twenty days after the date the decision is issued. All decisions are effective immediately upon issuance and continue in effect until vacated, corrected, or modified by the decision-maker or until an order is entered by a court pursuant to a de novo hearing pursuant to subsection (4) of this section.

(4) (a) A party may file a motion with the court requesting that a decision of the decision-maker be modified by the court pursuant to a de novo hearing. A motion for a de novo hearing shall be filed no later than thirty-five days after the date the decision is issued pursuant to subsection (3) of this section.

(b) If a court, in its discretion based on the pleadings filed, grants a party's request for a de novo hearing to modify the decision of the decision-maker and the court substantially upholds the decision of the decision-maker, the party that requested the de novo hearing shall pay the fees and costs of the other party and shall pay the fees and costs incurred by the decision-maker in connection with the request for de novo hearing, unless the court finds that it would be manifestly unjust.

(4.5) (a) Within seven days after the appointment, the appointed person shall disclose to each party, attorneys or licensed legal paraprofessionals of record, and the court any familial,

financial, or social relationship that the appointed person has or has had with the child, either party, the attorneys or licensed legal paraprofessionals of record, or the judicial officer and, if a relationship exists, the nature of the relationship.

(b) Based on the disclosure required pursuant to paragraph (a) of this subsection (4.5), the court may, in its discretion, terminate the appointment and appoint a different person in the proceedings. A party has seven days from the date of the disclosure to object to the appointment based upon information contained in the disclosure. If a party objects to the appointment, the court shall appoint a different person or confirm the appointment within seven days after the date of the party's objection. If no party timely objects to the appointment, then the appointment is deemed confirmed.

(5) A court order appointing a decision-maker shall be for a specified term; except that the court order shall not appoint a decision-maker for a period of longer than two years. If an order fails to specify the length of the court-ordered appointment, it shall be construed to be two years from the date of appointment. Upon agreement of the parties, the court may extend, modify, or terminate the appointment, including extending the appointment beyond two years from the date of the original appointment. The court may terminate the appointment of the decision-maker at any time for good cause. The court shall allow the decision-maker to withdraw at any time.

(6) A court order appointing a decision-maker shall include apportionment of the responsibility for payment of all of the decision-maker's fees between the parties. The state shall not be responsible for payment of fees to a decision-maker appointed pursuant to this section.

(7) (a) A decision-maker shall be immune from liability in any claim for injury that arises out of an act or omission of the decision-maker occurring during the performance of his or her duties or during the performance of an act that the decision-maker reasonably believed was within the scope of his or her duties unless the act or omission causing such injury was willful and wanton.

(b) Nothing in this subsection (7) shall be construed to bar a party from asserting a claim related to the reasonableness or accuracy of any fee charged or time billed by a decision-maker.

(c) (I) In a judicial proceeding, administrative proceeding, or other similar proceeding, a decision-maker shall not be competent to testify and may not be required to produce records as to any statement, conduct, or decision, that occurred during the decision-maker's appointment, to the same extent as a judge of a court of this state acting in a judicial capacity.

(II) This paragraph (c) shall not apply:

(A) To the extent testimony or production of records by the decision-maker is necessary to determine the claim of the decision-maker against a party; or

(B) To the extent testimony or production of records by the decision-maker is necessary to determine a claim of a party against a decision-maker; or

(C) When both parties have agreed, in writing, to authorize the decision-maker to testify.

(d) If a person commences a civil action against a decision-maker arising from the services of the decision-maker, or if a person seeks to compel a decision-maker to testify or produce records in violation of subsection (7)(c) of this section, and the court decides that the decision-maker is immune from civil liability or that the decision-maker is not competent to testify, the court shall award to the decision-maker reasonable attorney fees or reasonable licensed legal paraprofessional fees and reasonable expenses of litigation.

(8) The decision-maker shall comply with any applicable provisions set forth in chief justice directives and any other practice or ethical standards established by rule, statute, or licensing board that regulates the decision-maker.

Source: L. 2005: Entire section added, p. 954, § 1, effective June 2. **L. 2012:** (1) amended and (4.5) added, (SB 12-056), ch. 108, p. 370, § 5, effective July 1; (4)(a) amended, (SB 12-175), ch. 208, p. 832, § 31, effective July 1. **L. 2024:** (3), (4.5)(a), and (7)(d) amended, (HB 24-1291), ch. 131, p. 472, § 21, effective August 7.

ANNOTATION

Law reviews. For article, "Privatizing Family Law Adjudications: Issues and Procedures", see 34 Colo. Law. 95 (Aug. 2005). For article, "Parenting Coordinator: Understanding This New Role", see 35 Colo. Law. 31 (Feb. 2006).

To qualify as a de novo hearing, the court must hold an evidentiary hearing. In re Bochner, 2023 COA 63, 537 P.3d 16.

When no de novo hearing is held, the attorney fee provision of subsection (4)(b) is inapplicable. In re Bochner, 2023 COA 63, 537 P.3d 16.

Father was denied his request for attorney fees because no de novo hearing was held when the court held a status conference at which the parties' counsel only provided supplemental briefings. In re Bochner, 2023 COA 63, 537 P.3d 16.

14-10-128.5. Appointment of arbitrator - de novo hearing of award.

(1) With the consent of all parties, the court may appoint an arbitrator to resolve disputes between the parties concerning the parties' minor or dependent children, including but not limited to parenting time, nonrecurring adjustments to child support, and disputed parental decisions. Notwithstanding any other provision of law to the contrary, all awards entered by an arbitrator appointed pursuant to this section shall be in writing. The arbitrator's award shall be effective immediately upon entry and shall continue in effect until vacated by the arbitrator

pursuant to part 2 of article 22 of title 13, C.R.S., modified or corrected by the arbitrator pursuant to part 2 of article 22 of title 13, C.R.S., or modified by the court pursuant to a de novo hearing under subsection (2) of this section.

(2) Any party may apply to have the arbitrator's award vacated, modified, or corrected pursuant to part 2 of article 22 of title 13, C.R.S., or may move the court to modify the arbitrator's award pursuant to a de novo hearing concerning such award by filing a motion for hearing no later than thirty-five days after the date of the award. In circumstances in which a party moves for a de novo hearing by the court, if the court, in its discretion based on the pleadings filed, grants the motion and the court substantially upholds the decision of the arbitrator, the party that requested the de novo hearing shall be ordered to pay the fees and costs of the other party and the fees of the arbitrator incurred in responding to the application or motion unless the court finds that it would be manifestly unjust.

Source: L. 97: Entire section added, p. 33, § 2, effective July 1. **L. 2004:** Entire section amended, p. 1731, § 3, effective August 4. **L. 2005:** Entire section amended, p. 956, § 2, effective June 2. **L. 2012:** (2) amended, (SB 12-175), ch. 208, p. 833, § 32, effective July 1.

ANNOTATION

Law reviews. For article, "Child Custody: The Right Choice at the Right Price", see 26 Colo. Law. 67 (Aug. 1997). For article, "Use of a Parenting Coordinator in Domestic Cases", see 27 Colo. Law. 53 (May 1998). For article, "Privatizing Family Law Adjudications: Issues and Procedures", see 34 Colo. Law. 95 (Aug. 2005). For article, "Parenting Coordinator: Understanding This New Role", see 35 Colo. Law. 31 (Feb. 2006).

While issues of child custody, visitation, child support, and other matters relating to the children are arbitrable, the trial court retains jurisdiction to decide all issues relating to the children de novo upon the request of either party. In re Popack, 998 P.2d 464 (Colo. App. 2000).

Because there was no arbitration award issued pursuant to this section, mother was not entitled to a trial de novo. Although the order of appointment clothed the parenting coordinator with arbitration power, the court found no arbitration occurred. In re Kniskern, 80 P.3d 939 (Colo. App. 2003).

Trial court is not required to conduct an evidentiary hearing on an arbitrator's request for payment of fees. Although the necessity or reasonableness of an arbitrator's fees may be subject to dispute, the parties' due process rights to litigate the scope of the services and the amounts requested are well protected by written motion practice. In re Eggert, 53 P.3d 794 (Colo. App. 2002).

Requests for de novo review must be filed within 30 days after the arbitrator's ruling. This conclusion is consistent with the plain meaning of the statute since it specifically refers to the Uniform Arbitration Act of 1975 that creates the 30-day time frame. In re Schmitt, 89 P.3d 510 (Colo. App. 2004).

Request for de novo review of parenting time order must be timely filed. While the Uniform Dissolution of Marriage Act takes precedence over other laws, including those applicable to alternative dispute resolution, this section requires a party to request a de novo hearing on an arbitration award no later than 35 days after the date of the arbitration award. Court erred in setting permanent orders hearing on parenting issues. In re Rivera, 2013 COA 21, 300 P.3d 994.

Statute does not grant an absolute right to a de novo hearing. Plain language of statute gives the court discretion to grant or deny a party's motion for such a hearing. In re Vanderborgh, 2016 COA 27, 370 P.3d 661.

Arbitration award must be confirmed by the court in order for the award to be enforced as a court order through contempt proceedings. Although the arbitration order was effective immediately, neither spouse petitioned the district court to confirm the award. An arbitrator's award is not a "court order" for purposes of the contempt statute. In re Leverett, 2012 COA 69, 318 P.3d 31.

A court "substantially upholds" an arbitrator's decision if it reaches a substantially similar outcome but its reasoning differs from the arbitrator's. Nothing in the statute distinguishes the result from the reasoning or suggests that both must be the same to trigger a fee award. In re Pawelec, 2024 COA 107, 562 P.3d 106.

The language of the statute doesn't provide any exception to the mandatory fee award simply because the challenging party raises valid concerns with the arbitrator's decision or reasoning. In re Pawelec, 2024 COA 107, 562 P.3d 106.

Fees incurred in "responding" to a motion for a de novo hearing include fees incurred in preparing for and attending the hearing once the motion is granted. In re Pawelec, 2024 COA 107, 562 P.3d 106.

Any fees or costs incurred before mother filed the motion for de novo hearing cannot logically be incurred in responding to that motion. In re Pawelec, 2024 COA 107, 562 P.3d 106.

14-10-129. Modification of parenting time.

(1) (a) (I) Except as otherwise provided in subsection (1)(b)(I) of this section, the court may make or modify an order granting or denying parenting time rights whenever such order or modification would serve the best interests of the child. The trial court retains continuing jurisdiction to make or modify an order granting or denying parenting time rights pursuant to this section during the pendency of an appeal.

(II) In those cases in which a party with whom the child resides a majority of the time is seeking to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party, the court, in determining whether the modification of parenting time is in the best interests of the child, shall take into account all relevant factors, including those enumerated in paragraph (c) of subsection (2) of this section. The party who is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party shall provide the other party with written notice as soon as practicable of his or her intent to relocate, the location where the party intends to reside, the reason for the relocation, and a proposed revised parenting time plan. A court hearing on any modification of parenting time due to an intent to relocate shall be given a priority on the court's docket.

(b) (I) The court shall not restrict a parent's parenting time rights unless it finds that the parenting time would endanger the child's physical health or significantly impair the child's emotional development. In addition to a finding that parenting time would endanger the child's physical health or significantly impair the child's emotional development, in any order imposing or continuing a parenting time restriction, the court shall enumerate the specific factual findings supporting the restriction. Nothing in this section shall be construed to affect grandparent or great-grandparent family time granted pursuant to section 14-10-124.4.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply in those cases in which a party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party.

(1.5) If a motion for a substantial modification of parenting time which also changes the party with whom the child resides a majority of the time has been filed, whether or not it has been granted, no subsequent motion may be filed within two years after disposition of the prior motion unless the court decides, on the basis of affidavits, that the child's present environment may endanger the child's physical health or significantly impair the child's emotional development or that the party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party.

(2) The court shall not modify a prior order concerning parenting time that substantially changes the parenting time, as well as changes the party with whom the child resides a majority of the time, unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the party with whom the child resides the majority of the time and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the parenting time schedule established in the prior decree unless:

(a) The parties agree to the modification; or

(b) The child has been integrated into the family of the moving party with the consent of the other party; or

(c) The party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party. A court hearing on any modification of parenting time due to an intent to relocate shall be given a priority on the court's docket. In determining whether the modification of parenting time is in the best interests of the child, the court shall take into account all relevant factors, including whether a party has committed an act of domestic violence, has engaged in a pattern of domestic violence, or has a history of domestic violence, which factor must be supported by a preponderance of the evidence, and shall consider the domestic violence whether it occurred before or after the prior decree, and all other factors enumerated in section 14-10-124 (1.5)(a) and:

(I) The reasons why the party wishes to relocate with the child;

(II) The reasons why the opposing party is objecting to the proposed relocation;

(III) The history and quality of each party's relationship with the child since any previous parenting time order;

(IV) The educational opportunities for the child at the existing location and at the proposed new location;

(V) The presence or absence of extended family at the existing location and at the proposed new location;

(VI) Any advantages of the child remaining with the primary caregiver;

(VII) The anticipated impact of the move on the child;

(VIII) Whether the court will be able to fashion a reasonable parenting time schedule if the change requested is permitted; and

(IX) Any other relevant factors bearing on the best interests of the child; or

(d) The child's present environment endangers the child's physical health or significantly impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

(2.5) (a) When the court restricts a party's parenting time pursuant to section 19-5-105.5, section 19-5-105.7, or section 14-10-124 (1.6), the court may make or modify an order granting or denying parenting time rights whenever such order or modification would serve the best interests of the child. Within thirty-five days after the filing of a verified motion by the restricted party seeking a modification of parenting time, the court shall determine from the verified

motion, and response to the motion, if any, whether there has been a substantial and continuing change of circumstances such that the current parenting time orders are no longer in the child's best interests, including consideration of whether the restricted parent has satisfactorily complied with any conditions set forth by the court when the court imposed the restrictions on parenting time, and either:

(I) Deny the motion, if there is an inadequate allegation; or

(II) Set the matter for hearing as expeditiously as possible with notice to the parties of the time and place of the hearing.

(b) If the court finds that the filing of a motion pursuant to subsection (2.5)(a) of this section was substantially frivolous, substantially groundless, substantially vexatious, or intended to harass or intimidate the other party, the court shall require the moving party to pay the reasonable and necessary attorney fees or licensed legal paraprofessional fees and costs of the other party.

(3) (a) If a parent has been convicted of any of the crimes listed in subsection (3)(b) of this section or convicted in another state or jurisdiction, including, but not limited to, a military or federal jurisdiction, of an offense that, if committed in Colorado, would constitute any of the crimes listed in subsection (3)(b) of this section, or convicted of any crime in which the underlying factual basis has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), that constitutes a potential threat or endangerment to the child, the other parent, or any other person who has been granted custody of or parental responsibility for the child pursuant to court order may file an objection to parenting time with the court. The other parent or other person having custody or parental responsibility shall give notice to the offending parent of the objection as provided by the Colorado rules of civil procedure, and the offending parent has twenty-one days from the notice to respond. If the offending parent fails to respond within twenty-one days, the parenting time rights of the parent are suspended until further order of the court. If the parent responds and objects, a hearing must be held within thirty-five days after the response. The court may determine that any offending parent who responds and objects is responsible for the costs associated with any hearing, including reasonable attorney fees or licensed legal paraprofessional fees incurred by the other parent. In making the determination, the court must consider the criminal record of the offending parent and any actions to harass the other parent and the children, any mitigating actions by the offending parent, and whether the actions of either parent have been substantially frivolous, substantially groundless, or substantially vexatious. The offending parent has the burden at the hearing to prove that parenting time by the parent is in the best interests of the child or children.

(b) Subsection (3)(a) of this section applies to the following crimes:

(I) Murder in the first degree, as defined in section 18-3-102, C.R.S.;

(II) Murder in the second degree, as defined in section 18-3-103, C.R.S.;

(III) Enticement of a child, as defined in section 18-3-305, C.R.S.;

(IV) (A) Sexual assault, as described in section 18-3-402, C.R.S.; and

(B) Sexual assault in the first degree, as described in section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(V) Sexual assault in the second degree, as described in section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(VI) (A) Unlawful sexual contact if the victim is compelled to submit, as described in section 18-3-404 (2), C.R.S.; and

(B) Sexual assault in the third degree if the victim is compelled to submit, as described in section 18-3-404 (2), C.R.S., as it existed prior to July 1, 2000;

(VII) Sexual assault on a child, as defined in section 18-3-405, C.R.S.;

(VIII) Incest, as described in section 18-6-301, C.R.S.;

(IX) Aggravated incest, as described in section 18-6-302, C.R.S.;

(X) Child abuse, as described in section 18-6-401 (7)(a)(I) to (7)(a)(IV), C.R.S.;

(XI) Human trafficking of a minor for sexual servitude, as described in section 18-3-504 (2), C.R.S.;

(XII) Sexual exploitation of children, as defined in section 18-6-403, C.R.S.;

(XIII) Procurement of a child for sexual exploitation, as defined in section 18-6-404, C.R.S.;

(XIV) Soliciting for child prostitution, as defined in section 18-7-402, as it existed prior to July 1, 2026;

(XV) Pandering of a child, as defined in section 18-7-403, C.R.S.;

(XVI) Procurement of a child, as defined in section 18-7-403.5, C.R.S.;

(XVII) Keeping a place of child prostitution, as defined in section 18-7-404, as it existed prior to July 1, 2026;

(XVIII) Pimping of a child, as defined in section 18-7-405, C.R.S.;

(XIX) Inducement of child prostitution, as defined in section 18-7-405.5, as it existed prior to July 1, 2026;

(XX) Patronizing a prostituted child, as defined in section 18-7-406, as it existed prior to July 1, 2026;

(XXI) Soliciting for commercial sexual activity with a child, as defined in section 18-7-402;

(XXII) Keeping a place of commercial sexual activity with a child, as defined in section 18-7-404;

(XXIII) Inducement of commercial sexual activity with a child, as defined in section 18-7-405.5;

(XXIV) Engaging in commercial sexual activity with a child, as defined in section 18-7-406.

(c) If the party was convicted in another state or jurisdiction of an offense that, if committed in Colorado, would constitute an offense listed in subsections (3)(b)(III) to (3)(b)(XXIV) of this section, the court shall order that party to submit to a sex-offense-specific evaluation and a parental risk assessment in Colorado, and the court shall consider the recommendations of the evaluation and the assessment in any order the court makes relating to parenting time or parental contact. The convicted party shall pay for the costs of the evaluation and the assessment.

(4) A motion to restrict parenting time or parental contact with a parent which alleges that the child is in imminent physical or emotional danger due to the parenting time or contact by the parent shall be heard and ruled upon by the court not later than fourteen days after the day of the filing of the motion. Any parenting time which occurs during such fourteen-day period after the filing of such a motion shall be supervised by an unrelated third party deemed suitable by the court or by a licensed mental health professional, as defined in section 14-10-127 (1)(b). This subsection (4) shall not apply to any motion which is filed pursuant to subsection (3) of this section.

(5) If the court finds that filing a motion pursuant to subsection (4) of this section was substantially frivolous, substantially groundless, or substantially vexatious, the court shall require the moving party to pay the reasonable and necessary attorney fees and costs or licensed legal paraprofessional fees and costs of the other party.

Source: L. 71: R&RE, p. 531, § 1. **C.R.S. 1963:** § 46-1-29. **L. 73:** p. 554, § 11. **L. 88:** (3) added, p. 643, § 1, effective March 15. **L. 89:** (4) and (5) added, p. 803, § 2, effective April 27. **L. 90:** (3)(a) amended, p. 902, § 1, effective March 16. **L. 91:** (2) amended, p. 261, § 2, effective May 31. **L. 93:** (1), (2), (3)(a), and (4) amended, p. 578, § 11, effective July 1. **L. 98:** (1), (2), and (3)(a) amended and (1.5) added, p. 1387, § 15, effective February 1, 1999. **L. 2000:** (3)(b)(IV), (3)(b)(V), and (3)(b)(VI) amended, p. 701, § 21, effective July 1. **L. 2001:** (1), (1.5), and (2) amended, p. 761, § 1, effective September 1. **L. 2008:** (3)(a) amended and (3)(c) added, p. 1636, § 1, effective May 29. **L. 2010:** (3)(b)(XI) amended, (SB 10-140), ch. 156, p. 537, § 3, effective April 21; IP(2)(c) amended, (HB 10-1135), ch. 87, p. 291, § 2, effective July 1. **L. 2012:** (3)(a) amended, (SB 12-175), ch. 208, p. 833, § 33, effective July 1. **L. 2013:** IP(2)(c) and (4) amended, (HB 13-1259), ch. 218, p. 1000, § 4, effective July 1; (1)(b)(I) amended, (HB 13-1243), ch. 124, p. 418, § 2, effective August 7. **L. 2014:** (1)(b)(I) amended, (HB 14-1362), ch. 374, p. 1789, § 4, effective June 6; (2.5) added, (HB 14-1162), ch. 167, p. 594, § 8, effective July

1; (3)(b)(XI) amended, (HB 14-1273), ch. 282, p. 1152, § 9, effective July 1. **L. 2021:** (1)(a)(I) amended, (HB 21-1031), ch. 116, p. 450, § 3, effective May 7. **L. 2023:** (1)(b)(I) amended, (HB 23-1026), ch. 243, p. 1306, § 3, effective August 7. **L. 2024:** (2.5)(b), (3)(a), and (5) amended, (HB 24-1291), ch. 131, p. 472, § 22, effective August 7. **L. 2026:** IP(2)(c) and IP(2.5)(a) amended, (HB26-1309), ch. 163, p. 982, § 6, effective May 27; IP(3)(b), (3)(b)(XIV), (3)(b)(XVII), (3)(b)(XIX), (3)(b)(XX), and (3)(c) amended and (3)(b)(XXI), (3)(b)(XXII), (3)(b)(XXIII), and (3)(b)(XXIV) added, (SB 26-015), ch. 335, p. 2035, § 12, effective July 1.

Editor's note: Section 8 of chapter 116 (HB 21-1031), Session Laws of Colorado 2021, provides that the act changing this section applies to any request to modify an order appealed on, after, or before May 7, 2021.

Cross references: For the legislative declaration contained in the 1993 act amending subsections (1), (2), (3)(a), and (4), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration in HB 21-1031, see section 1 of chapter 116, Session Laws of Colorado 2021. For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of Colorado 2023. For the legislative declaration in HB 26-1309, see section 1 of chapter 163, Session Laws of Colorado 2026. For the legislative declaration in SB 26-015, see section 1 of chapter 335, Session Laws of Colorado 2026.

ANNOTATION

Law reviews. For article, "Moving the Children Out of State", see 12 Colo. Law. 1450 (1983). For article, "Dealing with Sexual Abuse Allegations in Custody and Visitation Disputes — Parts I and II", see 16 Colo. Law. 1005 and 1225 (1987). For article, "Custody Evaluations in Colorado", see 18 Colo. Law. 1523 (1989). For article, "Addressing New Standards for Modification Under the Parental Responsibility Act", see 28 Colo. Law. 67 (June 1999). For article, "Parenting Time in Divorce", see 31 Colo. Law. 25 (Oct. 2002). For article, "Relocation in Family Law Cases", see 35 Colo. Law. 47 (Mar. 2006). For article, "Dissolution of Marriage and Domestic Violence: Considerations for the Family Law Practitioner", see 37 Colo. Law. 43 (Oct. 2008). For article, "Constitutional Issues and Legal Standards in Parental Responsibility Matters", see 42 Colo. Law. 33 (Jan. 2013).

Annotator's note. Cases relevant to § 14-10-129 decided prior to its earliest source, L. 71, p. 531, § 1, have been included in the annotations to this section.

Best interests of child must predominate in any custody determination.

In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

The court did not abuse its discretion in adopting an agreement and modifying the parenting time despite the fact that the agreement was not reduced to writing or signed. This section allows the trial court to modify parenting time whenever doing so would be in the child's best interests. In re Barker, 251 P.3d 591 (Colo. App. 2010).

An appeal of a parenting time order is mooted when the child who is the subject of the order turns eighteen while the appeal is pending. While "child" is not defined in this article, it is defined in other statutory sections such as §§ 13-22-107 and 13-91-103. In re Tibbetts, 2018 COA 117, 428 P.3d 686.

Parenting time issues on appeal are moot because the parties' eighteen-year-old child is no longer subject to the dissolution court's jurisdiction to allocate parenting time and the court's existing parenting time order that father challenges is no longer enforceable as to her. In re Tibbetts, 2018 COA 117, 428 P.3d 686.

Determining whether to apply the best-interests standard or the endangerment standard may involve inquiry into both the quantitative and the qualitative aspects of the proposed change to parenting time, as well as the reason or reasons advanced for the change. In re West, 94 P.3d 1248 (Colo. App. 2004).

While endangerment will necessarily encompass best interests, few best interests arguments will show endangerment. In re West, 94 P.3d 1248 (Colo. App. 2004).

Before parenting time may be completely eliminated, court must consider both the endangerment standard and the best interests of the child. Although trial court may allocate parenting time substantially to one parent under the endangerment standard, it may not completely deny other parent parenting time under the best interests standard without express consideration of whether doing so is the least detrimental alternative. In re Hatton, 160 P.3d 326 (Colo. App. 2007).

A reduction in parenting time resulting from the other parent's relocation with the child is not to be construed as a restriction requiring the court to apply the endangerment standard set forth in subsection (1)(b). In re DeZalia, 151 P.3d 647 (Colo. App. 2006).

A substantial reduction in parenting time alone is not a restriction of parenting time rights as described in subsection (1)(b)(I). In re Dale, 2025 COA 29, 568 P.3d 1282.

This section eliminates the In re Francis test, 919 P.2d 776 (Colo. 1996), in relocation cases, including the presumption in favor of the majority-time parent. The trial court, however, abused its discretion in applying this section to the facts of this case, and such abuse of discretion unconstitutionally infringed upon mother's right to travel. In re Ciesluk, 113 P.3d 135 (Colo. 2005).

The well-being of child rather than reward or punishment of parent ought to guide every aspect of a custody determination, including visitation. In re

McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

In the best interests of a minor child, a trial court may deny visitation rights. Grosso v. Grosso, 149 Colo. 183, 368 P.2d 561 (1962).

Both parents' constitutional interests, the right to travel and the right to the care and control of the child, as well as the best interests of the child, will be best protected if each parent shares equally in the burden of demonstrating how the child's best interests will be affected by a proposed relocation. In re Ciesluk, 113 P.3d 135 (Colo. 2005).

This procedure applies to a parent who shares parenting time equally with the other parent but who desires to relocate with the child and to modify parenting time so as to become the majority time parent. In re DeZalia, 151 P.3d 647 (Colo. App. 2006).

It is incumbent upon the trial court to consider all the relevant factors to determine what arrangement will serve the child's best interests. Though the best interests of the child are of primary importance in making this determination, they do not automatically overcome the constitutional interests of the parents, which must be weighed against each other in the best-interests analysis. In re Ciesluk, 113 P.3d 135 (Colo. 2005); In re Newell, 192 P.3d 529 (Colo. App. 2008).

Integration into a family is more than a parent's expanded visitation with the child. The requirement of the other parent's consent is satisfied when the other parent voluntarily places the child with the noncustodial parent for any amount of time and willingly permits the child to become integrated into the new family. The other parent's consent need not be explicit. In re S.Z.S., 2022 COA 105, 521 P.3d 1025.

Presumption that parent has "first and prior" right to custody of children is not implicated when dispute is between mother and father and not mother and stepmother. As between two fit parents, duty of court is to weigh the wishes of both to determine what is in the best interests of the children. In re DePalma, 176 P.3d 829 (Colo. App. 2007).

Where a parent's role as day-to-day caregiver of a minor is relinquished through contested or uncontested judicial proceedings and with no indication by the court that the relinquishment was intended to be temporary, the parent has enjoyed and exercised his or her fundamental rights. In re M.J.K., 200 P.3d 1106 (Colo. App. 2008).

Subsequent application of the statutory standards for terminating guardianships or modifying allocations of parental responsibility, which standards certainly allow a court to consider the relationship between the biological parent and the child, does not violate the parent's constitutional rights. In re M.J.K., 200 P.3d 1106 (Colo. App. 2008).

To hold otherwise would effectively afford a parent who relinquishes his or her day-to-day parenting responsibilities through judicial processes a substantial, if not automatic, right to terminate a guardianship or modify an allocation of parental rights with no regard for the

perhaps significant impact on his or her children. In re M.J.K., 200 P.3d 1106 (Colo. App. 2008).

Where father wished to delegate his parenting time to his new wife while deployed in Iraq, the court did not err by considering first the presumption that father was acting in the best interests of the children because father was not attempting to impermissibly establish parental rights for his new wife over the established parental rights of the children's mother. In re DePalma, 176 P.3d 829 (Colo. App. 2007).

"Special weight" must be given to parent's motion to modify parental responsibilities where sole decision-making and primary residential custody is with non-parents. Rather than presuming that the existing order remains in effect, there is a presumption in favor of modifying the order at the parent's request. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden shifts from parent to non-parents in modification of parental responsibilities proceeding. Non-parents must rebut presumption by showing: (1) That the proposed modification is not in the child's best interests and that the present allocation of parental responsibilities does not endanger the child; and (2) that the present allocation of parental responsibilities is in the child's best interests. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden of proof for non-parents who have sole decision-making authority and primary residential custody is a preponderance of the evidence in modification action brought by parent who consented to the initial custody orders. Court denying parent's modification order must make findings of fact identifying appropriate special factors upon which it relies. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Trial court abused its discretion when it prematurely concluded that it would be in the child's best interests to remain in close proximity to both parents. The effect of this conclusion was to create a presumption in father's favor contrary to the legislative intent of subsection (2)(c). In re Ciesluk, 113 P.3d 135 (Colo. 2005).

It is against the policy of the law in Colorado to permit the removal of a child from the jurisdiction, unless his best interests would be served thereby. Tanttila v. Tanttila, 152 Colo. 445, 382 P.2d 798 (1963); In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

Before a court may allow a majority-time parent to relocate with the child, subsection (2)(c) dictates that the court must consider 21 relevant factors, including 11 factors listed in § 14-10-124 (1.5)(a), and nine factors in subsection (2)(c) specifically tailored to modification proceedings arising out of a majority-time parent's desire to relocate. In re Ciesluk, 113 P.3d 135 (Colo. 2005).

Where it was established that removal of the child from the jurisdiction would be conducive to the child's best interests, then the court should have permitted removal from the jurisdiction. Tanttila v. Tanttila, 152 Colo. 445, 382 P.2d 798 (1963).

In determining what was for the best welfare of a child of tender years, the courts considered not only food, clothing, shelter, care, education, and environment, but also kept in mind that every such child was entitled to the love, nurture, advice, and training of both father and mother, and to deny to the child an opportunity to know, associate with, love, and be loved by either parent may have been a more serious ill than to refuse him in some part those things which money can buy. Tanttila v. Tanttila, 152 Colo. 445, 382 P.2d 798 (1963).

Trial court need not make specific findings on each factor when considering the statutory factors that affect the child's best interest, so long as the court's findings indicate the court considered all pertinent factors and enable the appellate court to understand the basis of the trial court's order. In re Ciesluk, 100 P.3d 527 (Colo. App. 2004), rev'd on other grounds, 113 P.3d 135 (Colo. 2005).

Trial court can determine relative weight to be given each relevant factor in making a decision regarding parenting time. As decisions regarding parenting time are matters within the sound discretion of the trial court, it follows that it is within the discretion of the trial court to determine the weight to be given to each relevant factor in making a decision regarding the effect relocation of the primary residential parent and the child would have on the parenting time of the other parent. In re Ciesluk, 100 P.3d 527 (Colo. App. 2004), rev'd on other grounds, 113 P.3d 135 (Colo. 2005).

Where the trial court specifically found that the best interests of the child would be served in permitting her removal to California, and there was evidence to support this finding, a change in the father's visitation privileges was an unfortunate, but not unusual, result of a broken marriage. Nelson v. Card, 162 Colo. 274, 425 P.2d 276 (1967).

Determination of whether a child should relocate with one parent or remain in Colorado with another depends on assessment of the child's best interests, and the court's decision, based on special advocate's research and opinions concerning the factors specified in § 14-10-124, was supported by the record. In re Graham, 121 P.3d 279 (Colo. App. 2005).

Where, for all practical purposes, an order authorizing removal of the children of the parties to another state eliminated any opportunity for visitation by the father, except during summer vacations, and there was no showing of any substantial reasons of health, cultural opportunities, or other advantages contributing to the best interests of the children justifying such removal, such order was erroneous. Tanttila v. Tanttila, 152 Colo. 445, 382 P.2d 798 (1963).

The suggestion, advanced for the first time in the supreme court, that defendant having been denied visitation rights should be relieved of the duty to support his minor child was without merit. Grosso v. Grosso, 149 Colo. 183, 368 P.2d 561 (1962).

Parent seeking enlarged visitation rights need not establish that child's present circumstances are harmful. When the issue is whether visitation rights should

be enlarged, the suggestion that a parent seeking greater visitation rights must establish that the child's present circumstances are harmful is not only not authorized by this section but, if adopted, would defeat the legislative policy. In re Adamson, 626 P.2d 739 (Colo. App. 1981).

Evidence sufficient for denial of motion to reduce father's visitation rights. Where the court found that the visitation rights previously granted to the father would not endanger the children's physical health or significantly impair their emotional development, this was sufficient to warrant denial of mother's motion which sought to reduce father's visitation rights. Manson v. Manson, 35 Colo. App. 144, 529 P.2d 1345 (1974).

Court must hold hearing on subsection (4) motion to restrict parenting time within 14 days if motion complies with the "particularity" requirement of C.R.C.P. 7(b)(1). Motion must identify with specificity the grounds in support of it and the reasons relief is warranted. The court may not resolve the motion without a hearing based on the court's assessment of the credibility of the allegations or proof. The court in In re Slowinski, 199 P.3d 48 (Colo. App. 2008), applied the wrong standard for review of subsection (4) motions. In re Wollert, 2020 CO 47, 464 P.3d 703.

Subsection (4) requires the moving parent to allege, not prove, that the child is in imminent physical or emotional danger due to the parenting time or contact with a parent. When considering a motion filed under subsection (4), the district court must determine whether the moving parent has sufficiently pleaded allegations, including whether the danger is threatening to occur at any moment, requiring the court to take urgent action by setting an emergency hearing within 14 days. In re Thorburn, 2022 COA 80, 519 P.3d 736.

Motion under subsection (4) does not require any third party verification. A party's verification suffices under the statute, therefore the trial court erred in dismissing father's motion under subsection (4) without a hearing. In re Slowinski, 199 P.3d 48 (Colo. App. 2008).

Upon filing a sufficient subsection (4) motion, any parenting time occurring in that 14-day period must be supervised. But, to continue any parenting time restriction beyond the 14-day period, the endangerment standard under subsection (1)(b)(I) must be met. In re Thorburn, 2022 COA 80, 519 P.3d 736.

During an emergency 14-day hearing, held as a result of a sufficient subsection (4) motion, the court applies subsection (1)(b)(I)'s general endangerment standard. Subsection (1)(b)(I) applies to all motions to restrict parenting time, including emergency motions. A subsection (4) motion is a means of triggering a hearing within 14 days and an immediate parenting time restriction pending that hearing. At the hearing, under subsection (1)(b)(I), the district court first must find endangerment and then must make specific findings supporting its decision to impose or continue a parenting restriction. In re Thorburn, 2022 COA 80, 519 P.3d 736.

Endangerment standard met. Evidence that child sustained several head injuries while in father's care from August 2019 to January 2021, combined with mother's testimony that none of them were "kid-being-kid" injuries, that each one was worse than the last, and that father wavered in his explanation of how the injury happened, was sufficient proof that father's pattern of poor supervision endangered the child and warranted continued parenting time restrictions. In re Thorburn, 2022 COA 80, 519 P.3d 736.

Visitation rights within sound discretion of court. The question of visitation rights is within the sound discretion of the district court, taking into account the best interests of the children. In re Mann, 655 P.2d 814 (Colo. 1982); In re Schenck, 39 P.3d 1250 (Colo. App. 2001).

Visitation orders are within the sound discretion of the trial court. This discretion must, however, be exercised consistently with the express public policy of encouraging contact between each parent and the children. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

The determination of parenting time is a matter within the sound discretion of the trial court, taking into consideration the child's best interests and the policy of encouraging the parent-child relationship. In re Velasquez, 773 P.2d 635 (Colo. App. 1989); In re Finer, 920 P.2d 325 (Colo. App. 1996).

Even a parent who is unfit to be the custodial parent may be entitled to liberal visitation rights. In re Jarman, 752 P.2d 1068 (Colo. App. 1988).

Subsection (3)(a) does not usurp the court's authority to make an individualized determination of the best interests of the child after a hearing. Thus, it does not presume that termination of parenting time and contact is in the best interests of every sexually abused child, nor does it require that the court give greater weight to any particular opinion or testimony. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Permanent orders that substantially reduce the amount of parenting time originally specified in the temporary orders are not subject to the endangerment standard but rather the best interests of the child standard. In re Fickling, 100 P.3d 571 (Colo. App. 2004).

Trial court should have applied the standard for an original determination of visitation, which is based on the best interests of the child, where the order awarding parenting time to stepfather was a temporary order. Although paternity decree operated as a final order and permanent allocation as to paternity and custody, its award of parenting time to stepfather was a temporary order because the parties had not reached an agreement on a permanent parenting time schedule but had agreed to maintain the interim schedule and work toward a permanent one. The fact that the parties adhered to the schedule for nearly three years did not change the nature of the order. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

Trial court erred by failing to afford parents their due process rights because court did not presume parents were acting in the child's best interests, but instead placed upon them the burden of demonstrating that visitation with stepfather would endanger the child; the court did not find that "special circumstances" existed which justified the intrusion on the parents' rights; and the court did not apply a clear and convincing evidence standard. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

Even if stepfather was a psychological parent, stepfather failed to present evidence to rebut presumption that parents were acting in their child's best interests by terminating stepfather's visitation and failed to show or proffer evidence of special circumstances that would justify trial court's order allowing visitation against the wishes of the parents. The visitation order infringed upon parents' fundamental right to direct the upbringing of their child. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

The court did not err in applying the best interests standard set forth in subsection (1)(a)(II) and considering the factors mandated under that subsection rather than applying the endangerment standard set forth in subsection (1)(b)(I) to mother's motion to relocate the children where children did not reside with either parent a majority of the time. In re DeZalia, 151 P.3d 647 (Colo. App. 2006).

Court abused its discretion in limiting father's visitation rights. Where the trial court found that the father was fit and proper to be a custodial parent and there was no finding by the court, nor anything in the record to indicate that reasonable visitation by the father would endanger the child's physical health or significantly impair her emotional development, visitation limited to one week per year to be held in jurisdiction of mother's residence was unreasonable and an abuse of discretion. In re McGee, 44 Colo. App. 330, 613 P.2d 348 (1980).

The trial court's order limiting visitation to two days per month during the school year amounted to an abuse of discretion since it reduced the father's visitation rights and was contrary to the public policy of encouraging frequent visitation. In re Velasquez, 773 P.2d 635 (Colo. App. 1989).

Trial court's order granting wife parenting time with child only for one week at Christmas and four weeks each summer is unreasonable considering wife's extensive time spent with the child prior to the entry of permanent orders. In re Finer, 920 P.2d 325 (Colo. App. 1996).

Modification of parenting plan to return to supervised visits required a finding of endangerment by the trial court, which it failed to do. In re Parr, 240 P.3d 509 (Colo. App. 2010).

Allegations of endangerment from a failed emergency motion to restrict parenting time can, if ultimately proved, be the basis for a subsequent motion to substantially change parenting time or modify decision-making. In re Wenciker, 2022 COA 74, 519 P.3d 381.

Trial court had no authority to delegate to the child's psychiatrist the decision when overnight visitation could begin to

occur. In re Elmer, 936 P.2d 617 (Colo. App. 1997).

It was improper for trial court to delegate decisions regarding parenting time to the guardian and the therapist, and then, when the guardian withdrew, to the therapist, alone. Trial court's order that effectively defers to the family therapist the trial court's decisions as to when the mother should be allowed to participate in family therapy or to exercise unsupervised parenting time constitutes an improper delegation of the court's authority. In re D.R.V-A, 976 P.2d 881 (Colo. App. 1999).

Trial court may not delegate to one parent or a third party decision-making responsibility regarding other parent's exercise of parenting time, even assuming that parent or third party were to rely on professionals for reasonable advice in his or her decisions. Decisions regarding the exercise of parenting time are the sole discretion of the court and may not be allocated to a third party, even a parent. In re Hatton, 160 P.3d 326 (Colo. App. 2007).

But a court's discretion to impose conditions precedent to the exercise of parenting time is distinguishable from the improper delegation of decision-making authority. Court did not err when it limited father's right to file motion for modification of parenting time until after he completed sex offender treatment program. Such limitation did not deny the father access to the courts. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Award of custody to breastfeeding mother not sex bias. Sex bias is not readily found in a visitation order awarding custody to a mother who is breastfeeding her child. In re Norton, 640 P.2d 254 (Colo. App. 1981).

Two-year rule in § 14-10-131 does not apply to motions for modification of visitation rights under this section. Manson v. Manson, 35 Colo. App. 144, 529 P.2d 1345 (1974).

In a dissolution of marriage proceeding, the trial court may grant visitation privileges to a stepparent or surrogate parent under the following conditions: (1) The nonparent is jurisdictionally capable of litigating custody under § 14-10-123 (1); (2) the nonparent has acted in a custodial and parental capacity toward the minor child; and (3) visitation would be in the minor child's best interest. In re Dureno, 854 P.2d 1352 (Colo. App. 1992).

A court lacks authority to proceed under subsection (4) after failing to conduct the hearing as required by statute. Therefore, the automatic sanction of supervised visitation terminates as a result of failing to conduct a timely hearing. In re Slowinski, 199 P.3d 48 (Colo. App. 2008).

The trial court abused its discretion by effectively reducing father's visitation rights where court limited the father to four days per four-week period where he previously had portions of eight days in any four-week period and there was no evidence that the children would benefit by this reduction in visitation. This restriction was both contrary to the public policy of encouraging frequent visitation and to the

evidence in the record. In re Lester, 791 P.2d 1244 (Colo. App. 1990).

Where trial court made no finding that father's conduct in his homosexual lifestyle endangered the child physically or impaired the child's emotional development, father could not be precluded from having overnight guests during his parenting time or taking child to gay environment of father's church. In re Dorworth, 33 P.3d 1260 (Colo. App. 2001).

Parenting time issues related to guardianship may be determined in accordance with this section by the probate court in which the guardianship was established. People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Entry of permanent orders does not trigger the start of the two-year period during which motions for modification of parenting time are limited. The initial order concerning parenting time is not a motion seeking "substantial modification of parenting time". In re F.A.G., 148 P.3d 375 (Colo. App. 2006).

Order allowing father to delegate his parenting time to new wife during his deployment to Iraq does not violate mother's constitutional right to care, custody, or control of the children because it does not provide the stepmother with any legal rights. In re DePalma, 176 P.3d 829 (Colo. App. 2007).

Right of first refusal in parties' parenting plan not violated by allowing father to offer time to stepmother before offering it to mother if inconsistent with the parenting plan as a whole. Here, where father wished to delegate his parenting time to stepmother while he was deployed in Iraq, the court held that given the circumstances and evidence presented, requiring him to offer children to mother during that time would be inconsistent with the parenting plan as a whole and not in the children's best interests. In re DePalma, 176 P.3d 829 (Colo. App. 2007).

Prohibition on use of medical marijuana while parenting constitutes a modification to existing parenting plan rather than a restriction that requires a finding of endangerment. Because the prohibition is consistent with the parenting plan and did not present a qualitative change in the nature of the father's parenting time, it does not constitute a restriction of parenting time. In re Parr, 240 P.3d 509 (Colo. App. 2010).

While appeal is pending, trial court cannot modify orders concerning parental responsibilities or parenting time that are material to the appeal. Subsection (1)(a)(I) of this section and § 14-10-131 (2) do not specifically grant trial courts continuing jurisdiction to rule on motions to modify orders already on appeal. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

The trial court does not have jurisdiction in this case because father's motions were material to the appeal because they sought to modify the very orders on appeal. The court did not consider whether an emergency exception to grant a trial court jurisdiction would be appropriate if father had alleged imminent physical or emotional harm to the child due to the orders. In re Parental

Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

Trial court must apply endangerment standard in subsection (2)(d) in disputes involving parenting time under § 14-10-129.5 when the enforcement remedy includes making substantial changes to parenting time or changing the parent with whom the child resides a majority of the time. While parenting time may be modified to meet the best interests of the child under § 14-10-129.5 (2)(b), both subsection (2)(d) of this section and § 14-10-129.5 (2)(b) may be harmonized and the legislative policy of both provisions preserved by applying the higher endangerment standard set forth in subsection (2)(d) if the proposed modification is substantial and changes the primary residence of the child. In re Schlundt, 2021 COA 58, 489 P.3d 781.

While trial court purported to apply the endangerment standard in a parenting time dispute under subsection (2)(d), the court failed to follow the three-part test required under that standard, including the presumption in favor of the prior order. Further, a change in the child's primary residence cannot be ordered as a sanction for contempt relating to mother's attitude or demeanor, but must focus on the effect of such a substantial change on the child. Neither of the evaluator's reports supported the modification under the higher standard. In re Schlundt, 2021 COA 58, 489 P.3d 781.

Applied in Wise v. Bravo, 666 F.2d 1328 (10th Cir. 1981); In re Brown, 626 P.2d 755 (Colo. App. 1981); In re Casida v. Casida, 659 P.2d 56 (Colo. App. 1982).

14-10-129.5. Disputes concerning parenting time.

(1) Within thirty-five days after the filing of a verified motion by either parent or upon the court's own motion alleging that a parent is not complying with a parenting time order or schedule and setting forth the possible sanctions that may be imposed by the court, the court shall determine from the verified motion, and response to the motion, if any, whether there has been or is likely to be substantial or continuing noncompliance with the parenting time order or schedule and either:

(a) Deny the motion, if there is an inadequate allegation; or

(b) Set the matter for hearing with notice to the parents of the time and place of the hearing as expeditiously as possible; or

(c) Require the parties to seek mediation and report back to the court on the results of the mediation within sixty-three days. Mediation services shall be provided in accordance with section 13-22-305, C.R.S. At the end of the mediation period, the court may approve an agreement reached by the parents or shall set the matter for hearing.

(2) After the hearing, if a court finds that a parent has not complied with the parenting time order or schedule and has violated the court order, the court, in the best interests of the child, shall issue an order that may include but not be limited to one or more of the following orders:

(a) An order imposing additional terms and conditions that are consistent with the court's previous order; except that the court shall separate the issues of child support and parenting time and shall not condition child support upon parenting time;

(b) An order modifying the previous order to meet the best interests of the child;

(b.3) An order requiring either parent or both parents to attend a parental education program as described in section 14-10-123.7, at the expense of the noncomplying parent;

(b.7) An order requiring the parties to participate in family counseling pursuant to section 13-22-313, C.R.S., at the expense of the noncomplying parent;

(c) An order requiring the violator to post bond or security to ensure future compliance;

(d) An order requiring that makeup parenting time be provided for the aggrieved parent or child under the following conditions:

(I) That such parenting time is of the same type and duration of parenting time as that which was denied, including but not limited to parenting time during weekends, on holidays, and on weekdays and during the summer;

(II) That such parenting time is made up within six months after the noncompliance occurs, unless the period of time or holiday can not be made up within six months in which case the parenting time shall be made up within one year after the noncompliance occurs;

(III) That such parenting time takes place at the time and in the manner chosen by the aggrieved parent if it is in the best interests of the child;

(e) An order finding the parent who did not comply with the parenting time schedule in contempt of court and imposing a fine or jail sentence;

(e.5) An order imposing on the noncomplying parent a civil fine not to exceed one hundred dollars per incident of denied parenting time;

(f) An order scheduling a hearing for modification of the existing order concerning custody or the allocation of parental responsibilities with respect to a motion filed pursuant to section 14-10-131;

(g) (Deleted by amendment, L. 97, p. 970, § 1, effective August 6, 1997.)

(h) Any other order that may promote the best interests of the child or children involved.

(3) Any civil fines collected as a result of an order entered pursuant to paragraph (e.5) of subsection (2) of this section shall be transmitted to the state treasurer, who shall credit the same to the dispute resolution fund created in section 13-22-310, C.R.S.

(4) In addition to any other order entered pursuant to subsection (2) of this section, the court shall order a parent who has failed to provide court-ordered parenting time or to exercise court-ordered parenting time to pay to the aggrieved party attorney fees or licensed legal paraprofessional fees, court costs, and expenses that are associated with an action brought pursuant to this section. In the event the parent responding to an action brought pursuant to this section is found not to be in violation of the parenting time order or schedule, the court may order the petitioning parent to pay the court costs, attorney fees or licensed legal paraprofessional fees, and expenses incurred by the responding parent. This section does not preclude a party's right to a separate and independent legal action in tort.

Source: L. 87: Entire section added, p. 578, § 1, effective July 1. **L. 93:** IP(1) and (2) amended, p. 579, § 12, effective July 1. **L. 97:** Entire section amended, p. 970, § 1, effective August 6. **L. 98:** IP(2) and (2)(f) amended, p. 1388, § 16, effective February 1, 1999. **L. 2012:** IP(1) and (1)(c) amended, (SB 12-175), ch. 208, p. 833, § 34, effective July 1. **L. 2024:** (4) amended, (HB 24-1291), ch. 131, p. 473, § 23, effective August 7.

Cross references: For the legislative declaration contained in the 1993 act amending the introductory portion to subsection (1) and subsection (2), see section 1 of chapter 165, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For article, "Parenting Time in Divorce", see 31 Colo. Law. 25 (Oct. 2002). For article, "Enforcing Family Law Orders Through Contempt Proceedings Under C.R.C.P. 107", see 332 Colo. Law. 75 (Mar. 2003).

Notice of potential punitive sanctions is all the notice required to satisfy due process under section. Notice of possible remedial orders of the court is not required. In re Herrera, 772 P.2d 676 (Colo. App. 1989).

Wages lost by parent for attending contempt proceedings under section are a reimbursable expense. In re Herrera, 772 P.2d 676 (Colo. App. 1989).

Bond required to insure future compliance of parent need not be dismissed by court upon dismissal of contempt citation. In re Herrera, 772 P.2d 676 (Colo. App. 1989).

The plain language of this section requires, upon the filing of a motion to

clarify visitation, that the court deny the motion, conduct a hearing, or refer the matter to mediation. Where cross motions of mother and father sought to modify father's visitation, the trial court erred in granting the father's motion and denying the mother's motion. In re Williams-Off, 867 P.2d 205 (Colo. App. 1993).

If reallocation of decision-making responsibility is implicated as part of a parenting time dispute, subsection (2)(f) of this section requires the court to comply with § 14-10-131, which requires a court to make certain findings not required by this section. In re Humphries, 2024 COA 92M, 559 P.3d 271.

The phrase "previous order" in subsection (2)(b) refers to the previous "parenting time order or schedule" in subsection (2), not to an order allocating decision-making responsibility or, even more generically, permanent orders. In re Humphries, 2024 COA 92M, 559 P.3d 271.

District court erred by relying on subsections (2)(b) and (2)(h) to reallocate sole decision-making responsibility. An expansive reading of the latter was inconsistent with principles of statutory construction that require reading the entire statutory scheme, applying the more specific statute, and avoiding superfluity. In re Humphries, 2024 COA 92M, 559 P.3d 271.

Trial court erred in imposing sanctions based upon an unverified motion. In re Slowinski, 199 P.3d 48 (Colo. App. 2008).

The trial court abused its discretion by conditioning child support on an anticipated lack of parenting time when mother was planning to move to Singapore with children and father was entitled to "reasonable and liberal" parenting time. In re Hoffman, 878 P.2d 103 (Colo. App. 1994).

Order of abatement of child support was not proper as an award of actual travel expenses when the abatement order was not premised on any actual expenses incurred as a result of the mother's failure to provide parenting time but only on anticipated future expenses. In re Hoffman, 878 P.2d 103 (Colo. App. 1994).

If a parenting time dispute gives rise to a tort claim for damages, that claim must be brought, not in the dissolution court (which is authorized to award only attorney's fees, court costs, and expenses), but in a court that has jurisdiction over the parties and subject matter. Therefore, the court erred in dismissing father's tort claims under C.R.C.P. 12(b)(1). The court had subject matter jurisdiction over those claims, even though the claims arose from a dispute over parenting time. Marshall v. Marshall, 183 P.3d 699 (Colo. App. 2008).

District court erred in finding that it lacked subject matter jurisdiction to enforce an out-of-state parenting time order. On registering the out-of-state order, the district court was empowered to enforce the order through any remedy normally available under state law, including those outlined in this section. In re Parental Responsibilities of W.F-L., 2018 COA 164, 433 P.3d 168.

Trial court must apply endangerment standard in § 14-10-129 (2)(d) in disputes

involving parenting time when the enforcement remedy includes making substantial changes to parenting time or changing the parent with whom the child resides a majority of the time. While parenting time may be modified to meet the best interests of the child under subsection (2)(b) of this section, § 14-10-129 (2)(d) may be harmonized and the legislative policy of both provisions preserved by applying the more specific endangerment standard if the proposed modification is substantial and changes the primary residence of the child as specifically contemplated in § 14-10-129 (2)(d). In re Schlundt, 2021 COA 58, 489 P.3d 781.

While trial court purported to apply the endangerment standard, the court failed to follow the three-part test required under that standard, including the presumption in favor of the prior order. Further, a change in the child's primary residence cannot be ordered as a sanction for contempt relating to mother's attitude or demeanor, but must focus on the effect of such a substantial change on the child. Neither of the evaluator's reports supported the modification under the higher standard. In re Schlundt, 2021 COA 58, 489 P.3d 781.

14-10-130. Judicial supervision.

(1) Except as otherwise agreed by the parties in writing at the time of the decree concerning the allocation of parental responsibilities with respect to a child, the person or persons with responsibility for decision-making may determine the child's upbringing, including his or her education, health care, and religious training, unless the court, after hearing and upon motion by the other party, finds that, in the absence of a specific limitation of the person's or persons' decision-making authority, the child's physical health would be endangered or the child's emotional development significantly impaired.

(2) If both parties or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development significantly impaired, the court may order the county or district welfare department to exercise continuing supervision over the case to assure that the terms relating to the allocation of parental responsibilities with respect to the child or parenting time terms of the decree are carried out.

Source: L. 71: R&RE, p. 531, § 1. **C.R.S. 1963:** § 46-1-30. **L. 93:** (2) amended, p. 580, § 13, effective July 1. **L. 98:** Entire section amended, p. 1388, § 17, effective February 1, 1999. **L. 2015:** (2) amended, (SB 15-099), ch. 99, p. 289, § 2, effective August 5.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (2), see section 1 of chapter 165, Session Laws of Colorado 1993.

ANNOTATION

Law reviews. For article, "Moving the Children Out of State", see 12 Colo. Law. 1450 (1983). For article, "Family Law and Juvenile Delinquency", see 37 Colo. Law. 61 (Oct. 2008).

Section does not deny noncustodial parent equal protection. The contention that this section, which gives the custodial parent the right to determine the child's upbringing, "including his education, health care, and religious training", denies to a noncustodial parent the equal protection of the law is totally without merit. Rhoades v. Rhoades, 188 Colo. 423, 535 P.2d 1122 (1975).

Premarital agreements concerning religious training of unborn children are unenforceable in courts. In re Wolfert, 42 Colo. App. 433, 598 P.2d 524 (1979).

"Joint selection of schools" provision in separation agreement is unenforceable and the custodial parent retains the ultimate authority to select the child's school. Griffin v. Griffin, 699 P.2d 407 (Colo. 1985).

Section does not deny noncustodial parent first amendment rights where noncustodial parent does not allege physical or emotional harm to child and custodial parent approves and ratifies court's order specifying terms of mental health counseling for child. In re Jaeger, 883 P.2d 577 (Colo. App. 1994).

Ability to permit child to initiate litigation is within authority of custodial parent only. Montoya by Montoya v. Bebensee, 761 P.2d 285 (Colo. App. 1988).

Order allowing noncustodial grandparent to take children to church was invalid where unsupported by any finding that, absent order, children's physical or mental health would be at risk. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Grandparent visitation statute does not authorize an order impinging on custodial parent's rights under this section. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

Order tending to negate custodial parent's preference concerning religion is unconstitutional, even if parent chooses to provide no religious instruction at all. In re Oswald, 847 P.2d 251 (Colo. App. 1993).

In the case of parents who have agreed to joint decision-making responsibilities but have reached an impasse on an issue related to the child, the district court appropriately exercised its authority to resolve the dispute. In re Thomas, 2021 COA 123, 501 P.3d 290.

The court may break an impasse between joint decision-makers by making the decision that it determines to be in the best interests of the child even if there is no endangerment. In re E.E.L-T., 2024 COA 12, 548 P.3d 679.

14-10-131. Modification of custody or decision-making responsibility.

(1) If a motion for modification of a custody decree or a decree allocating decision-making responsibility has been filed, whether or not it was granted, no subsequent motion may be filed within two years after disposition of the prior motion unless the court decides, on the basis of affidavits, that there is reason to believe that a continuation of the prior decree of custody or order allocating decision-making responsibility may endanger the child's physical health or significantly impair the child's emotional development.

(2) The court shall not modify a custody decree or a decree allocating decision-making responsibility unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the child's custodian or party to whom decision-making responsibility was allocated and that the modification is necessary to serve the best interests of the child. The trial court retains jurisdiction to modify an order allocating decision-making responsibility pursuant to this section during the pendency of an appeal. In applying these standards, the court shall retain the allocation of decision-making responsibility established by the prior decree unless:

(a) The parties agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other party and such situation warrants a modification of the allocation of decision-making responsibilities;

(b.5) There has been a modification in the parenting time order pursuant to section 14-10-129, that warrants a modification of the allocation of decision-making responsibilities;

(b.7) A party has consistently consented to the other party making individual decisions for the child which decisions the party was to make individually or the parties were to make mutually; or

(c) The retention of the allocation of decision-making responsibility would endanger the child's physical health or significantly impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

Source: L. 71: R&RE, p. 532, § 1. **C.R.S. 1963:** § 46-1-31. **L. 83:** (1) and IP(2) amended, p. 648, § 5, effective June 10. **L. 98:** Entire section amended, p. 1389, § 18, effective February 1, 1999. **L. 2021:** IP(2) amended, (HB 21-1031), ch. 116, p. 450, § 4, effective May 7.

Editor's note: Section 8 of chapter 116 (HB 21-1031), Session Laws of Colorado 2021, provides that the act changing this section applies to any request to modify an order appealed on, after, or before May 7, 2021.

Cross references: (1) For the "Uniform Child-custody Jurisdiction and Enforcement Act", see article 13 of this title 14.

(2) For the legislative declaration in HB 21-1031, see section 1 of chapter 116, Session Laws of Colorado 2021.

ANNOTATION

I. General Consideration.

II. Procedure.

IV. Jurisdiction of Court.

V. Appellate Review.

I. GENERAL CONSIDERATION.

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75). For article, "Legislative Update", see 12 Colo. Law. 1257 (1983). For article, "Moving the Children Out of State", see 12 Colo. Law. 1450 (1983). For article, "Custody Evaluations in Colorado", see 18 Colo. Law. 1523 (1989). For article, "Removal Issues and Standards for Modification of Custody", see 24 Colo. Law. 1045 (1995). For article, "Addressing New Standards for Modification Under the Parental Responsibility Act", see 28 Colo. Law. 67 (June 1999). For article, "Constitutional Issues and Legal Standards in Parental Responsibility Matters", see 42 Colo. Law. 33 (Jan. 2013). For article, "The Role of Constitutional Rights in Parental Decision-Making Disputes", see 50 Colo. Law. 18 (Nov. 2021).

Annotator's note. Cases relevant to § 14-10-131 decided prior to its earliest source, L. 71, p. 532, § 1, have been included in the annotations to this section.

This section applies only where there is motion filed by noncustodial parent seeking a change of permanent custody. In re Lawson, 44 Colo. App. 105, 608 P.2d 378 (1980).

This section does not apply to modification of child support. In re Jones, 703 P.2d 1328 (Colo. App. 1985).

This section applies only in cases where a noncustodial parent is seeking a change of custody. In re Dickman, 670 P.2d 20 (Colo. App. 1983).

Where the parties share custody of the child, and both seek sole custody, the statutory criteria for modification in this section are inapplicable. In re Dickman, 670 P.2d 20 (Colo. App. 1983).

The "best interests" standard is governing standard for modification of parental responsibilities where the parents equally share joint legal and physical custody under the original decree and where the permanent orders did not designate a residential parent. In re Stewart, 43 P.3d 740 (Colo. App. 2002).

This section is limited to those cases where a parent has been awarded sole custody and the noncustodial parent is seeking sole custody. Where a parent seeks a change in custody from sole custody to joint custody, § 14-10-131.5 (4) provides the correct standards for determining whether joint custody shall be granted. In re Wall, 868 P.2d 387 (Colo. 1994) (disapproving In re Murphy, 834 P.2d 1287 (Colo. App. 1992), to the extent it holds that § 14-10-131 applies to a motion for a change in the prior order of sole custody to that of joint custody).

When modifying sole custody from one parent to another would result in a residential change in custody, then the "endangerment" standard should apply. In re Francis, 919 P.2d 776 (Colo. 1996).

When the court is considering a removal motion that involves a change in the residential custody of the children, it must similarly apply the "endangerment" standard of this section. In re Francis, 919 P.2d 776 (Colo. 1996).

In a modification of sole to joint custody, the "best interest of the child" standard of § 14-10-131.5 should apply only to those situations where only modification of legal custody and not residential custody is at stake. In re Francis, 919 P.2d 776 (Colo. 1996).

In amending § 14-10-129 in 2001, the general assembly intended to eliminate the three-part test set forth in In re Francis in relocation cases, including the presumption in favor of the majority-time parent seeking to relocate. In re Ciesluk, 113 P.3d 135 (Colo. 2005).

Both prongs of subsection (2)(c) must be established to warrant a change in custody or relocation. In re Steving, 980 P.2d 540 (Colo. App. 1999) (decided under law in effect prior to 1998 amendment).

The endangerment standard applies when removal is sought by a party who shares joint legal custody. In re Garst, 955 P.2d 1056 (Colo. App. 1998).

Where the separation agreement addressed the consequences of mother's continued alienation of the children from father, the father's motion was in the nature of enforcement rather than modification. Given that there was no modification, the court correctly ruled that the endangerment or removal standard was inapplicable and that the parenting plan in the decree had already been reviewed under the best interests standard. In re Kniskern, 80 P.3d 939 (Colo. App. 2003).

Two-year rule in this section does not apply to motions for modification of visitation rights under § 14-10-129. Manson v. Manson, 35 Colo. App. 144, 529 P.2d 1345 (1974).

Application where original custody order entered before article enacted. This

article does not apply to proceedings between parents to change custody of children when the original order relative to custody was entered pursuant to Colorado statutes in effect prior to this article. Spurling v. Spurling, 34 Colo. App. 341, 526 P.2d 671 (1974).

Subsection (2) is constitutional. Ford v. Ford, 194 Colo. 134, 571 P.2d 717 (1977).

Change in physical custody is tantamount to modification of custody. McGraw v. District Court, 198 Colo. 489, 601 P.2d 1383 (1979); Darner v. District Court, 680 P.2d 235 (Colo. 1984).

Parties may not alter requirements of this section through an agreement incorporated into the decree of dissolution. In re Johnson, 42 Colo. App. 198, 591 P.2d 1043 (1979).

"Joint selection of schools" provision in separation agreement is unenforceable and the custodial parent retains the ultimate authority to select the child's school. Griffin v. Griffin, 699 P.2d 407 (Colo. 1985).

There was nothing irrevocable about a custody order. Wiederspahn v. Wiederspahn, 146 Colo. 214, 361 P.2d 125 (1961).

Section does not apply since request was not for decree to place sole custody with a different parent but for change from sole to joint custody. Section 14-10-131.5 applies. In re Wall, 851 P.2d 224 (Colo. App. 1992).

Trial court should have applied the standard for an original determination of visitation, which is based on the best interests of the child, where the order awarding parenting time to stepfather was a temporary order. Although paternity decree operated as a final order and permanent allocation as to paternity and custody, its award of parenting time to stepfather was a temporary order because the parties had not reached an agreement on a permanent parenting time schedule but had agreed to maintain the interim schedule and work toward a permanent one. The fact that the parties adhered to the schedule for nearly three years did not change the nature of the order. In re C.T.G., 179 P.3d 213 (Colo. App. 2007).

If reallocation of decision-making responsibility is implicated as part of a parenting time dispute, § 14-10-129.5 (2)(f) requires the court to comply with this section, which imposes a heightened standard of proof and requires the court to make certain findings not required by § 14-10-129.5. In re Humphries, 2024 COA 92M, 559 P.3d 271.

A district court cannot use C.R.C.P. 57 to avoid applying the standards in subsection (2) of this section. In re Javernick, 2025 COA 96M, 585 P.3d 257.

When father sought to modify separation agreement concerning vaccination of children, district court erred by misapplying the endangerment standard in subsection (2)(c) when it imposed on the father a heightened burden to show substantial harm. Mother was opposed on religious grounds to vaccinating children, but that should not have logically led the court into an inquiry regarding a compelling state interest in a strict scrutiny constitutional analysis — an

analysis not required when allocating decision-making responsibility between parents. In re Crouch, 2021 COA 3, 490 P.3d 1087.

"Special weight" must be given to parent's motion to modify parental responsibilities where sole decision-making and primary residential custody is with non-parents. Rather than presuming that the existing order remains in effect, there is a presumption in favor of modifying the order at the parent's request. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden shifts from parent to non-parents in modification of parental responsibilities proceeding. Non-parents must rebut presumption by showing: (1) That the proposed modification is not in the child's best interests and that the present allocation of parental responsibilities does not endanger the child; and (2) that the present allocation of parental responsibilities is in the child's best interests. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden of proof for non-parents who have sole decision-making authority and primary residential custody is a preponderance of the evidence in modification action brought by parent who consented to the initial custody orders. Court denying parent's modification order must make findings of fact identifying appropriate special factors upon which it relies. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Applied in In re Rinow, 624 P.2d 365 (Colo. App. 1981); In re Eckman, 645 P.2d 866 (Colo. App. 1982); In re Davis, 656 P.2d 42 (Colo. App. 1982).

II. PROCEDURE.

An ex parte order of court changing the custody of children was void because a parent cannot be deprived of the custody of his or her children without the notice required by due process of law. Parker v. Parker, 142 Colo. 416, 350 P.2d 1067 (1960); Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

Section limits scope of inquiry. For the sake of continuity and stability, this section limits the scope of inquiry to the change in circumstances of the child or the custodial parent, and dictates that "the court shall retain the custodian established by the prior decree" absent the showing required by subsection (2)(c). In re Larington, 38 Colo. App. 408, 561 P.2d 17 (1976).

III. CHANGE OF CIRCUMSTANCES.

A. In General.

B. Evidence.

C. Discretion of Court.

A. In General.

Repeated decisions of the supreme court authorized a modification of a custodial order where there was a change in circumstances and conditions, and the modification would have been beneficial to the minor. Bird v. Bird, 132 Colo. 116, 285 P.2d 816 (1955); Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959); Wiederspahn v. Wiederspahn, 146 Colo. 214, 361 P.2d 125 (1961); Deines v. Deines, 157 Colo. 363, 402 P.2d 602 (1965).

A change in circumstances alone does not compel award of custody. Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959).

The mere fact that the mother's circumstances may have changed for the better does not constitute a sufficient basis for changing the original custody order. In re Larington, 38 Colo. App. 408, 561 P.2d 17 (1976).

A mere change of circumstances alone is insufficient to justify a change of custody. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

The interest and welfare of the children was the primary and controlling consideration of the court in ordering the change of custody. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Subsection (2)(c) recognizes that a modification of custody is likely to result in some harm to the child involved. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

In determining the issue of integration, the trial court should consider the totality of the circumstances, including: (1) The frequency, duration, and quality of the child's contacts with the custodial parent and the proposed custodial parent; (2) the identity of the person making the primary decisions with respect to health care, education, religious training, and the child's general welfare; and (3) the views of the child as to which environment constitutes his or her "home". In re Chatten, 967 P.2d 206 (Colo. App. 1998).

Integration into a family is more than a parent's expanded visitation with the child. The requirement of the other parent's consent is satisfied when the other parent voluntarily places the child with the noncustodial parent for any amount of time and willingly permits the child to become integrated into the new family. The other parent's consent need not be explicit. In re S.Z.S., 2022 COA 105, 521 P.3d 1025.

The consent requirement is satisfied when the custodian has voluntarily placed the child with the noncustodial parent and willingly permitted the child to become integrated into the new family. In re Chatten, 967 P.2d 206 (Colo. App. 1998).

Consent of the custodial parent may be implied from a voluntary transfer of custody that results in the child's integration into the family of the noncustodial parent. In re Chatten, 967 P.2d 206 (Colo. App. 1998).

Allegations of endangerment from a failed emergency motion to restrict parenting time can, if ultimately proved, be the basis for a subsequent motion to substantially change parenting time or modify decision-making. In re Wenciker, 2022 COA 74, 519 P.3d 381.

B. Evidence.

Strong showing needed to justify modification of custody. The public policy of this state as expressed in this section favors retention of the child in a stable atmosphere, thus requiring a strong showing, including a change in circumstances, to justify modification of custody. The protection for children created by this statute would be defeated by

allowing parents to determine independently that a lesser showing is sufficient grounds for changing custody arrangements. In re Johnson, 42 Colo. App. 198, 591 P.2d 1043 (1979).

To support the trial court's finding of a sufficient change in circumstances to justify changing the custody of the children, it was necessary to show a change of circumstances or new facts which were not in existence at the time of the prior order. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

Noncustodial parent must demonstrate change of circumstances necessitating change of custody, and change of custody may not be based solely on custodial parent's misconduct. Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

When the power of the court is invoked to place an infant into the custody of its parents and to withdraw such child from other persons, the court will scrutinize all the circumstances and ascertain if a change of custody would be disadvantageous to the infant; if so, the change will not be made, and it matters not whether it is through the fault or the mere misfortune of the legal guardian that the infant has come to be out of his custody. Root v. Allen, 151 Colo. 311, 377 P.2d 117 (1962).

Party seeking modification of prior custody decree has burden of proving that the statutory standards justifying the change are present. In re Davis, 43 Colo. App. 302, 602 P.2d 904 (1979).

Burden shifts from parent to non-parents in modification of parental responsibilities proceeding. Non-parents must rebut presumption by showing: (1) That the proposed modification is not in the child's best interests and that the present allocation of parental responsibilities does not endanger the child; and (2) that the present allocation of parental responsibilities is in the child's best interests. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Burden of proof for non-parents who have sole decision-making authority and primary residential custody is a preponderance of the evidence in modification action brought by parent who consented to the initial custody orders. Court denying parent's modification order must make findings of fact identifying appropriate special factors upon which it relies. In re B.R.D., 2012 COA 63, 280 P.3d 78.

Evidence of events which occurred prior to the original custody order, unless such were unknown to the trial court at the time the original order was entered, or unless the trial court was in some fashion imposed upon through fraud and concealment, may not be basis for a modification of the earlier custody order, because there must be proof of a change of circumstances in order to justify any modification of the order and decree awarding custody. Deines v. Deines, 157 Colo. 363, 402 P.2d 602 (1965).

In the hearing of a petition for the modification of a decree awarding custody of a minor child in a divorce proceeding, the contention that the court erred in considering evidence of matters that occurred prior to the entry of the original

decree, overruled. Ross v. Ross, 89 Colo. 536, 5 P.2d 246 (1931).

Where the custody of a child was awarded in a divorce proceeding, the child became the ward of the court, and it was against the policy of the law to permit its removal to another jurisdiction unless its well-being and future welfare could have been better served thereby. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

Fact that mother who had been awarded custody was undergoing a transsexual change from female to male was not sufficient for changing custody in view of uncontradicted evidence of the high quality of the environment and home life between mother and children and in absence of a showing that the mother's relationship with the children had been adversely affected or that their emotional development had been impaired. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

Evidence of ex-wife's inability to properly supervise older children is relevant to the determination of a motion to modify custody of the youngest child. In re Pilcher, 628 P.2d 126 (Colo. App. 1980).

Evidence of sexual abuse in record is sufficient to justify change of custody. In re Utzinger, 721 P.2d 703 (Colo. App. 1986).

Even though a court could modify an earlier decree to insure the carrying out of provisions for the best interests of the child, and violation of a decree was a good ground to file a motion to modify, nevertheless, a change of custody should not have been awarded as punishment for a parent's unwarranted acts, for the best interest of the child was paramount. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962); Heckel v. Heckel, 156 Colo. 20, 396 P.2d 602 (1964).

Although the mother sought to prevent the father from visiting the children by hiding them, this alone, unaccompanied by other evidence, did not constitute sufficient grounds for a change in custody of the children because the father did not produce evidence of changed circumstances and produced nothing to show that the change would have been in the best interests of his two children, and the evidence, therefore, was legally insufficient to support the change of custody. Deines v. Deines, 157 Colo. 363, 402 P.2d 602 (1965).

When a parent showed little or no regard for the legitimate order of a court relating to custody, that fact was certainly one factor for the court to weigh in considering suitability of who should have custody of a child along with other facts such as the consequences of removal to a foreign jurisdiction, and this was true no matter how laudable the desire of the offending parent. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

While it was true that custody of children of tender years was ordinarily given to the mother, and that custody of several children would normally not be split between the parents, it was also clear that the overriding concern of the court should have been for the welfare of the children. Kelley v. Kelley, 161 Colo. 486, 423 P.2d 315 (1967).

A new family situation of the mother was sufficient to justify a change of custody from the father to the mother providing always that the interest and welfare of the children was the primary and controlling consideration of the trial court in ordering such change of custody. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

In the absence of a clear showing to the contrary, decisions of custodial parent reasonably made in a good faith attempt to fulfill the responsibility imposed by award of custody should be presumed to have been made in the best interests of children. Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972).

The authority that must be exercised and the decisions that must be made by a custodial parent, both on a daily and long term basis, in carrying out the responsibility of custody of minor children, are entitled to the support of the court which initially awarded custody to the parent. Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972).

Custodial parent has great latitude in carrying out custodial responsibilities. Absent some restrictive conditions in the applicable dissolution decree or separation agreement, a custodial parent is permitted great latitude in carrying out the custodial responsibilities of providing a primary home for the minor children of the parties. In re Casida, 659 P.2d 56 (Colo. App. 1982).

Custodial discretion may include the removal of the child from the jurisdiction of the court which entered the permanent orders. In re Casida, 659 P.2d 56 (Colo. App. 1982).

C. Discretion of Court.

In sound exercise of its discretion, a trial court has authority to modify its previous orders relative to custody and visitation upon a showing of circumstances warranting a change in the best interests of the children. Bird v. Bird, 132 Colo. 116, 285 P.2d 816 (1955); Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972).

In awarding custody, the trial court has the advantage of personal contact with the parties, to appraise the worth of their testimony, and consider the circumstances involved, and if desirable to interview the subject child. Coulter v. Coulter, 141 Colo. 237, 347 P.2d 492 (1959); Schlabach v. Schlabach, 155 Colo. 377, 394 P.2d 844 (1964).

Where the one parent acts in disregard of the decree so as to deny the other parent the rights he had under it, the court was not limited to mere punitive measures, but could modify the decree in such a way as to insure the carrying out of those provisions which it conceived to be for the best interests of the child. Holland v. Holland, 150 Colo. 442, 373 P.2d 523 (1962).

The trial court erred in using a custodial change to punish the mother for her unjustified actions in secreting the children to prevent visitation. Pearson v. Pearson, 141 Colo. 336, 347 P.2d 779 (1959).

IV. JURISDICTION OF COURT.

Trial court has continuing jurisdiction by implication. Under former § 46-1-5(4), C.R.S. 1963, the trial court was specifically granted continuing jurisdiction "of the action" for the purpose of revising orders determining child custody. This article does not expressly grant such jurisdiction, but, since it contains a section permitting modification of child custody orders, it does give continuing jurisdiction by implication. Dockum v. Dockum, 34 Colo. App. 98, 522 P.2d 744 (1974).

Although juvenile court has exclusive jurisdiction to make custody determinations with respect to a child who is the subject of a valid petition in dependency and neglect, juvenile court cannot retain jurisdiction of a motion for modification of custody filed pursuant to this section once it has been determined that the child is not dependent and neglected. People in Interest of T.R.W., 759 P.2d 768 (Colo. App. 1988).

A court had continuing authority to modify existing orders or enter additional orders to minimize any detrimental effect of a move upon the relationship between a noncustodial parent and his children. Johnson v. Black, 137 Colo. 119, 322 P.2d 99 (1958); Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970); Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972); Wood v. District Court, 181 Colo. 95, 508 P.2d 134 (1973).

While appeal is pending, trial court cannot modify orders concerning parental responsibilities or parenting time that are material to the appeal. Section 14-10-129 (1)(a)(I) and subsection (2) of this section do not specifically grant trial courts continuing jurisdiction to rule on motions to modify orders already on appeal. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

The trial court does not have jurisdiction in this case because father's motions were material to the appeal because they sought to modify the very orders on appeal. The court did not consider whether an emergency exception to grant a trial court jurisdiction would be appropriate if father had alleged imminent physical or emotional harm to the child due to the orders. In re Parental Responsibilities Concerning W.C., 2020 CO 2, 456 P.3d 1261.

Where the original custody award of a child and a subsequent habeas corpus proceeding were in the same state, but in different courts, although the habeas corpus court would not have jurisdiction to test the wisdom of or to modify the custody decree, it could and should have made the writ permanent to enforce the decree, and should have ordered the child returned to the one lawfully entitled to custody. Wood v. District Court, 181 Colo. 95, 508 P.2d 134 (1973).

The trial court which acquired personal jurisdiction over party in divorce proceedings had continuing in personam jurisdiction to modify child support orders and to enforce original custody orders through the exercise power of contempt, therefore, personal service on a party out of state was sufficient and party's failure to appear did not deprive court of jurisdiction or power to punish for contempt.

Brown v. Brown, 31 Colo. App. 557, 506 P.2d 386 (1972).

Well-established was the rule that when a child from another state became domiciled in Colorado, and there was a material change in the circumstances of the divorced parents which would have justified modification of the rights to custody of the child, the Colorado courts could have and did take jurisdiction of the custody proceedings and enter appropriate orders based on conditions as they then appeared, and in such a case the supreme court held that the custody provisions of a decree rendered by the court of former domicile was subject to modification in Colorado if there was a change in conditions arising after the decree in the foreign state, which could not have been considered by that court in making the award. Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

Factors listed in this section are not relevant in determining custody in a dependency proceeding under the Colorado Children's Code. People in Interest of R.E., 721 P.2d 1233 (Colo. App. 1986).

Applied in In re Murphy, 834 P.2d 1287 (Colo. App. 1992).

V. APPELLATE REVIEW.

Any final order in a custody proceeding regardless of the label placed upon it by the trial court was appealable as a matter of law. Aylor v. Aylor, 173 Colo. 294, 478 P.2d 302 (1970).

On appellate review of such an order modifying a previous order relative to custody and visitation, every presumption will be made in favor of the validity of the trial court's decision and only where a clear abuse of discretion can be shown will an appellate court interfere with orders of a trial court delineating visitation rights and awarding custody. Bernick v. Bernick, 31 Colo. App. 485, 505 P.2d 14 (1972).

In reviewing an order affecting the custody of a child, appellate courts will make every reasonable presumption in favor of the action of the trial court. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

Questions of custody must of necessity rest upon the judgment of the trier of fact, and its determination will not be disturbed if there is evidence to support its conclusion. In re Trouth, 631 P.2d 1183 (Colo. App. 1981); In re Agner, 659 P.2d 53 (Colo. App. 1982); In re Utzinger, 721 P.2d 703 (Colo. App. 1986).

Appellate courts are reluctant to disturb rulings of the trial court in custody matters, absent circumstances clearly disclosing an abuse of discretion. Christian v. Randall, 33 Colo. App. 129, 516 P.2d 132 (1973).

The modification of a divorce decree with respect to custody of minor children lies within the sound discretion of the trial court and will be disturbed on review only if clear abuse of discretion is shown. Dockum v. Dockum, 34 Colo. App. 98, 522 P.2d 744 (1974); In re Utzinger, 721 P.2d 703 (Colo. App. 1986).

Change of custody in violation of subsection (2) cannot stand. Although appellate courts are reluctant to disturb the trial court's ruling in a custody matter, subsection (2) is clear and the trial court must comply with its provisions. If the trial court's findings show no indication of endangered physical health or impairment of emotional development, an order changing custody cannot stand. In re Harris, 670 P.2d 446 (Colo. App. 1983).

Trial court must comply with section. Although appellate courts are reluctant to disturb rulings of the trial court in custody matters, this section is clear, and the trial court must comply with its provisions. In re Larington, 38 Colo. App. 408, 561 P.2d 17 (1976).

14-10-131.3. Modification of the allocation of parental responsibilities and parenting time based upon military service - legislative declaration - definitions. (Repealed)

Source: L. 2008: Entire section added, p. 331, § 1, effective August 5. **L. 2013:** Entire section repealed, (HB 13-1200), ch. 174, p. 624, § 1, effective May 10.

14-10-131.5. Joint custody modification - termination. (Repealed)

Source: L. 83: Entire section added, p. 646, § 2, effective June 10. **L. 98:** Entire section repealed, p. 1390, § 19, effective February 1, 1999.

14-10-131.7. Designation of custody for the purpose of other state and federal statutes.

For purposes of all other state and federal statutes that require a designation or determination of custody, the parenting plan set forth in the court's order shall identify the responsibilities of each of the parties.

Source: L. 98: Entire section added, p. 1390, § 20, effective February 1, 1999.

14-10-131.8. Construction of 1999 revisions.

The enactment of the 1999 revisions to this article 10 does not constitute substantially changed circumstances for the purposes of modifying decrees involving child custody, parenting time, or grandparent or great-grandparent family time. Any action to modify any decree involving child

custody, parenting time, grandparent or great-grandparent family time, or a parenting plan is governed by the provisions of this article 10.

Source: L. 98: Entire section added, p. 1390, § 20, effective February 1, 1999. **L. 2014:** Entire section amended, (HB 14-1362), ch. 374, p. 1789, § 5, effective June 6. **L. 2023:** Entire section amended, (HB 23-1026), ch. 243, p. 1306, § 4, effective August 7.

Cross references: For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of Colorado 2023.

14-10-132. Affidavit practice.

A party seeking the modification of a custody decree or a decree concerning the allocation of parental responsibilities shall submit, together with his or her moving papers, an affidavit setting forth facts supporting the requested modification and shall give notice, together with a copy of his or her affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested modification should not be granted.

Source: L. 71: R&RE, p. 532, § 1. **C.R.S. 1963:** § 46-1-32. **L. 84:** Entire section amended, p. 479, § 2, effective March 16. **L. 98:** Entire section amended, p. 1390, § 21, effective February 1, 1999.

ANNOTATION

An ex parte order changing custody of a child without notice to the custodial parent violates due process and is, therefore, void. Ashlock v. District Court, 717 P.2d 483 (Colo. 1986).

Verified motion for modification does not change burden of proof. A verified motion for modification of a prior custody decree, alleging various changes of circumstances for the mother, the father and the children, does not place the burden of proof or of going forward on the custodial parent. In re Davis, 43 Colo. App. 302, 602 P.2d 904 (1979).

Where affidavits show noncooperation which renders the general order for visitation, in essence, a nullity, adequate cause for a hearing is established and the court should set a date for a hearing to show cause why the requested modification

should not be granted. In re Sepmeier, 782 P.2d 876 (Colo. App. 1989).

Motion to modify custody that was unverified and not supported by any factual averments failed to meet the threshold requirement. A claim contesting the court's denial of the motion on the ground that it failed to meet the threshold was without merit. In re Michie, 844 P.2d 1325 (Colo. App. 1992).

This section does not apply to modification of child support. In re Jones, 703 P.2d 1328 (Colo. App. 1985).

Applied in McGraw v. District Court, 198 Colo. 489, 601 P.2d 1383 (1979).

14-10-133. Effective date - applicability.

This article shall take effect January 1, 1972, and shall apply only to actions affected by this article which are commenced on or after such date; all such actions commenced prior to said date shall be governed by the laws then in effect.

Source: L. 71: p. 532, § 3. **C.R.S. 1963:** § 46-1-33.

ANNOTATION

Although the agreement and the decree refer to "alimony" rather than to "maintenance" payments, the Uniform Dissolution of Marriage Act governs these proceedings because the petition for dissolution was filed subsequent to the effective date of that statute. In re Udis, 780 P.2d 499 (Colo. 1989).

Applied in Wilkinson v. Wilkinson, 41 Colo. App. 364, 585 P.2d 599 (1978); Bradshaw v. Bradshaw, 626 P.2d 752 (Colo. App. 1981); In re Perlmutter, 772 P.2d 621 (Colo. 1989).

ARTICLE 10.5

Parenting Time Enforcement Act

14-10.5-101. Short title.

14-10.5-102. Legislative declaration.

14-10.5-103. Definition. (Repealed)

14-10.5-104. Parenting time enforcement program - authorization.

14-10.5-101. Short title.

This article shall be known and may be cited as the "Colorado Parenting Time Enforcement Act".

Source: L. 97: Entire article added, p. 972, § 2, effective August 6.

14-10.5-102. Legislative declaration.

(1) The general assembly finds and declares that in most situations it is important to the healthy development of children that the children spend quality time with both parents. The general assembly further finds that due to dissolution of marriage, legal separation, and children born to single parents, families are often divided. As a result, many children do not have the opportunity to spend the time with both parents that a court may have determined is in their best interests.

(2) The general assembly further finds that the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, allows states to seek grants of federal funds for the establishment and administration of programs and to support and facilitate children's access to time with their noncustodial parent.

(3) It is the purpose of this article to enhance children's opportunities for access to their parent with whom the child does not reside the majority of the time pursuant to court order in compliance with any orders entered in that regard. To that end, the general assembly hereby determines that it is appropriate for the state to seek the federal grant described in section 391 of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Public Law 104-193, in order to explore alternative methods by which to support and facilitate a child's access to and time with his or her parent with whom the child does not reside the majority of the time in contested parenting time proceedings.

Source: L. 97: Entire article added, p. 972, § 2, effective August 6. **L. 98:** (3) amended, p. 1400, § 47, effective February 1, 1999. **L. 2018:** (1) amended, (SB 18-095), ch. 96, p. 754, § 9, effective August 8.

Cross references: For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

14-10.5-103. Definition. (Repealed)

Source: L. 97: Entire article added, p. 973, § 2, effective August 6. **L. 98:** Entire section repealed, p. 1400, § 48, effective February 1, 1999.

14-10.5-104. Parenting time enforcement program - authorization.

(1) (a) The appropriate state agency, as determined by the governor, is hereby authorized to develop a parenting time enforcement program. The program, if developed, shall comply with all requirements and restrictions, if any, set forth in federal law or in federal regulation promulgated by the secretary of the federal department of health and human services and, if in compliance with federal law and regulation, shall address the enhancement and facilitation of children's access to the parents with whom such children reside less than the majority of the time by any one or any combination of the following methods:

(I) Mediation, both voluntary and mandatory;

(II) Family counseling;

(III) Parental education;

(IV) Development of parenting plans;

(V) Parenting time enforcement procedures, including monitored parenting time, supervised parenting time, or neutral drop-off and pickup locations;

(VI) Parenting time guidelines;

(VII) Alternative arrangements with respect to parental responsibilities.

(b) The parenting time enforcement program, if developed, may be operated on a statewide basis or on a representative pilot basis.

(2) The selected state agency shall monitor, evaluate, and report on the parenting time enforcement program, if developed, in accordance with the regulations prescribed by the secretary of the federal department of health and human services. Such agency shall also evaluate and report on the effectiveness of the amendments made to section 14-10-129.5, as contained in House Bill 97-1164.

Source: L. 97: Entire article added, p. 973, § 2, effective August 6. **L. 98:** IP(1)(a) and (1)(a)(VII) amended, p. 1400, § 49, effective February 1, 1999.

ARTICLE 11

Actions Originating in Other Jurisdictions

14-11-101. Foreign decrees - how handled.

14-11-101. Foreign decrees - how handled.

(1) Upon the docketing in a court of competent jurisdiction in this state of exemplified copies of all the written pleadings and court orders, judgments, and decrees in a case of divorce, separate maintenance, or annulment, or for support of minor children or a spouse, or for a protection order or other court order issued for the protection of a party or parties, or for a combination of the same entered in any court of competent jurisdiction in any other state or jurisdiction having reciprocal provisions for a like enforcement of orders, judgments, or decrees entered in the state of Colorado and upon obtaining jurisdiction by personal service of process as provided by the Colorado rules of civil procedure, said court in this state shall have jurisdiction over the subject matter and of the person in like manner as if the original suit or action had been commenced in this state, and is empowered to amend, modify, set aside, and make new orders as the court may find necessary and proper so as to do justice and equity to all parties to the action according to the public policy of this state, and has the same right, power, and authority to enter orders for temporary alimony, support money, and attorney fees as in similar actions originating in this state.

(2) The courts of this state in cases of dissolution of marriage, legal separation, or declaration of invalidity of marriage, or for support of minor children or a spouse, or for the protection of a party or parties by means of a protection order, however styled or designated, or for any combination of the same, where the action originated in this state, have the power to enforce the decrees, judgments, and orders of other states or jurisdictions made pursuant to statutes similar to this statute, or to amend the same, or to enter new orders to the same extent and in the same manner as though such decrees, judgments, and orders were entered in the courts of this state.

(3) Notwithstanding the provisions of this article, a restraining or protection order issued by a court of any state, any Indian tribe, or any United States territory shall be enforced pursuant to section 13-14-110, C.R.S.

(4) Notwithstanding the provisions of this article, a child-custody determination, as that term is defined in section 14-13-102 (3), issued by a court of another state shall be registered in accordance with section 14-13-305.

Source: L. 47: pp. 398, 399, §§ 1, 2. **CSA:** C. 56, § 39. **CRS 53:** § 46-4-1. **C.R.S. 1963:** § 46-4-1. **L. 75:** Entire section amended, p. 210, § 26, effective July 16. **L. 94:** Entire section amended, p. 2034, § 11, effective July 1. **L. 98:** (3) added, p. 1235, § 7, effective July 1. **L. 2000:** (4) added, p. 1538, § 4, effective July 1. **L. 2003:** (1) and (2) amended, p. 1012, § 18, effective July 1. **L. 2005:** (3) amended, p. 765, § 23, effective June 1. **L. 2013:** (3) amended, (HB 13-1259), ch. 218, p. 1016, § 18, effective July 1.

Cross references: For procedure in pleading a foreign judgment or decree, see C.R.C.P. 9(e); for enforcement of foreign judgments, see article 53 of title 13; for the "Uniform Child-custody Jurisdiction and Enforcement Act", see article 13 of this title 14; for enforcement of support orders from another state or foreign country, see the "Uniform Interstate Family Support Act", article 5 of this title 14.

ANNOTATION

Law reviews. For article, "Ten Years of Domestic Relations in Colorado — 1940-1950", see 27 Dicta 399 (1950). For article, "Constitutional Law", see 32 Dicta 397 (1955). For "Interstate Modification of Support Decrees", see 28 Rocky Mt. L. Rev. 355 (1956). For article, "Interstate Family Law Jurisdiction: Simplifying Complex Questions", see 31 Colo. Law. 77 (Sept. 2002).

Annotator's note. Since § 14-11-101 is similar to repealed § 46-4-1, CRS 53, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

General assembly, in reenacting section, granted state courts power to modify or alter foreign judgment for child support and such legislation does not offend the full faith and credit clause of the United States constitution. Glickman v. Mesigh, 200 Colo. 320, 615 P.2d 23 (1980).

This section confers subject matter jurisdiction with respect to the issue of enforcement of the foreign orders of Nebraska for support but in personam jurisdiction can be exercised by the state of Colorado only if defendant has "minimum contacts" with the state. In re Ness, 759 P.2d 844 (Colo. App. 1988).

Colorado court enforcing foreign judgment against Colorado resident must consider not only whether the foreign court had personal jurisdiction under its laws, but also whether the exercise of jurisdiction by the foreign state is consistent with the constitution and laws of the United States. The district court is required to adjudicate whether husband had sufficient minimum contacts with England to render constitutional under United States law the assertion of jurisdiction over him by the English court. In re Lohman, 2015 COA 134, 361 P.3d 1110.

Subsections (1) and (4) provide a Colorado court with jurisdiction to modify a child custody decree from another state that has been properly registered here as long as the other state has "reciprocal provisions for a like enforcement of orders . . . entered in the state of Colorado." In the Interest of F.A.G., 148 P.3d 375 (Colo. App. 2006).

Once an out-of-state order is properly docketed, a Colorado court acquires jurisdiction "as if the original suit or action had been commenced in this state" and is "empowered to amend, modify, set aside, and make new orders." In the Interest of F.A.G., 148 P.3d 375 (Colo. App. 2006).

Section reflects legislative effort to prevent state from becoming haven for parent against whom minimal or no support orders have been entered in the jurisdiction of rendition by granting Colorado courts explicit authority to enter appropriate orders in a manner consistent with the full faith and credit clause. Glickman v. Mesigh, 200 Colo. 320, 615 P.2d 23 (1980); Gonzales v. District Court, 629 P.2d 1074 (Colo. 1981).

The former § 46-4-1, CRS 53, was held unconstitutional as in violation of the full faith and credit clause of the federal constitution. Minnear v. Minnear, 131 Colo. 319, 281 P.2d 517 (1955).

Where the issue of alleged fraud in the procurement of the divorce decree either was, or could have been, litigated in a foreign court where it was raised by the wife, the disposition made of that issue in the sister state was res judicata in Colorado. Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

The argument that the divorce decree of a sister state should not have been recognized in Colorado because personal service of process was not made upon the wife in the action was without merit where it was disclosed by the record that she was a resident of the sister state temporarily residing in Colorado at the time of service of process upon her, and service of process upon her was effected by publication and mailing under the practice and procedure of the sister state, and the record showed that she had actual notice of the pendency of the divorce action, but chose not to appear or to contest it. Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

The former CSA, C. 56, § 30 disclosed the general intent of the general assembly regarding foreign divorces as being allowed to affect decrees of separate maintenance, it being stated therein that they were not to be admitted in evidence in any proceedings to enforce, or concerning, affecting or involving in any way, such marriage settlement, separate maintenance agreement, or decree of separate maintenance. Johnson v. Johnson, 119 Colo. 551, 206 P.2d 597 (1949).

"Other jurisdictions" construed. The reference to "other jurisdictions", in subsection (2), denotes only foreign jurisdictions which, although not states, are empowered to enter orders entitled to full faith and credit under art. IV, § 1, U.S. Const. Gonzales v. District Court, 629 P.2d 1074 (Colo. 1981).

In situations where a child support order was entered in another state, the obligee is a resident of this state, and the obligor is a nonresident, the Uniform Interstate Family Support Act (UIFSA) controls to the extent the requirements for modification of child support in UIFSA and the remedy allowed by this section differ. In re Hillstrom, 126 P.3d 315 (Colo. App. 2005).

Subsection (2) has no intrastate application. Because "other jurisdictions" do not refer to other judicial districts within the state of Colorado, subsection (2) has no intrastate application and confers no jurisdiction on a district court to try a contempt committed against another district court. Gonzales v. District Court, 629 P.2d 1074 (Colo. 1981).

State courts need not give conclusive effect to foreign decree when that decree is subject to modification by the courts of the rendering state. Glickman v. Mesigh, 200 Colo. 320, 615 P.2d 23 (1980).

Where California decree expressly provided for modification upon changed circumstances, Colorado courts had as much leeway to modify or alter the California decree as did the California court which rendered it. Glickman v. Mesigh, 200 Colo. 320, 615 P.2d 23 (1980).

Where Texas court had both personal and subject-matter jurisdiction, the full faith and credit clause required this state to enforce the Texas order to the extent that it was final and not modifiable. Stevens v. Stevens, 44 Colo. App. 252, 611 P.2d 590 (1980).

Exemplified copies of all written pleadings and court orders on foreign action must be filed with state court in order to come within the purview of this section. Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981).

Section requires docketing of exemplified copies of all written pleadings and court orders, judgments, and decrees for a court to obtain subject matter jurisdiction over a foreign decree. In re Orr, 36 P.3d 194 (Colo. App. 2001).

If an unfulfilled statutory requirement implicates the court's actual subject matter jurisdiction, no attempt to cure the defect will retroactively create jurisdiction, because the court would have been entirely without power to entertain any aspect of the claim until the requirement was fulfilled. In re Orr, 36 P.3d 194 (Colo. App. 2001).

Foreign custody decree could be modified by a Colorado court where the decree has been docketed in Colorado and Colorado is now the home state of the children. In re Whitley, 775 P.2d 95 (Colo. App. 1989).

Even if jurisdiction attaches under this section, if there is a proceeding pending in a foreign court, the trial court has discretion to decline to determine an issue that could easily and efficiently be addressed by a foreign court. Matter of C.G.G., 946 P.2d 603 (Colo. App. 1997).

Court erred in granting wife's motion for summary judgment in declaratory judgment action in which wife challenged validity of Wyoming dissolution decree on

grounds of insufficient service of process where court's analysis did not reach husband's equitable defenses. In re Lockwood, 857 P.2d 557 (Colo. App. 1993).

Trial court properly declined to recognize and enforce Mexican decree under doctrine of comity when record failed to establish how service was to be made under the circumstances and failed to demonstrate that the notice allegedly given to wife provided her with an adequate opportunity to litigate and defend the significant issues of maintenance and distribution of property implicated in the termination of the marriage. In re Seewald, 22 P.3d 580 (Colo. App. 2001).

Applied in In re Clark, 616 P.2d 1010 (Colo. App. 1980).

ARTICLE 12

Marriage Counseling

14-12-101. Legislative declaration.

14-12-102. Domestic relations counselor - assistants - term.

14-12-103. Offices - qualifications - salaries. (Repealed)

14-12-104. Duties of domestic relations counselors.

14-12-105. Counseling proceedings to be private - communications confidential.

14-12-106. Court may appoint marriage counselor in any county or judicial district where the population is under one hundred thousand. (Repealed)

14-12-101. Legislative declaration.

It is the declared public policy of this state to maintain desirable marital and family relations; to promote and foster the marriage relationship and reconciliation of estranged spouses; and to take reasonable measures to preserve marriages, particularly where minor children are involved, in the interest of strengthening the family life foundation of our society, and in reducing the economic and social costs to the state resulting from broken homes. In furtherance of this policy, it is the purpose of this article to make competent marriage counseling services available through the district courts of the state to spouses involved in domestic difficulties.

Source: L. 60: p. 131, § 1. **CRS 53:** § 46-5-1. **C.R.S. 1963:** § 46-5-1.

ANNOTATION

The creation of a "marriage relationship" is a fundamental right in this jurisdiction. Beeson v. Kiowa County Sch. Dist. RE-1, 39 Colo. App. 174, 567 P.2d 801 (1977).

Support during reconciliation attempt constituted maintenance payments. Where the parties made a good faith although unsuccessful attempt at reconciliation and where the husband supported the family during this time, the support paid and contributed by the husband constituted payment of the maintenance installments accruing during the period they were living together. This conforms to the public policy in the state "to promote and foster the marriage relationship and reconciliation of estranged spouses". In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977).

14-12-102. Domestic relations counselor - assistants - term.

Subject to the provisions of section 13-3-105, C.R.S., the chief judge of any judicial district may appoint one or more domestic relations counselors and such other persons as assistants and clerks as may be deemed necessary to serve during the pleasure of the appointing power.

Source: L. 60: p. 131, § 1. **CRS 53:** § 46-5-2. **C.R.S. 1963:** § 46-5-2. **L. 79:** Entire section R&RE, p. 602, § 29, effective July 1. **L. 80:** Entire section amended, p. 519, § 1, effective January 29.

14-12-103. Offices - qualifications - salaries. (Repealed)

Source: L. 60: p. 132, § 1. **CRS 53:** § 46-5-3. **C.R.S. 1963:** § 46-5-3. **L. 79:** Entire section repealed, p. 602, § 30, effective July 1.

14-12-104. Duties of domestic relations counselors.

(1) Domestic relations counselors shall, under the supervision of and as directed by the judge of the district court in which they are serving, perform the following duties:

(a) Promptly consider all requests for counseling for the purpose of disposing of such requests pursuant to this article;

(b) Counsel husband or wife or both under a schedule of fees set by the judge of the district court wherein the case is heard, said fee to be paid by either the husband or wife or jointly by the husband and wife, as determined by the court, whether or not a petition for dissolution of

marriage, declaration of invalidity of marriage, or legal separation has been filed, if the spouses have marital difficulties which may lead to a termination of the marriage relationship;

(c) If, in the judgment of the counselor, prolonged counseling is necessary or if it appears that medical, psychiatric, or religious assistance is indicated, refer the husband or wife or both to a physician, psychiatrist, psychologist, social service agency, or clergyman of any religious denomination to which the parties may belong.

Source: L. 60: p. 132, § 1. **CRS 53:** § 46-5-4. **C.R.S. 1963:** § 46-5-4.

14-12-105. Counseling proceedings to be private - communications confidential.

All counseling proceedings, interviews, or conferences shall be held in private. All communications, oral or written, from the parties to a domestic relations counselor in a counseling or conciliation proceedings shall be deemed to be made to such counsel in official confidence by a privileged communication and shall not be admissible or usable for any purpose in any dissolution of marriage hearing or any other proceedings. Any papers or records of the counselor relating to counseling proceedings under this article shall be confidential.

Source: L. 60: p. 133, § 1. **CRS 53:** § 46-5-6. **C.R.S. 1963:** § 46-5-6.

Cross references: For other privileged communications, see §§ 13-90-107 and 13-90-108.

14-12-106. Court may appoint marriage counselor in any county or judicial district where the population is under one hundred thousand. (Repealed)

Source: L. 60: p. 133, § 1. **CRS 53:** § 46-5-7. **C.R.S. 1963:** § 46-5-7. **L. 79:** Entire section repealed, p. 602, § 30, effective July 1.

ARTICLE 13

Uniform Child-custody Jurisdiction and Enforcement Act

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PART 1

GENERAL PROVISIONS

PREFATORY NOTE

This Act, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), revisits the problem of the interstate child almost thirty years after the Conference promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA accomplishes two major purposes.

First, it revises the law on child custody jurisdiction in light of federal enactments and almost thirty years of inconsistent case law. Part 2 of this Act provides clearer standards for which States can exercise original jurisdiction over a child custody determination. It also, for the first time, enunciates a standard of continuing jurisdiction and clarifies modification jurisdiction. Other aspects of the part harmonize the law on simultaneous proceedings, clean hands, and forum non conveniens.

Second, this Act provides in Part 3 for a remedial process to enforce interstate child custody and visitation determinations. In doing so, it brings a uniform procedure to the law of interstate enforcement that is currently producing inconsistent results. In many respects, this Act accomplishes for custody and visitation determinations the same uniformity that has occurred in interstate child support with the promulgation of the Uniform Interstate Family Support Act (UIFSA).

Revision of Uniform Child Custody Jurisdiction Act

The UCCJA was adopted as law in all 50 States, the District of Columbia, and the Virgin Islands. A number of adoptions, however, significantly departed from the original text. In addition, almost thirty years of litigation since the promulgation of the UCCJA produced substantial inconsistency in interpretation by state courts. As a result, the goals of the UCCJA were rendered unobtainable in many cases.

In 1980, the federal government enacted the Parental Kidnaping Prevention Act (PKPA), 28 U.S.C. § 1738A, to address the interstate custody jurisdictional problems that continued to exist after the adoption of the UCCJA. The PKPA mandates that state authorities give full faith and credit to other

states' custody determinations, so long as those determinations were made in conformity with the provisions of the PKPA. The PKPA provisions regarding bases for jurisdiction, restrictions on modifications, preclusion of simultaneous proceedings, and notice requirements are similar to those in the UCCJA. There are, however, some significant differences. For example, the PKPA authorizes continuing exclusive jurisdiction in the original decree State so long as one parent or the child remains there and that State has continuing jurisdiction under its own law. The UCCJA did not directly address this issue. To further complicate the process, the PKPA partially incorporates state UCCJA law in its language. The relationship between these two statutes became "technical enough to delight a medieval property lawyer." Homer H. Clark, *Domestic Relations* § 12.5 at 494 (2d ed. 1988).

As documented in an extensive study by the American Bar Association's Center on Children and the Law, *Obstacles to the Recovery and Return of Parentally Abducted Children* (1993) *(Obstacles Study)*, inconsistency of interpretation of the UCCJA and the technicalities of applying the PKPA, resulted in a loss of uniformity among the States. The Obstacles Study suggested a number of amendments which would eliminate the inconsistent state interpretations and harmonize the UCCJA with the PKPA.

The revisions of the jurisdictional aspects of the UCCJA eliminate the inconsistent state interpretations and can be summarized as follows:

1. Home state priority. The PKPA prioritizes "home state" jurisdiction by requiring that full faith and credit cannot be given to a child custody determination by a State that exercises initial jurisdiction as a "significant connection state" when there is a "home State." Initial custody determinations based on "significant connections" are not entitled to PKPA enforcement unless there is no home State. The UCCJA, however, specifically authorizes four independent bases of jurisdiction without prioritization. Under the UCCJA, a significant connection custody determination may have to be enforced even if it would be denied enforcement under the PKPA. The UCCJEA prioritizes home state jurisdiction in Section 201.

2. Clarification of emergency jurisdiction. There are several problems with the current emergency jurisdiction provision of the UCCJA § 3(a)(3). First, the language of the UCCJA does not specify that emergency jurisdiction may be exercised only to protect the child on a temporary basis until the court with appropriate jurisdiction issues a permanent order. Some courts have interpreted the UCCJA language to so provide. Other courts, however, have held that there is no time limit on a custody determination based on emergency jurisdiction. Simultaneous proceedings and conflicting custody orders have resulted from these different interpretations.

Second, the emergency jurisdiction provisions predated the widespread enactment of state domestic violence statutes. Those statutes are often invoked to

keep one parent away from the other parent and the children when there is a threat of violence. Whether these situations are sufficient to invoke the emergency jurisdiction provision of the UCCJA has been the subject of some confusion since the emergency jurisdiction provision does not specifically refer to violence directed against the parent of the child or against a sibling of the child.

The UCCJEA contains a separate section on emergency jurisdiction at Section 14-13-204 which addresses these issues.

3. Exclusive continuing jurisdiction for the State that entered the decree. The failure of the UCCJA to clearly enunciate that the decree-granting State retains exclusive continuing jurisdiction to modify a decree has resulted in two major problems. First, different interpretations of the UCCJA on continuing jurisdiction have produced conflicting custody decrees. States also have different interpretations as to how long continuing jurisdiction lasts. Some courts have held that modification jurisdiction continues until the last contestant leaves the State, regardless of how many years the child has lived outside the State or how tenuous the child's connections to the State have become. Other courts have held that continuing modification jurisdiction ends as soon as the child has established a new home State, regardless of how significant the child's connections to the decree State remain. Still other States distinguish between custody orders and visitation orders. This divergence of views leads to simultaneous proceedings and conflicting custody orders.

The second problem arises when it is necessary to determine whether the State with continuing jurisdiction has relinquished it. There should be a clear basis to determine when that court has relinquished jurisdiction. The UCCJA provided no guidance on this issue. The ambiguity regarding whether a court has declined jurisdiction can result in one court improperly exercising jurisdiction because it erroneously believes that the other court has declined jurisdiction. This caused simultaneous proceedings and conflicting custody orders. In addition, some courts have declined jurisdiction after only informal contact between courts with no opportunity for the parties to be heard. This raised significant due process concerns. The UCCJEA addresses these issues in Sections 14-13-110, 14-13-202, and 14-13-206.

4. Specification of what custody proceedings are covered. The definition of custody proceeding in the UCCJA is ambiguous. States have rendered conflicting decisions regarding certain types of proceedings. There is no general agreement on whether the UCCJA applies to neglect, abuse, dependency, wardship, guardianship, termination of parental rights, and protection from domestic violence proceedings. The UCCJEA includes a sweeping definition that, with the exception of adoption, includes virtually all cases that can involve custody of or visitation with a child as a "custody determination."

5. Role of "Best Interests." The jurisdictional scheme of the UCCJA was designed to promote the best interests of the children whose custody was at issue by

discouraging parental abduction and providing that, in general, the State with the closest connections to, and the most evidence regarding, a child should decide that child's custody. The "best interest" language in the jurisdictional sections of the UCCJA was not intended to be an invitation to address the merits of the custody dispute in the jurisdictional determination or to otherwise provide that "best interests" considerations should override jurisdictional determinations or provide an additional jurisdictional basis.

The UCCJEA eliminates the term "best interests" in order to clearly distinguish between the jurisdictional standards and the substantive standards relating to custody and visitation of children.

6. Other Changes. This draft also makes a number of additional amendments to the UCCJA. Many of these changes were made to harmonize the provisions of this Act with those of the Uniform Interstate Family Support Act. One of the policy bases underlying this Act is to make uniform the law of interstate family proceedings to the extent possible, given the very different jurisdictional foundations. It simplifies the life of the family law practitioner when the same or similar provisions are found in both Acts.

Enforcement Provisions

One of the major purposes of the revision of the UCCJA was to provide a remedy for interstate visitation and custody cases. As with child support, state borders have become one of the biggest obstacles to enforcement of custody and visitation orders. If either parent leaves the State where the custody determination was made, the other parent faces considerable difficulty in enforcing the visitation and custody provisions of the decree. Locating the child, making service of process, and preventing adverse modification in a new forum all present problems.

There is currently no uniform method of enforcing custody and visitation orders validly entered in another State. As documented by the *Obstacles Study*, despite the fact that both the UCCJA and the PKPA direct the enforcement of visitation and custody orders entered in accordance with mandated jurisdictional prerequisites and due process, neither act provides enforcement procedures or remedies.

As the *Obstacles Study* pointed out, the lack of specificity in enforcement procedures has resulted in the law of enforcement evolving differently in different jurisdictions. In one State, it might be common practice to file a Motion to Enforce or a Motion to Grant Full Faith and Credit to initiate an enforcement proceeding. In another State, a Writ of Habeas Corpus or a Citation for Contempt might be commonly used. In some States, Mandamus and Prohibition also may be utilized. All of these enforcement procedures differ from jurisdiction to jurisdiction. While many States tend to limit considerations in enforcement proceedings to whether the court which issued the decree had jurisdiction to make the custody determination, others broaden the considerations to scrutiny of whether

enforcement would be in the best interests of the child.

Lack of uniformity complicates the enforcement process in several ways: (1) It increases the costs of the enforcement action in part because the services of more than one lawyer may be required one in the original forum and one in the State where enforcement is sought; (2) It decreases the certainty of outcome; (3) It can turn enforcement into a long and drawn out procedure. A parent opposed to the provisions of a visitation determination may be able to delay implementation for many months, possibly even years, thereby frustrating not only the other parent, but also the process that led to the issuance of the original court order.

The provisions of Part 3 provide several remedies for the enforcement of a custody determination. First, there is a simple procedure for registering a custody determination in another State. This will allow a party to know in advance whether that State will recognize the party's custody determination. This is extremely important in estimating the risk of the child's non-return when the child is sent on visitation. The provision should prove to be very useful in international custody cases.

Second, the Act provides a swift remedy along the lines of habeas corpus. Time is extremely important in visitation and custody cases. If visitation rights cannot be enforced quickly, they often cannot be enforced at all. This is particularly true if there is a limited time within which visitation can be exercised such as may be the case when one parent has been granted visitation during the winter or spring holiday period. Without speedy consideration and resolution of the enforcement of such visitation rights, the ability to visit may be lost entirely. Similarly, a custodial parent must be able to obtain prompt enforcement when the noncustodial parent refuses to return a child at the end of authorized visitation, particularly when a summer visitation extension will infringe on the school year. A swift enforcement mechanism is desirable for violations of both custody and visitation provisions.

The scope of the enforcing court's inquiry is limited to the issue of whether the decree court had jurisdiction and complied with due process in rendering the original custody decree. No further inquiry is necessary because neither Part 2 nor the PKPA allows an enforcing court to modify a custody determination.

Third, the enforcing court will be able to utilize an extraordinary remedy. If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

Finally, there is a role for public authorities, such as prosecutors, in the enforcement process. Their involvement will encourage the parties to abide by the terms of the custody determination. If the parties know that public authorities and law enforcement officers are available to help in securing compliance with custody determinations, the parties may be deterred from interfering with the exercise of rights established by court order.

The involvement of public authorities will also prove more effective in remedying violations of custody determinations. Most parties do not have the resources to enforce a custody determination in another jurisdiction. The availability of the public authorities as an enforcement agency will help ensure that this remedy can be made available regardless of income level. In addition, the public authorities may have resources to draw on that are unavailable to the average litigant.

This Act does not authorize the public authorities to be involved in the action leading up to the making of the custody determination, except when requested by the court, when there is a violation of the Hague Convention on the Civil Aspects of International Child Abduction, or when the person holding the child has violated a criminal statute. The Act does not mandate that public authorities be involved in all cases. Not all States, or local authorities, have the funds necessary for an effective custody and visitation enforcement program.

14-13-101. Short title.

This article shall be known and may be cited as the "Uniform Child-custody Jurisdiction and Enforcement Act".

Source: L. 2000: Entire article R&RE, p. 1519, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-101 as it existed prior to 2000.

OFFICIAL COMMENT

Section 1 of the UCCJA was a statement of the purposes of the Act. Although extensively cited by courts, it was eliminated because Uniform Acts no longer contain such a section. Nonetheless, this Act should be interpreted according to its purposes which are to:

(1) Avoid jurisdictional competition and conflict with courts of other States in matters of child custody which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being;

(2) Promote cooperation with the courts of other States to the end that a custody decree is rendered in that State which can best decide the case in the interest of the child;

(3) Discourage the use of the interstate system for continuing controversies over child custody;

(4) Deter abductions of children;

(5) Avoid relitigation of custody decisions of other States in this State;

(6) Facilitate the enforcement of custody decrees of other States.

ANNOTATION

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 2000 repeal and reenactment.

Because federal Parental Kidnapping Prevention Act of 1980 governs decisions made under the Act, it applies to custody determinations made during child dependency and neglect proceedings. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

The UCCJA was enacted to extend the notion of full faith and credit to child custody decrees and its provisions seek to limit the exercise of jurisdiction over custody decrees to one state thereby eliminating forum shopping. In re Custody of K.R., 897 P.2d 896 (Colo. App. 1995).

Applied in In re Bechard, 40 Colo. App. 516, 577 P.2d 778 (1978); County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979).

14-13-102. Definitions.

As used in this article 13, unless the context otherwise requires:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained eighteen years of age.

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody or physical custody of a child or allocating parental responsibilities with respect to a child or providing for visitation, parenting time, or grandparent or great-grandparent family time with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child-custody proceeding" means a proceeding in which legal custody or physical custody with respect to a child or the allocation of parental responsibilities with respect to a child or visitation, parenting time, or grandparent or great-grandparent family time with respect to a child is an issue. The term includes a proceeding for divorce, dissolution of marriage, legal separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence and domestic abuse, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, except when such court is

entering an order to allocate parental responsibilities, contractual emancipation, or enforcement under part 3 of this article 13.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

(7) (a) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least one hundred eighty-two consecutive days immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7), "home state" does not mean a state in which a child lived with a parent or a person acting as a parent on a temporary basis as the result of an interim order entered pursuant to article 13.7 of this title.

(8) "Initial determination" means the first child-custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under this article.

(10) "Issuing state" means the state in which a child-custody determination is made.

(11) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) Has physical custody of the child or has had physical custody for a period of one hundred eighty-two consecutive days, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and

(b) Has been awarded legal custody or allocated parental responsibilities with respect to a child by a court or claims a right to legal custody or parental responsibilities under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

Source: L. 2000: Entire article R&RE, p. 1519, § 1, effective July 1. **L. 2008:** (7) amended, p. 333, § 2, effective August 5. **L. 2012:** (7)(a) and (13)(a) amended, (SB 12-175), ch. 208, p. 834, § 35, effective July 1. **L. 2013:** (7)(b) amended, (HB 13-1200), ch. 174, p. 635, § 3, effective July 1. **L. 2014:** (3) and (4) amended, (HB 14-1362), ch. 374, p. 1790, § 6, effective June 6. **L. 2017:** IP and (4) amended, (HB 17-1110), ch. 137, p. 459, § 3, effective August 9. **L. 2023:** (3) and (4) amended, (HB 23-1026), ch. 243, p. 1307, § 5, effective August 7.

Editor's note: This section is similar to former § 14-13-103 as it existed prior to 2000.

Cross references: For the short title ("Grandparents' Rights for Aaliyah and Myah Act") in HB 23-1026, see section 1 of chapter 243, Session Laws of Colorado 2023.

OFFICIAL COMMENT

The UCCJA did not contain a definition of "child." The definition here is taken from the PKPA.

The definition of "child-custody determination" now closely tracks the PKPA definition. It encompasses any judgment, decree or other order which provides for the custody of, or visitation with, a child, regardless of local terminology, including such labels as "managing conservatorship" or "parenting plan."

The definition of "child-custody proceeding" has been expanded from the comparable definition in the UCCJA. These listed proceedings have generally been determined to be the type of proceeding to which the UCCJA and PKPA are applicable. The list of examples removes any controversy about the types of proceedings where a custody determination can occur. Proceedings that affect access to the child are subject to this Act. The inclusion of proceedings related to protection from domestic violence is necessary because in some States domestic violence proceedings may affect custody of and visitation with a child. Juvenile delinquency or proceedings to confer contractual rights are not "custody proceedings" because they do not relate to civil aspects of access to a child. While a determination of paternity is covered under

the Uniform Interstate Family Support Act, the custody and visitation aspects of paternity cases are custody proceedings. Cases involving the Hague Convention on the Civil Aspects of International Child Abduction have not been included at this point because custody of the child is not determined in a proceeding under the International Child Abductions Remedies Act. Those proceedings are specially included in the part 3 enforcement process.

"Commencement" has been included in the definitions as a replacement for the term "pending" found in the UCCJA. Its inclusion simplifies some of the simultaneous proceedings provisions of this Act.

The definition of "home State" has been reworded slightly. No substantive change is intended from the UCCJA.

The term "issuing State" is borrowed from UIFSA. In UIFSA, it refers to the court that issued the support or parentage order. Here, it refers to the State, or the court, which made the custody determination that is sought to be enforced. It is used primarily in part 3.

The term "person" has been added to ensure that the provisions of this Act apply when the State is the moving party in a custody proceeding or has legal custody of a child. The definition of "person" is the one that is mandated for all Uniform Acts.

The term "person acting as a parent" has been slightly redefined. It has been broadened from the definition in the UCCJA to include a person who has acted as a parent for a significant period of time prior to the filing of the custody proceeding as well as a person who currently has physical custody of the child. In addition, a person acting as a parent must either have legal custody or claim a right to legal custody under the law of this State. The reference to the law of this State means that a court determines the issue of whether someone is a "person acting as a parent" under its own law. This reaffirms the traditional view that a court in a child custody case applies its own substantive law. The court does not have to undertake a choice-of-law analysis to determine whether the individual who is claiming to be a person acting as a parent has standing to seek custody of the child.

The definition of "tribe" is the one mandated for use in Uniform Acts. Should a State choose to apply this Act to tribal adjudications, this definition should be enacted as well as the entirety of Section 104. (Note: Section 104 of the Act deals with the application to Indian tribes. Colorado did not adopt this section of the Act.)

The term "contestant" as has been omitted from this revision. It was defined in the UCCJA § 2(1) as "a person, including a parent, who claims a right to custody or visitation rights with respect to a child." It seems to have served little purpose over the years, and whatever function it once had has been subsumed by state laws on who has standing to seek custody of or visitation with a child. In addition UCCJA § 2(5) of the which defined "decree" and "custody decree" has been eliminated as duplicative of the definition of "custody determination."

ANNOTATION

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75).

Annotator's note. Since § 14-13-102 is similar to § 14-13-103 as it existed prior to the 2000 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

"Custody determination" does not include decision relating to child support. County of Clearwater v. Petrash, 41 Colo. App. 143, 589 P.2d 1370 (1978), aff'd in part, rev'd on other grounds, 198 Colo. 231, 598 P.2d 138 (1979).

Modification of visitation rights is a "custody determination" under subsection (2), and so, pursuant to § 14-13-104(1)(b), where a child and his parents have been living in this state for over a year, a trial court of this state has the jurisdiction to modify a foreign child visitation order. In re Bechard, 40 Colo. App. 516, 577 P.2d 778 (1978).

A paternity determination, standing alone, does not fall within the definition of a child custody determination, although it is one type of child custody proceeding under the UCCJEA. People in Interest of G.C.M.M., 2020 COA 152, 477 P.3d 792.

UCCJEA does not provide a jurisdictional basis to make a child custody determination of an unborn child, given that the definition of "home state" is the state in which the child lived from birth. People in Interest of G.C.M.M., 2020 COA 152, 477 P.3d 792.

A temporary restraining order constitutes a "child-custody determination" within the meaning of the UCCJEA. People ex rel. M.C., 94 P.3d 1220 (Colo. App. 2004).

"Custody proceeding" interpreted. In re Barden, 678 P.2d 1031 (Colo. App. 1983); Barden v. Blau, 712, P.2d 481 (Colo. 1986).

Child-custody proceeding includes a proceeding to terminate parental rights. It does not include an adoption proceeding unless a proceeding to terminate parental rights is initiated in the context of the adoption. In re M.M.V., 2020 COA 94, 469 P.3d 556.

The definition of "home state" refers to the child's physical residence, not his legal residence or domicile. McCarron v. District Court ex rel. County of Jefferson, 671 P.2d 953 (Colo. 1983).

Trial court properly held that Colorado is child's home state since she maintained significant connections here. She has lived with her mother and attended school in Colorado for years, and both her guardian ad litem and therapist are here. In re Dickson, 983 P.2d 44 (Colo. App. 1998) (decided prior to 2000 repeal and reenactment).

Even though a petition is brought by the state and is not a private action brought by a parent or other party seeking custody, the act governs a custody determination made during a child neglect

and dependency proceeding. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

In dependency and neglect proceeding, court erred by failing to follow UCCJEA procedures for acquiring jurisdiction prior to allocation of parental responsibilities. Record reflected a prior foreign court custody order. The court should have contacted the foreign court or heard evidence on the parties' residency relating to jurisdiction under the act to modify the foreign order. People in Interest of M.S., 2017 COA 60, 413 P.3d 287.

The provisions of the UCCJA are implicated whenever the court makes a custody determination, which under this section means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. In re Custody of K.R., 897 P.2d 896 (Colo. App. 1995).

Applied in Zumbrun v. Zumbrun, 42 Colo. App. 37, 592 P.2d 16 (1978); Roberts v. District Court, 198 Colo. 231, 596 P.2d 65 (1979); In re Tricamo, 42 Colo. App. 493, 599 P.2d 273 (1979); Lopez v. District Court, 199 Colo. 207, 606 P.2d 853 (1980); In re Nicholson, 648 P.2d 681 (Colo. App. 1982); In re Tatum, 653 P.2d 74 (Colo. App. 1982); In re Tonnessen, 937 P.2d 863 (Colo. App. 1996).

14-13-103. Proceedings governed by other law.

This article does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Source: L. 2000: Entire article R&RE, p. 1521, § 1, effective July 1.

OFFICIAL COMMENT

Two proceedings are governed by other acts. Adoption cases are excluded from this Act because adoption is a specialized area which is thoroughly covered by the Uniform Adoption Act (UAA) (1994). Most States either will adopt that Act or will adopt the jurisdictional provisions of that Act. Therefore the jurisdictional provisions governing adoption proceeding are generally found elsewhere.

However, there are likely to be a number of instances where it will be necessary to apply this Act in an adoption proceeding. For example, if a State adopts the UAA then Section 3-101 of the Act specifically refers in places to the Uniform Child Custody Jurisdiction Act which will become a reference to this Act. Second, the UAA requires that if an adoption is denied or set aside, the court is to determine the child's custody. UAA § 3-704. Those custody proceedings would be subject to this Act.

See Joan Heifetz Hollinger, The Uniform Adoption Act: Reporter's Ruminations, 30 Fam.L.Q. 345 (1996).

Children that are the subject of interstate placements for adoption or foster care are governed by the Interstate Compact on the Placement of Children (ICPC). The UAA § 2-107 provides that the provisions of the compact, although not jurisdictional, supply the governing rules for all children who are subject to it. As stated in the Comments to that section: "Once a court exercises jurisdiction, the ICPC helps determine the legality of an interstate placement." For a discussion of the relationship between the UCCJA and the ICPC see *J.D.S. v. Franks*, 893 P.2d 732 (Ariz. 1995).

Proceedings pertaining to the authorization of emergency medical care for children are outside the scope of this Act since they are not custody determinations. All States have procedures which allow the State to temporarily supersede parental authority for purposes of emergency medical procedures. Those provisions will govern without regard to this Act.

ANNOTATION

Specific language of statute precludes UCCJEA application to failed adoption proceedings, however, exclusion of jurisdiction of adoption proceedings relied upon expectation that states would adopt the Uniform Adoption Act and enter a final custody order after a failed adoption based on the best interests of the child. People ex rel. A.J.C., 88 P.3d 599 (Colo. 2004).

In case involving failed adoption and resulting litigation with mother located in Missouri, a UCCJA state, and child and potential adoptive parents residing in Colorado, a UCCJEA state, it was proper for Colorado court to exercise jurisdiction over question of custody of the child after Missouri court dismissed petition for adoption and ordered child to be returned to the mother's custody for the following reasons: (1) Under provisions of the UCCJA, a court of a second state can exercise jurisdiction after an initial custody decree has been entered if the court of the first state declined to exercise jurisdiction; (2) Missouri court's failure to determine custody of child according to child's best interest was akin to declining to exercise jurisdiction over custody issues, and Colorado was therefore not obligated to give full faith and credit to Missouri court's order concerning custody of the child; (3) in both Missouri and Colorado, there are provisions that authorize the court, subsequent to a failed adoption, to provide for the care and custody of the child according to the child's best interests, including a custody request from a nonparent; (4) the UCCJEA's exclusion of adoption was based on the expectation that states enacting the UCCJEA would adopt the Uniform Adoption Act, and the Uniform Adoption Act contemplates that when an adoption fails after a child has been with the prospective parents for a period of time, the court must take into account the best interests of the child in making determinations about continuing placement;

and (5) Missouri does not retain jurisdiction over the case under the interstate compact on the placement of children (ICPC) since under the facts of the case, there was no proper request pursuant to the ICPC to return the child to Missouri. People ex rel. A.J.C., 88 P.3d 599 (Colo. 2004).

Despite plain language in this section concerning adoption proceedings, the UCCJEA governs an adoption proceeding if a proceeding to terminate parental rights has been initiated in the context of the adoption. In re M.M.V., 2020 COA 94, 469 P.3d 556.

Stepparent adoption proceeding required a reconciliation between this section and § 14-13-102 (4). In re M.M.V., 2020 COA 94, 469 P.3d 556.

14-13-104. International application of article.

(1) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying this part 1 and part 2 of this article.

(2) Except as otherwise provided in subsection (3) of this section, a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this article must be recognized and enforced under part 3 of this article.

(3) A court of this state need not apply this article if the child-custody law of a foreign country violates fundamental principles of human rights.

Source: L. 2000: Entire article R&RE, p. 1521, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-124 as it existed prior to 2000.

OFFICIAL COMMENT

The provisions of this Act have international application to child custody proceedings and determinations of other countries. Another country will be treated as if it were a State of the United States for purposes of applying parts 1 and 2 of this Act. Custody determinations of other countries will be enforced if the facts of the case indicate that jurisdiction was in substantial compliance with the requirements of this Act.

In this section, the term "child-custody determination" should be interpreted to include proceedings relating to custody or analogous institutions of the other country. See generally, Article 3 of The Hague Convention on Jurisdiction, Applicable Law,

Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. 35 I.L.M. 1391 (1996).

A court of this State may refuse to apply this Act when the child custody law of the other country violates basic principles relating to the protection of human rights and fundamental freedoms. The same concept is found in of the Section 20 of the Hague Convention on the Civil Aspects of International Child Abduction (return of the child may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms). In applying subsection (3), the court's scrutiny should be on the child custody law of the foreign country and not on other aspects of the other legal system. This Act takes no position on what laws relating to child custody would violate fundamental freedoms. While the provision is a traditional one in international agreements, it is invoked only in the most egregious cases.

This section is derived from Section 23 of the UCCJA.

ANNOTATION

Law reviews. For article, "The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act", see 11 Colo. Law. 1224 (1982). For article, "Interstate Custody Problems Revisited", see 11 Colo. Law. 2596 (1982).

Annotator's note. Since § 14-13-104 is similar to § 14-13-124 as it existed prior to the 2000 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

The general policies of the UCCJA apply to recognition and enforcement of custody decrees from other countries. In re Jeffers and Makropoulos, 992 P.2d 686 (Colo. App. 1999).

Applied in Woodhouse v. District Court, 196 Colo. 558, 587 P.2d 1199 (1978); In re T.L.B., 2012 COA 8, 272 P.3d 1148; People in Interest of A.B-A., 2019 COA 125, 451 P.3d 1278.

14-13-105. Effect of child-custody determination.

A child-custody determination made by a court of this state that had jurisdiction under this article binds all persons who have been served in accordance with the laws of this state or notified in accordance with section 14-13-108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

Source: L. 2000: Entire article R&RE, p. 1521, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-113 as it existed prior to 2000.

OFFICIAL COMMENT

No substantive changes have been made to this section which was Section 12 of the UCCJA.

14-13-106. Priority.

If a question of existence or exercise of jurisdiction under this article is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

Source: L. 2000: Entire article R&RE, p. 1521, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-125 as it existed prior to 2000.

OFFICIAL COMMENT

No substantive change was made to this section which was Section 24 of the UCCJA. The section is placed toward the beginning of part 1 to emphasize its importance.

The language change from "case" to "question" is intended to clarify that it is the jurisdictional issue which must be expedited and not the entire custody case. Whether the entire custody case should be given priority is a matter of local law.

14-13-107. (Reserved)

14-13-108. Notice to persons outside state.

(1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(2) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(3) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Source: L. 2000: Entire article R&RE, p. 1522, § 1, effective July 1.

Editor's note: This section is similar to former §§ 14-13-105 and 14-13-106 as they existed prior to 2000.

Cross references: For manner of giving notice through service by mail or publication, see C.R.C.P. 4(g); for manner of giving notice through personal service outside state, see C.R.C.P. 4(e).

OFFICIAL COMMENT

This section authorizes notice and proof of service to be made by any method allowed by either the State which issues the notice or the State where the notice is received. This eliminates the need to specify the type of notice in the Act and therefore the provisions of Section 5 of the UCCJA which specified how notice was to be accomplished were eliminated. The change reflects an approach in this Act to use local law to determine many procedural issues. Thus, service by facsimile is permissible if allowed by local rule in either State. In addition, where special service or notice rules are available for some procedures, in either jurisdiction, they could be utilized under this Act. For example, if a case involves domestic violence and the statute of either State would authorize notice to be served by a peace officer, such service could be used under this Act.

Although section 14-13-104 requires foreign countries to be treated as States for purposes of this Act, attorneys should be cautioned about service and notice in foreign countries. Countries have their own rules on service which must usually be followed. Attorneys should consult the Hague

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 20 U.S.T. 36, T.I.A.S. 6638 (1965).

ANNOTATION

Law reviews. For article, "The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act", see 11 Colo. Law. 1224 (1982). For article, "Interstate Custody Problems Revisited", see 11 Colo. Law. 2596 (1982).

Annotator's note. Since § 14-13-108 is similar to §§ 14-13-105 and 14-13-106 as they existed prior to the 2000 repeal and reenactment of this article, relevant cases construing those provisions have been included in the annotations to this section.

Notice by publication controlled by C.R.C.P. 4(h). Since subsection (1)(d) does not specify the number of times that publication is required to effect notice under the act, C.R.C.P. 4(h) controls. In re Blair, 42 Colo. App. 270, 592 P.2d 1354 (1979) (decided under former § 14-13-106).

In the best interests of the child, the hearing in a custody action should be swiftly concluded. Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974).

The custody hearing may be properly made part of a habeas corpus proceeding, which is considered to be a suit in equity. Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974).

Determination that court lacks jurisdiction not "decree". A determination by a court that it lacks jurisdiction to entertain a petition for custody is not a decree such as is contemplated by this section. Clark v. Kendrick, 670 P.2d 32 (Colo. App. 1983).

14-13-109. Appearance and limited immunity.

(1) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(2) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(3) The immunity granted by subsection (1) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this article committed by an individual while present in this state.

Source: L. 2000: Entire article R&RE, p. 1522, § 1, effective July 1.

OFFICIAL COMMENT

This section establishes a general principle that participation in a custody proceeding does not, by itself, give the court jurisdiction over any issue for which personal jurisdiction over the individual is required. The term "participate" should be read broadly. For example, if jurisdiction is proper under part 2, a respondent in an original custody determination, or a party in a modification determination, should be able to request custody without this constituting the seeking of affirmative relief that would waive personal jurisdictional objections. Once jurisdiction is proper under part 2, a party should not be placed in the dilemma of choosing between seeking custody or protecting a right not to be subject to a monetary judgment by a court with no other relationship to the party.

This section is comparable to the immunity provision of UIFSA § 314. A party who is otherwise not subject to personal jurisdiction can appear in a custody proceeding or an enforcement action without being subject to the general jurisdiction of the State by virtue of the appearance. However, if the petitioner would otherwise be subject to the jurisdiction of the State, appearing in a custody proceeding or filing an enforcement proceeding will not provide immunity. Thus, if the non-custodial parent moves from the State that decided the custody determination, that parent is still subject to the state's jurisdiction for enforcement of child support if the child or an individual obligee continues to reside there. See UIFSA § 205. If the non-custodial parent returns to enforce the visitation aspects of the custody determination, the State can utilize any appropriate means to collect the back-due child support. However, the situation is different if both parties move from State A after the determination, with the custodial parent and the child establishing a new home State in State B, and the non-custodial parent moving to State C. The non-custodial parent is not, at this point, subject to the jurisdiction of State B for monetary matters. See *Kulko v. Superior Court*, 436 U.S. 84 (1978). If the non-custodial parent comes into State B to enforce the visitation aspects of the determination, the non-custodial parent is not subject to the jurisdiction of State B for those proceedings and issues requiring personal jurisdiction by filing the enforcement action.

A party also is immune from service of process during the time in the State for an enforcement action except for those claims

for which jurisdiction could be based on contacts other than mere physical presence. Thus, when the non-custodial parent comes into State B to enforce the visitation aspects of the decree, State B cannot acquire jurisdiction over the child support aspects of the decree by serving the non-custodial parent in the State. Cf. UIFSA § 611 (personally serving the obligor in the State of the residence of the obligee is not by itself a sufficient jurisdictional basis to authorize a modification of child support). However, a party who is in this State and subject to the jurisdiction of another State may be served with process to appear in that State, if allowable under the laws of that State.

As the Comments to UIFSA § 314 note, the immunity provided by this section is limited. It does not provide immunity for civil litigation unrelated to the enforcement action. For example, a party to an enforcement action is not immune from service regarding a claim that involves an automobile accident occurring while the party is in the State.

14-13-110. Communication between courts.

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under this article.

(2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(4) Except as otherwise provided in subsection (3) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Source: L. 2000: Entire article R&RE, p. 1522, § 1, effective July 1.

OFFICIAL COMMENT

This section emphasizes the role of judicial communications. It authorizes a court to communicate concerning any proceeding arising under this Act. This includes communication with foreign tribunals and tribal courts. Communication can occur in many different ways such as by telephonic conference and by on-line or other electronic communication. The Act does not preclude any method of communication and recognizes that there will be increasing use of modern communication techniques.

Communication between courts is required under Sections 14-13-204, 14-13-206, and 14-13-306 and strongly suggested in applying Section 14-13-207. Apart from those sections, there may be less need under this Act for courts to communicate concerning jurisdiction due to the prioritization of home state jurisdiction. Communication is authorized, however, whenever the court finds it would be helpful. The court may authorize the parties to participate in the communication. However, the Act does not mandate participation. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls often have to be made after-hours or whenever the schedules of judges allow.

This section does require that a record be made of the conversation and that the parties have access to that record in order to be informed of the content of the conversation. The only exception to this requirement is when the communication involves relatively inconsequential matters such as scheduling, calendars, and court records. Included within this latter type of communication would be matters of cooperation between courts under Section 14-13-112. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.

The second sentence of subsection (2) protects the parties against unauthorized ex parte communications. The parties' participation in the communication may amount to a hearing if there is an opportunity to present facts and jurisdictional arguments. However, absent such an opportunity, the participation of the parties should not to be considered a substitute for a hearing and the parties must be given an opportunity to fairly and fully present facts and arguments on the jurisdictional issue before a determination is made. This may be done through a hearing or, if appropriate, by affidavit or memorandum. The court is expected to set forth the basis for its jurisdictional decision, including any court-to-court communication which may have been a factor in the decision.

ANNOTATION

Because this section does not specify which court must make a record, the statute is satisfied if either the Colorado or the non-Colorado court makes a record. People ex rel. D.P., 181 P.3d 403 (Colo. App. 2008).

Trial court erred when judge allowed law clerk to conduct telephone conference with non-Colorado court. However, such error was harmless and does not warrant reversal. People ex rel. D.P., 181 P.3d 403 (Colo. App. 2008).

Prior to assuming jurisdiction to modify an out-of-state custody order, the court must communicate with the state that initially issued the custody order and conduct a hearing at which both sides are allowed to present evidence concerning any disputed residency issue. The burden of proof is on the parent who petitioned the court to assume jurisdiction. In re Brandt, 2012 CO 3, 268 P.3d 406.

14-13-111. Taking testimony in another state.

(1) In addition to other procedures available to a party, a party to a child-custody proceeding or other legal representative of the child may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Source: L. 2000: Entire article R&RE, p. 1523, § 1, effective July 1. **L. 2005:** (1) amended, p. 962, § 7, effective July 1.

Editor's note: This section is similar to former § 14-13-119 as it existed prior to 2000.

Cross references: (1) For manner of giving notice through service by mail or publication, see C.R.C.P. 4(g); for manner of giving notice through personal service outside state, see C.R.C.P. 4(e).

(2) For the legislative declarations contained in the 2005 act amending subsection (1), see sections 1 and 3 of chapter 244, Session Laws of Colorado 2005.

OFFICIAL COMMENT

No substantive changes have been made to subsection (1) which was Section 18 of the UCCJA.

Subsections (2) and (3) merely provide that modern modes of communication are permissible in the taking of testimony and the transmittal of documents. See UIFSA § 316.

ANNOTATION

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75).

14-13-112. Cooperation between courts - preservation of records.

(1) A court of this state may request the appropriate court of another state to:

(a) Hold an evidentiary hearing;

(b) Order a person to produce or give evidence pursuant to procedures of that state;

(c) Order that an evaluation be made with respect to the custody or allocation of parental responsibilities with respect to a child involved in a pending proceeding;

(d) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(e) Order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (1) of this section.

(3) Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) of this section may be assessed against the parties according to the law of this state.

(4) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

Source: L. 2000: Entire article R&RE, p. 1523, § 1, effective July 1.

OFFICIAL COMMENT

This section is the heart of judicial cooperation provision of this Act. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other States and may assist courts of other States.

The provision on the assessment of costs for travel provided in the UCCJA § 19 has been changed. The UCCJA provided that the costs may be assessed against the parties or the State or county. Assessment of costs against a government entity in a case where the government is not involved is inappropriate and therefore that provision has been removed. In addition, if the State is involved as a party, assessment of costs and expenses against the State must be authorized by other law. It should be noted that the term "expenses" means out-of-pocket costs. Overhead costs should not be assessed as expenses.

No other substantive changes have been made. The term "social study" as used in the UCCJA was replaced with the modern term: "custody evaluation." The Act does not take a position on the admissibility of a custody evaluation that was conducted in another State. It merely authorizes a court to seek assistance of, or render assistance to, a court of another State.

This section combines the text of Sections 19-22 of the UCCJA.

PART 2

JURISDICTION

14-13-201. Initial child-custody jurisdiction.

(1) Except as otherwise provided in section 14-13-204, a court of this state has jurisdiction to make an initial child-custody determination only if:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within one hundred eighty-two days before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) A court of another state does not have jurisdiction under a provision of law adopted by that state that is in substantial conformity with paragraph (a) of this subsection (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under a provision of law adopted by that state that is in substantial conformity with section 14-13-207 or 14-13-208, and:

(I) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(II) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) All courts having jurisdiction under a provision of law adopted by that state that is in substantial conformity with paragraph (a) or (b) of this subsection (1) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under a provision of law adopted by that state that is in substantial conformity with section 14-13-207 or 14-13-208; or

(d) No court of any other state would have jurisdiction under the criteria specified in a provision of law adopted by that state that is in substantial conformity with paragraph (a), (b), or (c) of this subsection (1).

(2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

Source: L. 2000: Entire article R&RE, p. 1524, § 1, effective July 1. **L. 2012:** (1)(a) amended, (SB 12-175), ch. 208, p. 834, § 36, effective July 1.

Editor's note: This section is similar to former § 14-13-104 as it existed prior to 2000.

OFFICIAL COMMENT

This section provides mandatory jurisdictional rules for the original child custody proceeding. It generally continues the provisions of the UCCJA § 3. However, there have been a number of changes to the jurisdictional bases.

1. Home State Jurisdiction. The jurisdiction of the home State has been prioritized over other jurisdictional bases. Section 3 of the UCCJA provided four independent and concurrent bases of jurisdiction. The PKPA provides that full faith and credit can only be given to an initial custody determination of a "significant connection" State when there is no home State. This Act prioritizes home state jurisdiction in the same manner as the PKPA thereby eliminating any potential conflict between the two acts.

The six-month extended home state provision of subsection (1)(a) has been modified slightly from the UCCJA. The UCCJA provided that home state jurisdiction continued for six months when the child had been removed by a person seeking the child's custody or for other reasons and a parent or a person acting as a parent continues to reside in the home State. Under this Act, it is no longer necessary to determine why the child has been removed. The only inquiry relates to the status of the person left behind. This change provides a slightly more refined home state standard than the UCCJA or the PKPA, which also requires a determination that the child has been removed "by a contestant or for other reasons." The scope of the PKPA's provision is theoretically narrower than this Act. However, the phrase "or for other reasons" covers most fact situations where the child is not in the home State and, therefore, the difference has no substantive effect.

In another sense, the six-month extended home state jurisdiction provision is this Act is narrower than the comparable provision in the PKPA. The PKPA's definition of extended home State is more expansive because it applies whenever a "contestant" remains in the home State. That class of individuals has been eliminated in this Act. This Act retains the original UCCJA classification of "parent or person acting as parent" to define who must remain for a State to exercise the six-month extended home state jurisdiction. This eliminates the undesirable jurisdictional determinations which would occur as a result of differing state substantive laws on visitation involving grandparents and others. For example, if State A's law provided that grandparents could obtain visitation with a child after the death of one of the parents, then the grandparents, who would be considered "contestants" under the PKPA, could file a proceeding within six months after the remaining parent moved and have the case heard in State A. However, if State A did not provide that grandparents could seek visitation under such circumstances, the grandparents would not be considered "contestants" and State B where the child acquired a new home State would provide the only forum. This Act bases jurisdiction on the parent and child or person acting as a parent and child relationship without regard to grandparents or other potential seekers of custody or visitation. There is no conflict with the broader provision of the PKPA. The

PKPA in § (c)(1) authorizes States to narrow the scope of their jurisdiction.

2. Significant connection jurisdiction. This jurisdictional basis has been amended in four particulars from the UCCJA. First, the "best interest" language of the UCCJA has been eliminated. This phrase tended to create confusion between the jurisdictional issue and the substantive custody determination. Since the language was not necessary for the jurisdictional issue, it has been removed.

Second, the UCCJA based jurisdiction on the presence of a significant connection between the child and the child's parents or the child and at least one contestant. This Act requires that the significant connections be between the child, the child's parents or the child and a person acting as a parent.

Third, a significant connection State may assume jurisdiction only when there is no home State or when the home State decides that the significant connection State would be a more appropriate forum under Section 14-13-207 or 14-13-208. Fourth, the determination of significant connections has been changed to eliminate the language of "present or future care." The jurisdictional determination should be made by determining whether there is sufficient evidence in the State for the court to make an informed custody determination. That evidence might relate to the past as well as to the "present or future."

Emergency jurisdiction has been moved to a separate section. This is to make it clear that the power to protect a child in crisis does not include the power to enter a permanent order for that child except as provided by that section.

Paragraph (1)(c) provides for jurisdiction when all States with jurisdiction under paragraphs (1)(a) and (b) determine that this State is a more appropriate forum. The determination would have to be made by all States with jurisdiction under subsection (1)(a) and (b). Jurisdiction would not exist under this paragraph because the home State determined it is a more appropriate place to hear the case if there is another State that could exercise significant connection jurisdiction under subsection (1)(b).

Paragraph (1)(d) retains the concept of jurisdiction by necessity as found in the UCCJA and in the PKPA. This default jurisdiction only occurs if no other State would have jurisdiction under subsections (1)(a) through (1)(c).

Subsections (2) and (3) clearly State the relationship between jurisdiction under this Act and other forms of jurisdiction. Personal jurisdiction over, or the physical presence of, a parent or the child is neither necessary nor required under this Act. In other words neither minimum contacts nor service within the State is required for the court to have jurisdiction to make a custody determination. Further, the presence of minimum contacts or service within the State does not confer jurisdiction to make a custody determination. Subject to Section 14-13-204, satisfaction of the requirements of subsection (1) is mandatory.

The requirements of this section, plus the notice and hearing provisions of the Act, are all that is necessary to satisfy due process.

This Act, like the UCCJA and the PKPA is based on Justice Frankfurter's concurrence in *May v. Anderson*, 345 U.S. 528 (1953). As pointed out by Professor Bodenheimer, the reporter for the UCCJA, no "workable interstate custody law could be built around [Justice] Burton's plurality opinion ... ." Bridgette Bodenheimer, The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws, 22 Vand.L.Rev. 1207,1233 (1969). It should also be noted that since jurisdiction to make a child custody determination is subject matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that would not otherwise have jurisdiction under this Act is ineffective.

ANNOTATION

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75). For article, "The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act", see 11 Colo. Law. 1224 (1982). For article, "Interstate Custody Problems Revisited", see 11 Colo. Law. 2596 (1982). For article, "Waking the Dormant PKPA in Colorado", see 21 Colo. Law. 2209 (1992). For article, "Nuts and Bolts of the PKPA", see 22 Colo. Law. 2397 (1993).

Annotator's note. Cases relevant to § 14-13-104 decided prior to its earliest source, L. 73, p. 557, § 1, have been included in the annotations to this section. Since § 14-13-201 is similar to § 14-13-104 as it existed prior to the 2000 repeal and reenactment of this article, relevant cases construing that provision also have been included in the annotations to this section.

Section must be read in conjunction with other provisions of act. In order to effectuate the general purposes of this act and to deter jurisdictional fishing with children as bait, this section must be read in conjunction with other provisions of the act. Brock v. District Court, 620 P.2d 11 (Colo. 1980).

Primary purposes of act are to avoid jurisdictional conflicts with other states over child custody issues, to discourage parents from "jurisdictional fishing," and to ensure that the state making the custody decision is the state with the closest connection to the child and the child's family. Nistico v. District Ct., 791 P.2d 1128 (Colo. 1990); L.G. v. People in Interest of K.G., 890 P.2d 647 (Colo. 1995); G.B. v. Arapahoe County Ct., 890 P.2d 1153 (Colo. 1995).

The uniform act was enacted to extend full faith and credit to child custody decrees, and therefore discourage the noncustodial parent from kidnapping and forum shopping. L.G. v. People, 890 P.2d 647 (Colo. 1995).

Court not required to exercise jurisdiction. A court which has jurisdiction over a custody issue is not required to exercise its jurisdiction. In re Nicholson, 648 P.2d 681 (Colo. App. 1982).

The question of whether jurisdiction exists is distinct from the question of whether it should be exercised. Even if a determination that jurisdiction exists is made, the court may decline to exercise jurisdiction, or it may stay the proceedings upon the condition that custody proceedings be initiated in another state. Johnson v. District Court, 654 P.2d 827 (Colo. 1982); Barden v. Blau, 712 P.2d 481 (Colo. 1986).

Section neither grants courts of state right, nor imposes upon them duty, to modify out-of-state custody decrees under any and all circumstances merely because of a claimed emergency and a threshold showing that some form of judicial intervention might be appropriate. Brock v. District Court, 620 P.2d 11 (Colo. 1980).

State courts authorized to exercise jurisdiction over custody matters in emergency situations when the child is physically present in the state and is threatened with mistreatment, abuse, or is otherwise neglected or dependent even if its orders contravene those of a sister state that still retains jurisdiction over custody. Brock v. District Court, 620 P.2d 11 (Colo. 1980).

Finding of either "significant connection" or "emergency" sufficient for jurisdiction. The "significant connection" and "substantial evidence" ground for jurisdiction of subsection (1)(b) is different from the "emergency" ground of subsection (1)(c), and a finding of either is sufficient to bestow jurisdiction. Johnson v. District Court, 654 P.2d 827 (Colo. 1982).

Temporary emergency jurisdiction did not provide court with jurisdiction to enter permanent order terminating parental rights without the court first obtaining home state jurisdiction pursuant to this section. The record does not disclose a basis on which the court could infer home state jurisdiction. Both "significant connection" and "more appropriate forum" jurisdiction requires the home state to affirmatively decline jurisdiction before another state can invoke it. Declining jurisdiction under the UCCJEA means more than just the absence of litigation in the home state. The home state must have had an opportunity to weigh in and been made aware of a possible reason to do so. People in Interest of S.A.G., 2020 COA 45, 487 P.3d 1223, aff'd in part, rev'd in part, 2021 CO 38, 487 P.3d 677.

Jurisdiction conferred on court where matter first raised. Where two states could exercise jurisdiction, this article establishes the rule that exclusive jurisdiction is conferred on the court in which the matter is first raised. In re Edilson, 637 P.2d 362 (Colo. 1981); People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

A juvenile court's ability to enter a termination order pursuant to significant connection, more appropriate forum, and last resort jurisdiction turns on whether the child's home state when the case began still presently has home state jurisdiction. People in Interest of S.A.G., 2021 CO 38, 487 P.3d 677.

Court entering dissolution decree always has jurisdiction. A court which enters a dissolution decree, where custody is one of the issues in that proceeding, will always have jurisdiction as to the custody

issue, even where the parties and the child have left the state. In re Nicholson, 648 P.2d 681 (Colo. App. 1982), overruled in Barden v. Blau, 712 P.2d 481 (Colo. 1986).

Holding that court always has jurisdiction is overly broad and overlooks the intent and purposes of the uniform act that under certain circumstances the state of original jurisdiction can and should lose jurisdiction. In re Dunn, 701 P.2d 158 (Colo. App. 1985).

In deciding whether to entertain a child custody proceeding, the court shall conduct a two-pronged inquiry. It must first be determined whether jurisdiction exists in this state and if so, then whether jurisdiction should be exercised. Barden v. Blau, 712 P.2d 481 (Colo. 1986); In re Nielsen, 782 P.2d 868 (Colo. 1989).

Instances giving rise to subject matter jurisdiction. The uniform act attempts to limit custody determination jurisdiction to only one state. Thus, this section confines subject matter jurisdiction to: (a) The home state of at least one parent, and of the child for the last six months; or (b) the state where there are other strong contacts with the child and his family and it is in the child's best interest; or (c) the state where the child is present if the child has been abandoned, or if there is an emergency case of child neglect; or (d) the state of the forum if it is in the child's best interest and no other state could or would assume jurisdiction. In re Glass, 36 Colo. App. 91, 537 P.2d 1092 (1975).

Court had jurisdiction to modify an existing Oklahoma custody decree based on the home state provision of subsection (1)(a) where the child resided in Colorado for thirteen months before the alleged incident of sexual molestation by the child's father. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Two-step analysis. Where Colorado has jurisdiction as a matter of law, the court must then determine whether its jurisdiction is exclusive or nonexclusive, and, if nonexclusive, the court must determine whether or not it should defer to another state's jurisdiction. Lynch v. Lynch, 770 P.2d 1383 (Colo. App. 1989); People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993); L.G. v. People, 890 P.2d 647 (Colo. 1995).

Intent to remain in the state is not grounds for exercise of initial child-custody jurisdiction. Court erred in failing to conduct jurisdictional analysis required pursuant to the Uniform Child-custody Jurisdiction and Enforcement Act (UCCJEA) for initial child-custody jurisdiction. While court apparently concluded that this state was not the child's home state, the court did not determine whether another state was the child's home state. If no state qualifies as the child's home state, the court must look to the language of the statute to determine appropriate jurisdiction. Except in the event of an emergency, the UCCJEA delineates the exclusive jurisdictional bases for making a child-custody determination by a court of this state. Madrone v. Madrone, 2012 CO 70, 290 P.3d 478.

Serving best interests of children where parents are located in separate jurisdictions. The best interests of children who are subjects of contested custody where the parents are located in separate

jurisdictions are served when the forum determining custody has a significant connection and optimum access to relevant evidence about them. Wheeler v. District Court, 186 Colo. 218, 526 P.2d 658 (1974).

Jurisdictional considerations under subsection (1)(b) are governed by the best interest of the child and by the child's connections to the prospective forum state rather than the best interests of the feuding parties or the parties' connections to a prospective forum state. Nistico v. District Court, 791 P.2d 1128 (Colo. 1990).

The trial court had jurisdiction even though the mother had abducted the child, because this article provides that unclean hands do not deprive the trial court of jurisdiction. Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974).

Improper retention of the child should affect only the court's decision to exercise its jurisdiction. Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974).

Exercise of parens patriae jurisdiction under subsection (1)(c) is reserved for extraordinary circumstances. In re Glass, 36 Colo. App. 91, 537 P.2d 1092 (1975); Barden v. Blau, 712 P.2d 481 (Colo. 1986).

Jurisdiction when domicile changes. Under subsection (1)(a), where mother and child have moved to another state after a dissolution of marriage proceeding in a court of this state, jurisdiction over issues of child custody is with the state that is the home state of the child at the commencement of the custody proceeding then pending before the court. Barden v. Blau, 712 P.2d 481 (Colo. 1986).

Where the child lived in Michigan during the six-month period preceding the filing of the father's motion of schedule visitation, Colorado does not have home state jurisdiction under subsection (1)(a). Barden v. Blau, 712 P.2d 481 (Colo. 1986).

Loss of jurisdiction of original state. While the intent of the uniform act is that the original state shall have continuing jurisdiction under § 14-13-115, such jurisdiction can be lost by the erosion of a child's and parents' significant connections with the state. McCarron v. District Court ex rel. County of Jefferson, 671 P.2d 953 (Colo. 1983); Barden v. Blau, 712 P.2d 481 (Colo. 1986).

No authority to modify unless other court without jurisdiction. A Colorado court is not authorized to modify an existing custody decree from another state even in an emergency unless the court which rendered that decree no longer has, or has declined to assume, jurisdiction of the matter. In re Thomas, 36 Colo. App. 96, 537 P.2d 1095 (1975).

Modification authorized where Colorado is home state. When Colorado is the home state of the children, Colorado has the jurisdiction to modify a sister state's decree in the best interests of the children. Kudler v. Smith, 643 P.2d 783 (Colo. App. 1981).

State court had jurisdiction. Where all of the individuals who had an interest in the child's future care, well-being, and custody were either domiciled in Colorado or sought to enforce their legal rights by way of habeas corpus or permanent custody

petitions in the courts of Colorado, and sufficient evidence was available in Colorado from which the trial court could have concluded that the Colorado court could best resolve the issues relating to the child's future care and training, the trial court had jurisdiction to decide the issues raised in a petition for permanent custody although the child's domicile was not in Colorado. Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974).

Trial court properly held that Colorado is child's home state since she maintained significant connections here. Child has lived with her mother and attended school in Colorado for years, and both her guardian ad litem and therapist are here. Furthermore, the California courts in two districts both declined to exercise jurisdiction, which satisfies one of the alternative requirements of former § 14-13-04 (1)(d). In re Dickson, 983 P.2d 44 (Colo. App. 1998) (decided prior to 2000 repeal and reenactment).

Colorado court had jurisdiction in proceeding brought by children's mother to enforce a custody decree rendered in a sister state, which had originally given custody of the children to the father and had allowed the father to move the children to Colorado, where the children and the father were domiciled in Colorado and the children attended Colorado schools. Wheeler v. District Court, 186 Colo. 218, 526 P.2d 658 (1974).

Allegations by parents against each other do not justify jurisdiction. Although the allegations of both the father and the mother may indicate that the best interests of the child mandate judicial review of the fitness of each parent to have custody of the child, that does not necessarily justify the exercise of jurisdiction by the courts of this state. Roberts v. District Court, 198 Colo. 79, 596 P.2d 65 (1979).

Jurisdiction to modify foreign visitation order. A modification of visitation rights is a "custody determination" under § 14-13-103(2), and so, pursuant to this section, where a child and his parents have been living in this state for over a year, a trial court of this state has the jurisdiction to modify a foreign child visitation order. In re Bechard, 40 Colo. App. 516, 577 P.2d 778 (1978).

Foreign state without jurisdiction. Foreign state court which originally granted temporary custody to the petitioner, a paternal aunt, has lost jurisdiction since the residence of the parties in the foreign state was premised solely on a military assignment, and both the father and the mother have returned to the site of their domicile — Denver, Colorado — and the child's natural father, mother, and grandparents are all residents of Colorado and have significant connections to Colorado. Nelson v. Schweitzer, 189 Colo. 511, 542 P.2d 382 (1975).

Court lacked basis to grant noncustodial parent temporary custody of wrongfully retained minor child. Where no compelling reason exists for the exercise of parens patriae jurisdiction, and the child has been retained in this state by the noncustodial parent after the term of visitation has expired, the court has no basis in fact or law to grant the noncustodial parent temporary custody of the minor child.

Brock v. District Court, 620 P.2d 11 (Colo. 1980).

Colorado without jurisdiction. Where, on the date father filed his complaint in Colorado, all significant connections of child and mother were with Kansas and child's contacts with Colorado were minimal, Kansas had jurisdiction to make a custody determination. Hence, pursuant to § 14-13-115 (1), the Colorado court could not modify the existing Kansas custody decree. In re Thomas, 36 Colo. App. 96, 537 P.2d 1095 (1975).

To interpret § 14-13-115 as a prohibition against a Colorado court's exercise of jurisdiction to enter temporary and protective custody orders in order to protect children endangered by their surroundings would, in effect, vitiate the very purpose of the parens patriae jurisdiction granted by this section. E.P. v. District Court, 696 P.2d 254 (Colo. 1985).

Where on the date the Colorado petition for permanent custody of a child was filed by the father, a Colorado resident, in Colorado, and the uniform act was operable in California, and on that date, the mother was still a domiciliary of California, the child's home state under the uniform act was and is California, and, for all but the last three months before the petition was filed, the child lived with his mother and grandparents in California and had only minimal contacts with Colorado, therefore, California had jurisdiction to make a custody determination under the uniform act. Hence, by virtue of § 14-13-115(1), the Colorado court could not modify the existing California custody decree. In re Glass, 36 Colo. App. 91, 537 P.2d 1092 (1975).

A parent's self-serving statements that his child appeared unwell are not enough to confer jurisdiction, under subdivision (1)(c), on a district court in this state while a foreign court has continuing jurisdiction over the child. Woodhouse v. District Court, 196 Colo. 558, 587 P.2d 1199 (1978).

Court rejects mother's assertion that, because a Colorado court denied the immediate return of the children to Canada under the Hague Convention's "grave risk" exception, final custody determinations must be made in Colorado, and not in Canada, which was undisputedly the children's habitual residence. Under the Hague Convention, the country to which a child has been removed has jurisdiction to decide the merits of the return claim, but not necessarily the merits of the underlying custody dispute. Applying the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Canada was the appropriate jurisdiction to enter the final custody determination for the children. In re T.L.B., 2012 COA 8, 272 P.3d 1148.

In a continuing custody dispute where none of the parties still live in Colorado, the fact that any proceedings related to custody inherently arise from an initial custody order, which was made by Colorado courts, does not necessarily give Colorado continuing jurisdictional authority. In re Pritchett, 80 P.3d 918 (Colo. App. 2003).

Under the uniform act, the Colorado court was without jurisdiction to resolve a second contempt proceeding once it had relinquished jurisdiction over all matters except the first contempt proceeding, and the North Dakota court was properly exercising jurisdiction. In re Pritchett, 80 P.3d 918 (Colo. App. 2003).

"The time of commencement of the proceeding" means the pending motion affecting custody or visitation rather than the initial dissolution action which resulted in the rendition of the custody decree. Barden v. Blau, 712 P.2d 481 (Colo. 1986).

Declining jurisdiction over controversy held not error. Garcia v. Martinez, 642 P.2d 53 (Colo. App. 1982).

Where both states had jurisdiction over child and trial court found that South Carolina was "home state" of child, trial court did not err in declining to exercise continuing jurisdiction. People in Interest of S.B., 742 P.2d 935 (Colo. App. 1987).

Under the doctrine of parens patriae, where an emergency existed concerning the immediate needs and welfare of a child within this state, our courts could have in such circumstances, entered custodial orders for the protection of such child, notwithstanding the child's domicile elsewhere and the existence of otherwise valid orders to the contrary theretofore entered in a sister state having jurisdiction of the parties, and such power could have been exercised not only in ordinary custody proceedings, but also in habeas corpus proceedings. Wilson v. Wilson, 172 Colo. 566, 474 P.2d 789 (1970).

Where the father alleged the existence of an emergency situation which he claimed required the Colorado court to intervene and modify the Kansas divorce decree, under such circumstances, the Colorado court, under its general parens patriae jurisdiction over a child physically present in the state, could properly make a temporary order to protect the child. In re Thomas, 36 Colo. App. 96, 537 P.2d 1095 (1975).

The forum of the domicile where the parties were known, where the matrimonial difficulties occurred, and where the evidence was available, was most likely to make just decisions of such issues, and it promoted neither justice nor respect for the courts to permit a spouse in prospect of an unfavorable decision to find sanctuary in another jurisdiction where adverse evidence was not available and the other spouse may not be able to appear. Evans v. Evans, 136 Colo. 6, 314 P.2d 291 (1957); Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

The courts of this state had jurisdiction, in a proper case, to hear all relevant testimony offered by either party in regard to the custody of a minor child domiciled in this state, and enter such judgment as would have been for the best interests of the minor, even though the judgment be different from that entered by a sister state, where it was shown to the courts of this state that the condition of the parties had so changed since the entry of the judgment by the sister state that the welfare of the minor required that the courts of this state hear and determine the question presented. Evans v. Evans, 136 Colo. 6, 314

P.2d 291 (1957); Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961).

State exercising jurisdiction under the uniform act should be state with closest connection to the child and the child's family and with access to the maximum amount of evidence concerning the child's residence. L.G. v. People, 890 P.2d 647 (Colo. 1995).

After a final decree in divorce, either party could change domicile at will, and the child's domicile then changed with that of the parent in whose custody he had been placed and the court of new domicile had jurisdiction over proceedings as to custody. Evans v. Evans, 136 Colo. 6, 314 P.2d 291 (1957).

After a change of domicile it was held that any modification of the provisions of the final decree as to custody by the court of the former domicile was without extraterritorial effect in Colorado. Evans v. Evans, 136 Colo. 6, 314 P.2d 291 (1957).

Award of custody by a court having jurisdiction should be recognized by other states and the facts upon which the award is based held res judicata. Evans v. Evans, 136 Colo. 6, 314 P.2d 291 (1957); Petition of Kraudel v. Benner, 148 Colo. 525, 366 P.2d 667 (1961); Wilson v. Wilson, 172 Colo. 566, 474 P.2d 789 (1970).

Where the primary and controlling issue was the welfare of the child, and that issue was considered and determined by the court of another state, it could not and should not have been readjudicated in Colorado. Evans v. Evans, 136 Colo. 6, 314 P.2d 291 (1957).

While the custody issue may be decided in another state, there is no legal basis for a trial court to defer to another state on issues of maintenance and child support. In re Doria, 855 P.2d 28 (Colo. App. 1993).

Colorado courts do not have jurisdiction in case in which child was born in California and continued to reside there. The record suggests that California, not Colorado, is the state containing substantial evidence concerning the child's present or future care, protection, training, and personal relationships. Nistico v. District Court, 791 P.2d 1128 (Colo. 1990).

The district court did not abuse its discretion in exercising jurisdiction, even though it did not make findings as to the basis for its exercise of jurisdiction, where Colorado had jurisdiction based on the home state provision of the act and Oklahoma met none of the criteria outlined in either the Colorado or the substantially similar Oklahoma jurisdictional prerequisite provisions. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Even though Colorado both had jurisdiction and could have exercised that jurisdiction under the act to modify an Oklahoma custody decree, under the federal parental kidnapping prevention act of 1980, the Colorado court was required to decline jurisdiction in favor of Oklahoma because Oklahoma was the state of the original custody determination and, therefore, had continuing jurisdiction under Oklahoma law since the father remained a resident of Oklahoma and he had exercised his visitation rights in Oklahoma. Therefore, the portion of the Colorado court's judgment

that modified mother's custody and father's visitation rights under the Oklahoma custody determination could not stand. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Foreign custody decree could be modified by a Colorado court where the decree has been docketed in Colorado and Colorado is now the home state of the children. In re Whitley, 775 P.2d 95 (Colo. App. 1989).

Colorado not required to give full faith and credit to another state's custody order if order was not entered in compliance with the PKPA. Under the PKPA, a state's custody determination is in conformance with the PKPA if the court of the state has jurisdiction under its own law and the exercise of jurisdiction meets one of the conditions set forth in the PKPA. Because Nebraska, like Colorado, has adopted the UCCJEA, and the UCCJEA is substantively identical to the PKPA, the provisions of Nebraska's state law conform to the PKPA. Therefore, because Nebraska lacked jurisdiction to enter the custody order under its own law, it lacked jurisdiction to enter the order under the PKPA and Colorado is not required to recognize and enforce the order pursuant to the PKPA. In re L.S., 257 P.3d 201 (Colo. 2011).

Where New York family court referee determined that it lacked exclusive, continuing jurisdiction to modify New York custody order and declined jurisdiction, a New York Supreme Court (trial court) lacked jurisdiction to enter order in a subsequent motion to modify custody. New York has adopted the UCCJEA and, therefore, the jurisdictional provisions of New York law are substantially identical to the PKPA. Consequently, because the second New York court did not have jurisdiction over the matter under New York law, the PKPA does not require that Colorado accord full faith and credit to the second court's custody modification order and the Colorado court erred in enforcing the New York order modifying custody. In re Dedie & Springston, 255 P.3d 1142 (Colo. 2011).

When the parties to a divorce remarry each other, the court's jurisdiction over the parties is terminated and the provisions of the prior decree for matters of child support, custody, and maintenance are nullified. In re Doria, 855 P.2d 28 (Colo. App. 1993).

Applied in Zumbrun v. Zumbrun, 42 Colo. App. 37, 592 P.2d 16 (1978); In re Tricamo, 42 Colo. App. 493, 599 P.2d 273 (1979); Lopez v. District Court, 199 Colo. 207, 606 P.2d 853 (1980); In re Severn, 44 Colo. App. 109, 608 P.2d 381 (1980); In re Johnson, 634 P.2d 1034 (Colo. App. 1981); In re Tatum, 653 P.2d 74 (Colo. App. 1982); Bakke v. District Court, 719 P.2d 313 (Colo. 1986); In re Tonnessen, 937 P.2d 863 (Colo. App. 1996); In Interest of B.C.B., 2015 COA 42, 411 P.3d 926.

14-13-202. Exclusive, continuing jurisdiction.

(1) Except as otherwise provided in section 14-13-204, a court of this state that has made a child-custody determination consistent with section 14-13-201 or 14-13-203 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that the child, the child's parents, and any person acting as a parent do not have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(2) A court of this state that has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 14-13-201.

Source: L. 2000: Entire article R&RE, p. 1525, § 1, effective July 1.

OFFICIAL COMMENT

This is a new section addressing continuing jurisdiction. Continuing jurisdiction was not specifically addressed in the UCCJA. Its absence caused considerable confusion, particularly because the PKPA, § 1738(d), requires other States to give Full Faith and Credit to custody determinations made by the original decree State pursuant to the decree State's continuing jurisdiction so long as that State has jurisdiction under its own law and remains the residence of the child or any contestant.

This section provides the rules of continuing jurisdiction and borrows from UIFSA as well as recent UCCJA case law. The continuing jurisdiction of the original decree State is exclusive. It continues until one of two events occurs:

1. If a parent or a person acting as a parent remains in the original decree State, continuing jurisdiction is lost when neither the child, the child and a parent, nor the child and a person acting as a parent continue to have a significant connection with the original decree State and there is no longer substantial evidence concerning the child's care, protection, training and personal relations in that State. In other words, even if the child has acquired a new home State, the original decree State retains exclusive, continuing jurisdiction, so long as the general requisites of the "substantial connection" jurisdiction provisions of Section 14-13-201 are met. If the relationship between the child and the person remaining in the State with exclusive, continuing jurisdiction becomes

so attenuated that the court could no longer find significant connections and substantial evidence, jurisdiction would no longer exist.

The use of the phrase "a court of this State" under subsection (1)(a) makes it clear that the original decree State is the sole determinant of whether jurisdiction continues. A party seeking to modify a custody determination must obtain an order from the original decree State stating that it no longer has jurisdiction.

2. Continuing jurisdiction is lost when the child, the child's parents, and any person acting as a parent no longer reside in the original decree State. The exact language of subparagraph (1)(b) was the subject of considerable debate. Ultimately the Conference settled on the phrase that "a court of this State or a court of another State determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State" to determine when the exclusive, continuing jurisdiction of a State ended. The phrase is meant to be identical in meaning to the language of the PKPA which provides that full faith and credit is to be given to custody determinations made by a State in the exercise of its continuing jurisdiction when that "State remains the residence of ... ." The phrase is also the equivalent of the language "continues to reside" which occurs in UIFSA § 205(a)(1) to determine the exclusive, continuing jurisdiction of the State that made a support order. The phrase "remains the residence of" in the PKPA has been the subject of conflicting case law. It is the intention of this Act that paragraph (1)(b) of this section means that the named persons no longer continue to actually live within the State. Thus, unless a modification proceeding has been commenced, when the child, the parents, and all persons acting as parents physically leave the State to live elsewhere, the exclusive, continuing jurisdiction ceases.

The phrase "do not presently reside" is not used in the sense of a technical domicile. The fact that the original determination State still considers one parent a domiciliary does not prevent it from losing exclusive, continuing jurisdiction after the child, the parents, and all persons acting as parents have moved from the State.

If the child, the parents, and all persons acting as parents have all left the State which made the custody determination prior to the commencement of the modification proceeding, considerations of waste of resources dictate that a court in State B, as well as a court in State A, can decide that State A has lost exclusive, continuing jurisdiction.

The continuing jurisdiction provisions of this section are narrower than the comparable provisions of the PKPA. That statute authorizes continuing jurisdiction so long as any "contestant" remains in the original decree State and that State continues to have jurisdiction under its own law. This Act eliminates the contestant classification. The Conference decided that a remaining grandparent or other third party who claims a right to visitation, should not suffice to confer exclusive, continuing jurisdiction on the State that made the original custody determination after the departure of the child, the parents and any person acting as a

parent. The significant connection to the original decree State must relate to the child, the child and a parent, or the child and a person acting as a parent. This revision does not present a conflict with the PKPA. The PKPA's reference in § 1738(d) to § 1738 (c)(1) recognizes that States may narrow the class of cases that would be subject to exclusive, continuing jurisdiction. However, during the transition from the UCCJA to this Act, some States may continue to base continuing jurisdiction on the continued presence of a contestant, such as a grandparent. The PKPA will require that such decisions be enforced. The problem will disappear as States adopt this Act to replace the UCCJA.

Jurisdiction attaches at the commencement of a proceeding. If State A had jurisdiction under this section at the time a modification proceeding was commenced there, it would not be lost by all parties moving out of the State prior to the conclusion of proceeding. State B would not have jurisdiction to hear a modification unless State A decided that State B was more appropriate under Section 14-13-207.

Exclusive, continuing jurisdiction is not reestablished if, after the child, the parents, and all persons acting as parents leave the State, the non-custodial parent returns. As subsection (2) provides, once a State has lost exclusive, continuing jurisdiction, it can modify its own determination only if it has jurisdiction under the standards of Section 14-13-201. If another State acquires exclusive continuing jurisdiction under this section, then its orders cannot be modified even if this State has once again become the home State of the child.

In accordance with the majority of UCCJA case law, the State with exclusive, continuing jurisdiction may relinquish jurisdiction when it determines that another State would be a more convenient forum under the principles of Section 14-13-207.

ANNOTATION

A court that has obtained initial jurisdiction to adjudicate a child-custody proceeding does not automatically lose jurisdiction when all parties leave the state. People in Interest of E.W., 2022 CO 51, 523 P.3d 422.

In a continuing custody dispute where none of the parties still live in Colorado, the fact that any proceedings related to custody inherently arise from an initial custody order, which was made by Colorado courts, does not necessarily give Colorado continuing jurisdictional authority. In re Pritchett, 80 P.3d 918 (Colo. App. 2003).

"Presently reside" is not equivalent to "currently reside" or "physical presence". "Presently reside" is not confined only to a party's physical presence within the borders of a state, but necessitates an inquiry broader than technical domicile into the totality of the circumstances that make up domicile—that is, a person's permanent home to which he or she intends

to return to and remain. In re Brandt, 2012 CO 3, 268 P.3d 406.

Totality of the circumstance test to determine if a party "presently resides" is a mixed question of fact and law and includes, but is not limited to, the length and reasons for the parents' and the child's absence from the state of initial jurisdiction; their intent in departing from the state and returning to it; reserve and active military assignments affecting one or both parents; where they maintain a home, car, driver's license, job, professional licensure, and voting registration; where they pay state taxes; the initial state's determination of residency based on the facts and that state's law; and any other circumstances demonstrated by evidence in the case. In re Brandt, 2012 CO 3, 268 P.3d 406.

14-13-203. Jurisdiction to modify determination.

(1) Except as otherwise provided in section 14-13-204, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under section 14-13-201 (1)(a) or 14-13-201 (1)(b) and:

(a) The court of the other state determines it no longer has exclusive, continuing jurisdiction under a provision of law adopted by that state that is in substantial conformity with section 14-13-202 or that a court of this state would be a more convenient forum under a provision of law adopted by that state that is in substantial conformity with section 14-13-207; or

(b) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Source: L. 2000: Entire article R&RE, p. 1525, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-115 as it existed prior to 2000.

OFFICIAL COMMENT

This section complements Section 14-13-202 and is addressed to the court that is confronted with a proceeding to modify a custody determination of another State. It prohibits a court from modifying a custody determination made consistently with this Act by a court in another State unless a court of that State determines that it no longer has exclusive, continuing jurisdiction under Section 14-13-202 or that this State would be a more convenient forum under Section 14-13-207. The modification State is not authorized to determine that the original decree State has lost its jurisdiction. The

only exception is when the child, the child's parents, and any person acting as a parent do not presently reside in the other State. In other words, a court of the modification State can determine that all parties have moved away from the original State. The court of the modification State must have jurisdiction under the standards of Section 14-13-201.

ANNOTATION

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75). For article, "The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act", see 11 Colo. Law. 1224 (1982). For article, "Waking the Dormant PKPA in Colorado", see 21 Colo. Law. 2209 (1992). For article, "Nuts and Bolts of the PKPA", see 22 Colo. Law. 2397 (1993).

Annotator's note. Since § 14-13-203 is similar to § 14-13-115 as it existed prior to the 2000 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Intent of child custody jurisdiction act. The uniform child custody jurisdiction act attempts to guarantee reasonable security and continuity of environment to children by discouraging their unilateral removal from one state to another to avoid obeying custodial orders. Kraft v. District Court, 197 Colo. 10, 593 P.2d 321 (1979).

The uniform act establishes additional conditions and restrictions before Colorado courts can modify existing foreign custody decrees. In re Glass, 36 Colo. App. 91, 537 P.2d 1092 (1975).

A Colorado court must recognize and refrain from modifying a custody decree of another state where the sister state had jurisdiction at the time its decree was entered and has continuing jurisdiction at the time the action to modify is instituted in this state. Fry v. Ball, 190 Colo. 128, 544 P.2d 402 (1975).

No authority to modify unless foreign state without jurisdiction. A Colorado court is not authorized to modify an existing custody decree from another state even in an emergency unless the court which rendered that decree no longer has or has declined to assume jurisdiction of the matter. In re Thomas, 36 Colo. App. 96, 537 P.2d 1095 (1975).

To interpret this section as a prohibition against a Colorado court's exercise of jurisdiction to enter temporary and protective custody orders in order to protect children endangered by their surroundings would, in effect, vitiate the very purpose of the parens patrial jurisdiction granted by § 14-13-104. E.P. v. District Court, 696 P.2d 254 (Colo. 1985).

Section 14-13-114 and this section require a court to recognize the valid custody decrees of other jurisdictions and not to modify such decrees unless the rendering state no longer has jurisdiction or has

declined to exercise jurisdiction. Woodhouse v. District Court, 196 Colo. 558, 587 P.2d 1199 (1978).

Absent exceptional circumstances, a Colorado court must refrain from modifying another state's custody decree if that state has continuing jurisdiction over the custody matter at the time the action to modify is instituted in Colorado. Kraft v. District Court, 197 Colo. 10, 593 P.2d 321 (1979).

An out-of-state court order that returns physical custody of a child to the parents satisfies the UCCJEA's definition of "child-custody determination". If a Colorado court seeks to modify the order, it must follow the UCCJEA's procedures for acquiring modification jurisdiction pursuant to § 14-13-201. People in Interest of B.H., 2021 CO 39, 488 P.3d 1026.

Colorado courts are free to determine whether another court's proceedings are substantially in conformity with our act, and must do so if the issue is raised. Lynch v. Lynch, 770 P.2d 1383 (Colo. App. 1989).

Loss of jurisdiction of original state. While the intent of the uniform act is that the original state shall have continuing jurisdiction under this section, such jurisdiction can be lost by the erosion of a child's and parents' significant connections with the state. McCarron v. District Court ex rel. County of Jefferson, 671 P.2d 953 (Colo. 1983).

When Colorado is the home state of the children, Colorado has the jurisdiction to modify a sister state's decree in the best interests of the children. Kudler v. Smith, 643 P.2d 783 (Colo. App. 1981).

Application of parens patriae jurisdiction. Where the father alleged the existence of an emergency situation which he claimed required the Colorado court to intervene and modify the Kansas divorce decree, under such circumstances, the Colorado court, under its general parens patriae jurisdiction over a child physically present in the state, could properly make a temporary order to protect the child. In re Thomas, 36 Colo. App. 96, 537 P.2d 1095 (1975).

Foreign court's jurisdiction over custody preclude Colorado court's exercise of jurisdiction. If the courts of another state have continuing jurisdiction over custody and have not declined to exercise that jurisdiction, then a Colorado court is precluded by § 14-13-114 and this section from exercising jurisdiction in the case, at least in the absence of a grave emergency. Brock v. District Court, 620 P.2d 11 (Colo. 1980).

Judicial relief may extend beyond issuance of temporary orders for compelling reasons only. Generally, judicial relief should not extend beyond the issuance of temporary protective orders pending the application to the court of the rendering state for appropriate modification of the custody decree. Only when there are compelling reasons, articulated in the record, that render such out-of-state application impractical, should a Colorado court grant anything but temporary relief under its parens patriae jurisdiction. Brock v. District Court, 620 P.2d 11 (Colo. 1980).

A Colorado trial court cannot modify a California custody order unless and until

the court has determined whether the California court would continue to exercise jurisdiction. The burden was on the prospective adoptive parents to establish by competent evidence all facts essential to jurisdiction. In re Custody of K.R., 897 P.2d 896 (Colo. App. 1995).

In dependency and neglect proceeding, court erred by failing to follow UCCJEA procedures for acquiring jurisdiction to modify prior custody order. Record reflected a prior foreign court custody order. The court should have contacted the foreign court or heard evidence on the parties' residency relating to jurisdiction under the act to modify the foreign order. People in Interest of M.S., 2017 COA 60, 413 P.3d 287.

District court held to have properly concluded that it lacked jurisdiction to modify another state's custody decree. Clark v. Kendrick, 670 P.2d 32 (Colo. App. 1983).

Determination that a court of another state had jurisdiction held not erroneous. In re Edilson, 637 P.2d 362 (Colo. 1981).

"Presently reside" is not equivalent to "currently reside" or "physical presence". "Presently reside" is not confined only to a party's physical presence within the borders of a state, but necessitates an inquiry broader than technical domicile into the totality of the circumstances that make up domicile—that is, a person's permanent home to which he or she intends to return to and remain. In re Brandt, 2012 CO 3, 268 P.3d 406.

More than a perfunctory determination of residence is required to divest an issuing state of its jurisdiction. In re Brandt, 2012 CO 3, 268 P.3d 406.

Totality of the circumstance test to determine if a party "presently resides" is a mixed question of fact and law and includes, but is not limited to, the length and reasons for the parents' and the child's absence from the state of initial jurisdiction; their intent in departing from the state and returning to it; reserve and active military assignments affecting one or both parents; where they maintain a home, car, driver's license, job, professional licensure, and voting registration; where they pay state taxes; the initial state's determination of residency based on the facts and that state's law; and any other circumstances demonstrated by evidence in the case. In re Brandt, 2012 CO 3, 268 P.3d 406.

The burden of proof when applying the totality of the circumstance test lies with the parent who is petitioning to modify jurisdiction. In re Brandt, 2012 CO 3, 268 P.3d 406.

The preference for "home state" pertains only to jurisdiction to enter an initial child custody order, not jurisdiction to modify an order that has already been entered by another state. In re Brandt, 2012 CO 3, 268 P.3d 406.

Applied in Zumbrun v. Zumbrun, 42 Colo. App. 37, 592 P.2d 16 (1978); Roberts v. District Court, 198 Colo. 231, 596 P.2d 65 (1979).

14-13-204. Temporary emergency jurisdiction.

(1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. A court of this state may exercise temporary emergency jurisdiction during the pendency of an appeal of a child-custody determination.

(2) If there is no previous child-custody determination that is entitled to be enforced under this article and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203, a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(3) If there is a previous child-custody determination that is entitled to be enforced under this article, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state that has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to sections 14-13-201 to 14-13-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Source: L. 2000: Entire article R&RE, p. 1525, § 1, effective July 1. **L. 2021:** (1) amended, (HB 21-1031), ch. 116, p. 450, § 5, effective May 7.

Editor's note: (1) This section is similar to former § 14-13-104 as it existed prior to 2000.

(2) Section 8 of chapter 116 (HB 21-1031), Session Laws of Colorado 2021, provides that the act changing this section applies to any request to modify an order appealed on, after, or before May 7, 2021.

Cross references: For the legislative declaration in HB 21-1031, see section 1 of chapter 116, Session Laws of Colorado 2021.

OFFICIAL COMMENT

The provisions of this section are an elaboration of what was formerly Section 3(a)(3) of the UCCJA. It remains, as Professor Bodenheimer's comments to that section noted, "an extraordinary jurisdiction reserved for extraordinary circumstances."

This section codifies and clarifies several aspects of what has become common practice in emergency jurisdiction cases under the UCCJA and PKPA. First, a court may take jurisdiction to protect the child even though it can claim neither home State nor significant connection jurisdiction. Second, the duties of States to recognize, enforce and not modify a custody determination of another State do not take precedence over the need to enter a temporary emergency order to protect the child.

Third, a custody determination made under the emergency jurisdiction provisions of this section is a temporary order. The purpose of the order is to protect the child until the State that has jurisdiction under Sections 14-13-201 to 14-13-203 enters an order.

Under certain circumstances, however, subsection (2) provides that an emergency custody determination may become a final custody determination. If there is no existing custody determination, and no custody proceeding is filed in a State with jurisdiction under Sections 14-13-201 to 14-13-203, an emergency custody determination made under this section becomes a final determination, if it so provides, when the State that issues the order becomes the home State of the child.

Subsection (3) is concerned with the temporary nature of the order when there exists a prior custody order that is entitled to be enforced under this Act or when a subsequent custody proceeding is filed in a State with jurisdiction under Sections 14-13-201 to 14-13-203. Subsection (3) allows the temporary order to remain in effect only so

long as is necessary for the person who obtained the determination under this section to present a case and obtain an order from the State with jurisdiction under Sections 14-13-201 to 14-13-203. That time period must be specified in the order. If there is an existing order by a State with jurisdiction under Sections 14-13-201 to 14-13-203, that order need not be reconfirmed. The temporary emergency determination would lapse by its own terms at the end of the specified period or when an order is obtained from the court with jurisdiction under Sections 14-13-202 to 14-13-203. The court with appropriate jurisdiction also may decide, under the provisions of 207, that the court that entered the emergency order is in a better position to address the safety of the person who obtained the emergency order, or the child, and decline jurisdiction under Section 14-13-207.

Any hearing in the State with jurisdiction under Sections 14-13-201 to 14-13-203 on the temporary emergency determination is subject to the provisions of Sections 14-13-111 and 14-13-112. These sections facilitate the presentation of testimony and evidence taken out of State. If there is a concern that the person obtaining the temporary emergency determination under this section would be in danger upon returning to the State with jurisdiction under Sections 14-13-201 to 14-13-203, these provisions should be used.

Subsection (4) requires communication between the court of the State that is exercising jurisdiction under this section and the court of another State that is exercising jurisdiction under Sections 14-13-201 to 14-13-203. The pleading rules of Section 14-13-209 apply fully to determinations made under this section. Therefore, a person seeking a temporary emergency custody determination is required to inform the court pursuant to Section 14-13-209 (4) of any proceeding concerning the child that has been commenced elsewhere. The person commencing the custody proceeding under Sections 14-13-201 to 14-13-203 is required under Section 14-13-209 (1) to inform the court about the temporary emergency proceeding. These pleading requirements are to be strictly followed so that the courts are able to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Relationship to the PKPA. The definition of emergency has been modified to harmonize it with the PKPA. The PKPA's definition of emergency jurisdiction does not use the term "neglect." It defines an emergency as "mistreatment or abuse." Therefore "neglect" has been eliminated as a basis for the assumption of temporary emergency jurisdiction. Neglect is so elastic a concept that it could justify taking emergency jurisdiction in a wide variety of cases. Under the PKPA, if a State exercised temporary emergency jurisdiction based on a finding that the child was neglected without a finding of mistreatment or abuse, the order would not be entitled to federal enforcement in other States.

Relationship to Protective Order Proceedings. The UCCJA and the PKPA were enacted long before the advent of state procedures on the use of protective orders to

alleviate problems of domestic violence. Issues of custody and visitation often arise within the context of protective order proceedings since the protective order is often invoked to keep one parent away from the other parent and the children when there is a threat of violence. This Act recognizes that a protective order proceeding will often be the procedural vehicle for invoking jurisdiction by authorizing a court to assume temporary emergency jurisdiction when the child's parent or sibling has been subjected to or threatened with mistreatment or abuse.

In order for a protective order that contains a custody determination to be enforceable in another State it must comply with the provisions of this Act and the PKPA. Although the Violence Against Women's Act (VAWA), 18 U.S.C. § 2265, does provide an independent basis for the granting of full faith and credit to protective orders, it expressly excludes "custody" orders from the definition of "protective order," 22 U.S.C. § 2266.

Many States authorize the issuance of protective orders in an emergency without notice and hearing. This Act does not address the propriety of that procedure. It is left to local law to determine the circumstances under which such an order could be issued, and the type of notice that is required, in a case without an interstate element. However, an order issued after the assumption of temporary emergency jurisdiction is entitled to interstate enforcement and nonmodification under this Act and the PKPA only if there has been notice and a reasonable opportunity to be heard as set out in Section 14-13-205. Although VAWA does require that full faith and credit be accorded to ex parte protective orders if notice will be given and there will be a reasonable opportunity to be heard, it does not include a "custody" order within the definition of "protective order."

VAWA does play an important role in determining whether an emergency exists. That Act requires a court to give full faith and credit to a protective order issued in another State if the order is made in accordance with the VAWA. This would include those findings of fact contained in the order. When a court is deciding whether an emergency exists under this section, it may not relitigate the existence of those factual findings.

ANNOTATION

Annotator's note. Section 14-13-204 is similar to § 14-13-104 (1)(c) as it existed prior to the 2000 repeal and reenactment of this article. Relevant cases construing § 14-13-104 have been included in the annotations under § 14-13-201.

UCCJEA temporary emergency jurisdiction exists only to protect abandoned children or to prevent mistreatment or abuse in emergencies. People in Interest of S.A.G., 2021 CO 38, 487 P.3d 677.

The reference to final determination in subsection (2) does not permit a court to terminate parental rights pursuant to temporary emergency jurisdiction in the

absence of a continuing abandonment or emergency. People in Interest of S.A.G., 2021 CO 38, 487 P.3d 677.

Despite the fact that Texas court had made child-custody determination, temporary emergency jurisdiction was proper when child's father was jailed during a child's visit with mother in Colorado; except that only temporary emergency jurisdiction for a specified period to allow father to seek an order from Texas court was proper, and magistrate's order terminating the parental rights of both parents exceeded Colorado's temporary emergency jurisdiction. People ex rel. M.C., 94 P.3d 1220 (Colo. App. 2004).

An order under this section is temporary only and lapses as soon as the state which otherwise has jurisdiction under the UCCJEA enters an order. In re T.L.B., 2012 COA 8, 272 P.3d 1148.

Temporary emergency jurisdiction is limited in time and scope and did not extend to orders terminating parental rights. Due to prior custody order in Iran, juvenile court was without jurisdiction to enter permanent custody orders terminating mother's and father's parental rights. People in Interest of A.B-A., 2019 COA 125, 451 P.3d 1278.

The absence of diplomatic relations with Iran does not excuse the court's failure to confer with foreign court. Juvenile court must immediately communicate with Iranian court. The statute does not create an exception to the communication provision for a foreign country that has no diplomatic relations with the United States. The department's assertion that it had no means of contacting the Iranian court in the absence of diplomatic relations is speculation, as the juvenile court made no attempt to contact the Iranian court. People in Interest of A.B-A., 2019 COA 125, 451 P.3d 1278.

Temporary emergency jurisdiction did not provide court with jurisdiction to enter permanent order terminating parental rights without the court first obtaining home state jurisdiction pursuant to § 14-13-201. A temporary emergency order pursuant to this section does not automatically become a permanent order. The record does not disclose a basis on which the court could infer home state jurisdiction. Both "significant connection" and "more appropriate forum" jurisdiction requires the home state to affirmatively decline jurisdiction before another state can invoke it. Declining jurisdiction under the UCCJEA means more than just the absence of litigation in the home state. The home state must have had an opportunity to weigh in and been made aware of a possible reason to do so. People in Interest of S.A.G., 2020 COA 45, 487 P.3d 1223, aff'd in part, rev'd in part on other grounds, 2021 CO 38, 487 P.3d 677.

The juvenile court lacked temporary emergency jurisdiction when, at the time of its termination order, the child was not abandoned and there was no emergency. People in Interest of S.A.G., 2021 CO 38, 487 P.3d 677.

Therefore the juvenile court should have conducted a full analysis of its non-emergency jurisdiction, including the

requisite fact-finding. People in Interest of S.A.G., 2021 CO 38, 487 P.3d 677.

14-13-205. Notice - opportunity to be heard - joinder.

(1) Before a child-custody determination is made under this article, notice and an opportunity to be heard in accordance with the standards of section 14-13-108 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(2) This article does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this article are governed by the law of this state as in child-custody proceedings between residents of this state.

Source: L. 2000: Entire article R&RE, p. 1526, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-105 as it existed prior to 2000.

OFFICIAL COMMENT

This section generally continues the notice provisions of the UCCJA. However, it does not attempt to dictate who is entitled to notice. Local rules vary with regard to persons entitled to seek custody of a child. Therefore, this section simply indicates that persons entitled to seek custody should receive notice but leaves the rest of the determination to local law. Parents whose parental rights have not been previously terminated and persons having physical custody of the child are specifically mentioned as persons who must be given notice. The PKPA, § 1738A(e), requires that they be given notice in order for the custody determination to be entitled to full faith and credit under that Act.

State laws also vary with regard to whether a court has the power to issue an enforceable temporary custody order without notice and hearing in a case without any interstate element. Such temporary orders may be enforceable, as against due process objections, for a short period of time if issued as a protective order or a temporary restraining order to protect a child from harm. Whether such orders are enforceable locally is beyond the scope of this Act. Subsection (2) clearly provides that the validity of such orders and the enforceability

of such orders is governed by the law which authorizes them and not by this Act. An order is entitled to interstate enforcement and nonmodification under this Act only if there has been notice and an opportunity to be heard. The PKPA, § 1738A(e), also requires that a custody determination is entitled to full faith and credit only if there has been notice and an opportunity to be heard.

Rules requiring joinder of people with an interest in the custody of and visitation with a child also vary widely throughout the country. The UCCJA has a separate section on joinder of parties which has been eliminated. The issue of who is entitled to intervene and who must be joined in a custody proceeding is to be determined by local state law.

A sentence of the UCCJA § 4 which indicated that persons outside the State were to be given notice and an opportunity to be heard in accordance with the provision of that Act has been eliminated as redundant.

ANNOTATION

Annotator's note. Section 14-13-205 is similar to § 14-13-105 as it existed prior to the 2000 repeal and reenactment of this article. Relevant cases construing § 14-13-105 have been included in the annotations under § 14-13-108.

14-13-206. Simultaneous proceedings.

(1) Except as otherwise provided in section 14-13-204, a court of this state may not exercise its jurisdiction under this part 2 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this article, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under a provision of law adopted by that state that is in substantial conformity with section 14-13-207.

(2) Except as otherwise provided in section 14-13-204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 14-13-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with a provision of law adopted by that state that is in substantial conformity with this article, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this article does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(3) In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court of this state may:

(a) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(b) Enjoin the parties from continuing with the proceeding for enforcement; or

(c) Proceed with the modification under conditions it considers appropriate.

Source: L. 2000: Entire article R&RE, p. 1527, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-107 as it existed prior to 2000.

OFFICIAL COMMENT

This section represents the remnants of the simultaneous proceedings provision of the UCCJA § 6. The problem of simultaneous proceedings is no longer a significant issue. Most of the problems have been resolved by the prioritization of home state jurisdiction under Section 14-13-201; the exclusive, continuing jurisdiction provisions of Section 14-13-202; and the prohibitions on modification of Section 14-13-203. If there is a home State, there can be no exercise of significant connection jurisdiction in an initial child custody determination and, therefore, no simultaneous proceedings. If there is a State of exclusive, continuing jurisdiction, there cannot be another State with concurrent jurisdiction and, therefore, no simultaneous proceedings. Of course, the home State, as well as the State with exclusive, continuing jurisdiction, could defer to another State under Section 14-13-207. However, that decision is left entirely to the home State or the State with exclusive, continuing jurisdiction.

Under this Act, the simultaneous proceedings problem will arise only when there is no home State, no State with exclusive, continuing jurisdiction and more than one significant connection State. For those cases, this section retains the "first in time" rule of the UCCJA.

Subsection (2) retains the UCCJA's policy favoring judicial communication. Communication between courts is required when it is determined that a proceeding has been commenced in another State.

Subsection (3) concerns the problem of simultaneous proceedings in the State with modification jurisdiction and enforcement proceedings under part 3. This section

authorizes the court with exclusive, continuing jurisdiction to stay the modification proceeding pending the outcome of the enforcement proceeding, to enjoin the parties from continuing with the enforcement proceeding, or to continue the modification proceeding under such conditions as it determines are appropriate. The court may wish to communicate with the enforcement court. However, communication is not mandatory. Although the enforcement State is required by the PKPA to enforce according to its terms a custody determination made consistently with the PKPA, that duty is subject to the decree being modified by a State with the power to do so under the PKPA. An order to enjoin the parties from enforcing the decree is the equivalent of a temporary modification by a State with the authority to do so. The concomitant provision addressed to the enforcement court is Section 14-13-306 of this Act. That section requires the enforcement court to communicate with the modification court in order to determine what action the modification court wishes the enforcement court to take.

The term "pending" that was utilized in the UCCJA section on simultaneous proceeding has been replaced. It has caused considerable confusion in the case law. It has been replaced with the term "commencement of the proceeding" as more accurately reflecting the policy behind this section. The latter term is defined in Section 14-13-102 (5).

ANNOTATION

Law reviews. For article, "The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act", see 11 Colo. Law. 1224 (1982). For article, "Interstate Custody Problems Revisited", see 11 Colo. Law. 2596 (1982).

Annotator's note. Since § 14-13-206 is similar to § 14-13-107 as it existed prior to the 2000 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Provisions of § 14-13-123 are not jurisdictional but are to assist the trial court in undertaking the investigation required under the circumstances set forth in subsection (3) concerning proceedings pending in another state. Zimmerman v. Evans, 749 P.2d 1008 (Colo. App. 1987).

When communication with other court required. The requirement for communication with the other court is appropriate if the trial court is unsure of whether to accept jurisdiction and is seeking information as to the most appropriate forum, but where the trial court is not uncertain as to the more appropriate forum for resolution of the issues, communication is not required. In re Edilson, 637 P.2d 362 (Colo. 1981).

Communication with the trial court in another jurisdiction is required only if the trial court is unsure whether to accept jurisdiction and seeks information as to

the more appropriate forum. In re Custody of K.R., 897 P.2d 896 (Colo. App. 1995).

When civil case deemed "pending". Under the common law of this state a civil case is deemed "pending" until final determination on appeal. In re Rector, 39 Colo. App. 111, 565 P.2d 950 (1977).

If, at the time of filing, another state is exercising continuing jurisdiction substantially in conformity with the act, a Colorado court is prohibited from exercising jurisdiction. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

There is no pending proceeding in a court of another state where a stipulation of the parties is not made an order of the court, or where the stipulation expires by its own terms. McCarron v. District Court ex rel. County of Jefferson, 671 P.2d 953 (Colo. 1983).

The existence or non-existence of orders in the other state is not a factor critical to invocation of this section; rather, communication between courts of different states is required if "proceedings are pending". In re Olmo, 701 P.2d 866 (Colo. App. 1984).

The appeal of a child custody order in the Kansas courts was a "pending" proceeding within the meaning of subsection (1). In re Rector, 39 Colo. App. 111, 565 P.2d 950 (1977).

Action by father in California deemed "pending" for purposes of this section although Colorado grandparents, who had physical charge of the child, had not been notified of the California action when they brought a subsequent custody suit in Colorado. Lopez v. District Court, 199 Colo. 207, 606 P.2d 853 (1980).

Procedure when case pending in court of another state. Where the rendering court in another state initially had jurisdiction of a child custody case and the case is still pending in that judicial system, the proper course of action in seeking change of custody in this state is to request a stay from the court in which the case is pending. In re Rector, 39 Colo. App. 111, 565 P.2d 950 (1977).

Because child-custody proceeding, in the form of a restraining order issued against mother, was pending in Texas when Colorado court filed dependency and neglect action and because child-custody proceeding had not been terminated or stayed by the court in Texas, Colorado court only properly had temporary emergency jurisdiction. People ex rel. M.C., 94 P.3d 1220 (Colo. App. 2004).

Court to determine conformity with the Colorado custody act. Although this section prohibits a court from proceeding with a petition concerning child custody where the court of another state is "exercising jurisdiction substantially in conformity with this article" and the other court refuses to stay its proceedings, Colorado trial courts are free to determine whether the other court's proceedings are substantially in conformity with the Colorado custody act. Bakke v. District Court, 719 P.2d 313 (Colo. 1986).

Where there was no custody proceeding pending in sister state which had granted the original custody decree, this section was not a bar to a Colorado court hearing challenge to sister state's subsequent decree ordering that father, who had custody of the children and who was domiciled in Colorado for over a year, return the children to their mother. Wheeler v. District Court, 186 Colo. 218, 526 P.2d 658 (1974).

This section, which generally favors exercise of jurisdiction in the state where custody is pending, does not apply where jurisdiction had never existed in this state. Colorado did not have priority jurisdiction merely because simultaneous proceedings were commenced first in this state where the children were born in another state and had always lived in another state. In re Tonnessen, 937 P.2d 863 (Colo. App. 1996).

Court did not err in determining that Colorado could exercise only temporary emergency jurisdiction where petition for parental responsibilities was pending in Canada, Canada's exercise of jurisdiction was substantially in conformity with the Uniform Child Custody Jurisdiction and Enforcement Act, and Canada had not determined that Colorado was a more convenient forum. In re T.L.B., 2012 COA 8, 272 P.3d 1148.

In a continuing custody dispute where none of the parties still live in Colorado, the fact that any proceedings related to custody inherently arise from an initial custody order, which was made by Colorado courts, does not necessarily give Colorado continuing jurisdictional authority. In re Pritchett, 80 P.3d 918 (Colo. App. 2003).

Applied in In re Baisley, 749 P.2d 446 (Colo. App. 1987); G.B. v. Arapahoe County Ct., 890 P.2d 1153 (Colo. 1995); In Interest of B.C.B., 2015 COA 42, 411 P.3d 926.

14-13-207. Inconvenient forum.

(1) A court of this state that has jurisdiction under this article to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a) Whether domestic violence or domestic abuse has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) The length of time the child has resided outside this state;

(c) The distance between the court in this state and the court in the state that would assume jurisdiction;

(d) The relative financial circumstances of the parties;

(e) Any agreement of the parties as to which state should assume jurisdiction;

(f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) The familiarity of the court of each state with the facts and issues in the pending litigation.

(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(4) A court of this state may decline to exercise its jurisdiction under this article if a child-custody determination is incidental to an action for divorce, dissolution of marriage, or another proceeding while still retaining jurisdiction over the divorce, dissolution of marriage, or other proceeding.

Source: L. 2000: Entire article R&RE, p. 1527, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-108 as it existed prior to 2000.

OFFICIAL COMMENT

This section retains the focus of Section 7 of the UCCJA. It authorizes courts to decide that another State is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties. If so, the court may defer to the other State.

The list of factors that the court may consider has been updated from the UCCJA. The list is not meant to be exclusive. Several provisions require comment. Subparagraph (2)(a) is concerned specifically with domestic violence and other matters affecting the health and safety of the parties. For this purpose, the court should determine whether the parties are located in different States because one party is a victim of domestic violence or child abuse. If

domestic violence or child abuse has occurred, this factor authorizes the court to consider which State can best protect the victim from further violence or abuse.

In applying subparagraph (2)(c), courts should realize that distance concerns can be alleviated by applying the communication and cooperation provisions of Sections 14-13-111 and 14-13-112.

In applying subsection (2)(g) on expeditious resolution of the controversy, the court could consider the different procedural and evidentiary laws of the two States, as well as the flexibility of the court dockets. It also should consider the ability of a court to arrive at a solution to all the legal issues surrounding the family. If one State has jurisdiction to decide both the custody and support issues, it would be desirable to determine that State to be the most convenient forum. The same is true when children of the same family live in different States. It would be inappropriate to require parents to have custody proceedings in several States when one State could resolve the custody of all the children.

Before determining whether to decline or retain jurisdiction, the court of this State may communicate, in accordance with Section 14-13-110, with a court of another State and exchange information pertinent to the assumption of jurisdiction by either court.

There are two departures from Section 7 of the UCCJA. First, the court may not simply dismiss the action. To do so would leave the case in limbo. Rather the court shall stay the case and direct the parties to file in the State that has been found to be the more convenient forum. The court is also authorized to impose any other conditions it considers appropriate. This might include the issuance of temporary custody orders during the time necessary to commence a proceeding in the designated State, dismissing the case if the custody proceeding is not commenced in the other State or resuming jurisdiction if a court of the other State refuses to take the case.

Second, UCCJA, § 7(g) which allowed the court to assess fees and costs if it was a clearly inappropriate court, has been eliminated. If a court has jurisdiction under this Act, it could not be a clearly inappropriate court.

ANNOTATION

Law reviews. For article, "The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act", see 11 Colo. Law. 1224 (1982). For article, "Interstate Custody Problems Revisited", see 11 Colo. Law. 2596 (1982).

Annotator's note. Since § 14-13-207 is similar to § 14-13-108 as it existed prior to the 2000 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Provisions of this section are discretionary, and their application is best left to the judgment of the trial court. In re Edilson, 637 P.2d 362 (Colo. 1981).

Trial court held not to abuse its discretion in concluding that Colorado was an inconvenient forum. In re Tatum, 653 P.2d 74 (Colo. App. 1982).

Payment of attorney fees. Before a court can award attorney fees as a necessary expense, there should be a showing that the fee has been paid or agreed upon and that the amount is reasonable. In re Thomas, 36 Colo. App. 96, 537 P.2d 1095 (1975).

Where there was no evidence presented as to the award of attorney fees, the matter must be remanded for hearing and for judgment to be entered in the amount found to be reasonable under the circumstances of the case and of the parties thereto. In re Thomas, 36 Colo. App. 96, 537 P.2d 1095 (1975).

Award of attorney fees upheld. In the absence of such transcript or other matters of record, the trial court's award of expenses and attorney fees must be presumed to be reasonable and correct. In re Tatum, 653 P.2d 74 (Colo. App. 1982).

Applied in In re Nicholson, 648 P.2d 681 (Colo. App. 1982); Johnson v. District Court, 654 P.2d 827 (Colo. 1982); In Interest of B.C.B., 2015 COA 42, 411 P.3d 926.

14-13-208. Jurisdiction declined by reason of conduct.

(1) Except as otherwise provided in section 14-13-204, or by other law of this state, if a person seeking to invoke the jurisdiction of a court of this state under this article has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(a) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) A court of the state otherwise having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203 determines that this state is a more appropriate forum under a provision of law adopted by that state that is in substantial conformity with section 14-13-207; or

(c) No court of any other state would have jurisdiction under the criteria specified in a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203.

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under a provision of law adopted by that state that is in substantial conformity with sections 14-13-201 to 14-13-203.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (1) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this article.

Source: L. 2000: Entire article R&RE, p. 1528, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-109 as it existed prior to 2000.

OFFICIAL COMMENT

The "Clean Hands" section of the UCCJA has been truncated in this Act. Since there is no longer a multiplicity of jurisdictions which could take cognizance of a child-custody proceeding, there is less of a concern that one parent will take the child to another jurisdiction in an attempt to find a more favorable forum. Most of the jurisdictional problems generated by abducting parents should be solved by the prioritization of home State in Section 14-13-201; the exclusive, continuing jurisdiction provisions of Section 14-13-202; and the ban on modification in Section 14-13-203. For example, if a parent takes the child from the home State and seeks an original custody determination elsewhere, the stay-at-home parent has six months to file a custody petition under the extended home state jurisdictional provision of Section 14-13-201, which will ensure that the case is retained in the home State. If a petitioner for a modification determination takes the child from the State that issued the original custody determination, another State cannot assume jurisdiction as long at the first State exercises exclusive, continuing jurisdiction.

Nonetheless, there are still a number of cases where parents, or their surrogates, act in a reprehensible manner, such as removing, secreting, retaining, or restraining the child. This section ensures that abducting parents will not receive an advantage for their unjustifiable conduct. If the conduct that creates the jurisdiction is unjustified, courts must decline to exercise jurisdiction that is inappropriately invoked by one of the parties. For example, if one parent abducts the child pre-decree and establishes a new home State, that jurisdiction will decline to hear the case. There are exceptions. If the other party has acquiesced in the court's jurisdiction, the court may hear the case. Such acquiescence may occur by filing a pleading submitting to the jurisdiction, or by not filing in the court

that would otherwise have jurisdiction under this Act. Similarly, if the court that would have jurisdiction finds that the court of this State is a more appropriate forum, the court may hear the case.

This section applies to those situations where jurisdiction exists because of the unjustified conduct of the person seeking to invoke it. If, for example, a parent in the State with exclusive, continuing jurisdiction under Section 14-13-202 has either restrained the child from visiting with the other parent, or has retained the child after visitation, and seeks to modify the decree, this section in inapplicable. The conduct of restraining or retaining the child did not create jurisdiction. Jurisdiction existed under this Act without regard to the parent's conduct. Whether a court should decline to hear the parent's request to modify is a matter of local law.

The focus in this section is on the unjustified conduct of the person who invokes the jurisdiction of the court. A technical illegality or wrong is insufficient to trigger the applicability of this section. This is particularly important in cases involving domestic violence and child abuse. Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. Thus, if a parent flees with a child to escape domestic violence and in the process violates a joint custody decree, the case should not be automatically dismissed under this section. An inquiry must be made into whether the flight was justified under the circumstances of the case. However, an abusive parent who seizes the child and flees to another State to establish jurisdiction has engaged in unjustifiable conduct and the new State must decline to exercise jurisdiction under this section.

Subsection (2) authorizes the court to fashion an appropriate remedy for the safety of the child and to prevent a repetition of the unjustified conduct. Thus, it would be appropriate for the court to notify the other parent and to provide for foster care for the child until the child is returned to the other parent. The court could also stay the proceeding and require that a custody proceeding be instituted in another State that would have jurisdiction under this Act. It should be noted that the court is not making a forum non conveniens analysis in this section. If the conduct is unjustifiable, it must decline jurisdiction. It may, however, retain jurisdiction until a custody proceeding is commenced in the appropriate tribunal if such retention is necessary to prevent a repetition of the wrongful conduct or to ensure the safety of the child.

The attorney's fee standard for this section is patterned after the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). The assessed costs and fees are to be paid to the respondent who established that jurisdiction was based on unjustifiable conduct.

ANNOTATION

Law reviews. For article, "The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act", see 11 Colo. Law. 1224 (1982).

Annotator's note. Since § 14-13-208 is similar to § 14-13-109 as it existed prior to the 2000 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Paramount consideration must be the best interests of the child, not the wrongdoing of the parent. Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974).

In a habeas corpus hearing on behalf of a child, the court is by no means limited to an inquiry into the legal right by which the child is held, but must determine the broad question of what will best serve the child's interest. Nelson v. Schweitzer, 189 Colo. 511, 542 P.2d 382 (1975).

Jurisdiction not mandatory under subsection (1). This section does not prohibit the court from exercising jurisdiction if the children have been wrongfully taken to Colorado from another state but merely gives the court discretion to decline if just and proper under the circumstances. In re Severn, 44 Colo. App. 109, 608 P.2d 381 (1980).

Discretion to decline jurisdiction limited. A Colorado court's discretion to decline jurisdiction is limited by whether another state has jurisdiction to decide custody, whether it is in the best interests of the children that the Colorado court assume jurisdiction, and whether declining jurisdiction would be just and proper under the circumstances. Bakke v. district Court, 719 P.2d 313 (Colo. 1986).

Court lacks basis to grant noncustodial parent temporary custody of wrongfully retained minor. Where no compelling reason exists for the exercise of parens patriae jurisdiction, and the child has been retained in this state by the noncustodial parent after the term of visitation has expired, the court has no basis in fact or law to grant the noncustodial parent temporary custody of the minor child. Brock v. District Court, 620 P.2d 11 (Colo. 1980).

The trial court had jurisdiction even though the mother had abducted the child, because this article provides that unclean hands do not deprive the trial court of jurisdiction. Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974).

Improper retention of the child should affect only the court's decision to exercise its jurisdiction. Nelson v. District Court, 186 Colo. 381, 527 P.2d 811 (1974).

Applied in Woodhouse v. District Court, 196 Colo. 558, 587 P.2d 1199 (1978); In re Johnson, 634 P.2d 1034 (Colo. App. 1981); In Interest of B.C.B., 2015 COA 42, 411 P.3d 926.

14-13-209. Information to be submitted to court.

(1) Subject to a court order allowing a party to maintain the confidentiality of addresses and other identifying information and to subsection (5) of this section, in a child-custody proceeding,

each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath, as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(a) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation or parenting time with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;

(b) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence or domestic abuse, protective orders or restraining orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(c) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of parental responsibilities or legal custody or physical custody of, or visitation or parenting time with, the child and, if so, the names and addresses of those persons.

(2) If the information required by subsection (1) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(3) If the declaration as to any of the items described in paragraphs (a) to (c) of subsection (1) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Source: L. 2000: Entire article R&RE, p. 1529, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-110 as it existed prior to 2000.

OFFICIAL COMMENT

The pleading requirements from Section 9 of the UCCJA are generally carried over into this Act. However, the information is made subject to local law on the protection of names and other identifying information in certain cases. A number of States have enacted laws relating to the protection of victims in domestic violence and child abuse cases which provide for the confidentiality of victims names, addresses, and other information. These procedures must be followed if the child-custody proceeding of the State requires their applicability. See, e.g., California Family Law Code § 3409(a). If a State does not have local law that provides for protecting names and addresses, then subsection (5) or a similar provision should be adopted. Subsection (5) is based on the National Council of Juvenile and Family Court Judge's, Model Code on Domestic and Family Violence § 304(c). There are other models to choose from, in particular UIFSA § 312.

In subsection (1)(b), the term "proceedings" should be read broadly to include more than custody proceedings. Thus, if one parent was being criminally prosecuted for child abuse or custodial interference, those proceedings should be disclosed. If the child is subject to the Interstate Compact on the Placement of Children, facts relating to compliance with the Compact should be disclosed in the pleading or affidavit.

Subsection (1)(b) has been added. It authorizes the court to stay the proceeding until the information required in subsection (1)(a) has been disclosed, although failure to provide the information does not deprive the court of jurisdiction to hear the case. This follows the majority of jurisdictions which held that failure to comply with the pleading requirements of the UCCJA did not deprive the court of jurisdiction to make a custody determination.

14-13-210. Appearance of parties and child.

(1) In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(2) If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section 14-13-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(4) If a party to a child-custody proceeding who is outside this state is directed to appear under subsection (2) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

Source: L. 2000: Entire article R&RE, p. 1530, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-112 as it existed prior to 2000.

OFFICIAL COMMENT

No major changes have been made to this section which was Section 11 of the UCCJA. Language was added to subsection (1) to authorize the court to require a non-party who has physical custody of the child to produce the child.

Subsection (3) authorizes the court to enter orders providing for the safety of the child and the person ordered to appear with the child. If safety is a major concern, the court, as an alternative to ordering a party to appear with the child, could order and arrange for the party's testimony to be taken in another State under Section 14-13-111. This alternative might be important when there are safety concerns regarding requiring victims of domestic violence or child abuse to travel to the jurisdiction where the abuser resides.

ANNOTATION

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75).

PART 3

ENFORCEMENT

14-13-301. Definitions.

As used in this part 3, unless the context otherwise requires:

(1) "Petitioner" means a person who seeks enforcement of an order for the return of a child under the "Hague Convention on the Civil Aspects of International Child Abduction" or enforcement of a child-custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for the return of a child under the "Hague Convention on the Civil Aspects of International Child Abduction" or enforcement of a child-custody determination.

Source: L. 2000: Entire article R&RE, p. 1530, § 1, effective July 1.

OFFICIAL COMMENT

For purposes of this part, "petitioner" and "respondent" are defined. The definitions clarify certain aspects of the notice and hearing sections.

14-13-302. Enforcement under Hague Convention.

Under this part 3 a court of this state may enforce an order for the return of the child made under the "Hague Convention on the Civil Aspects of International Child Abduction" as if it were a child-custody determination.

Source: L. 2000: Entire article R&RE, p. 1531, § 1, effective July 1.

OFFICIAL COMMENT

This section applies the enforcement remedies provided by this part to orders requiring the return of a child issued under the authority of the International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., implementing the Hague Convention on the Civil Aspects of International Child Abduction. Specific mention of ICARA proceedings is necessary because they often occur prior to any formal custody determination. However, the need for a speedy enforcement remedy for an order to return the child is just as necessary.

14-13-303. Duty to enforce.

(1) A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this article

or the determination was made under factual circumstances meeting the jurisdictional standards of this article and the determination has not been modified in accordance with this article.

(2) A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in this part 3 are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

Source: L. 2000: Entire article R&RE, p. 1531, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-114 as it existed prior to 2000.

OFFICIAL COMMENT

This section is based on Section 13 of the UCCJA which contained the basic duty to enforce. The language of the original section has been retained and the duty to enforce is generally the same.

Enforcement of custody determinations of issuing States is also required by federal law in the PKPA, 28 U.S.C. § 1738A(a). The changes made in Part 2 of this Act now make a State's duty to enforce and not modify a child custody determination of another State consistent with the enforcement and nonmodification provisions of the PKPA. Therefore custody determinations made by a State pursuant to the UCCJA that would be enforceable under the PKPA will generally be enforced under this Act. However, if a State custody determination made pursuant to the UCCJA would not be enforceable under the PKPA, it will also not be enforceable under this Act. Thus a custody determination made by a "significant connection" jurisdiction when there is a home State is not enforceable under the PKPA regardless of whether a proceeding was ever commenced in the home State. Even though such a determination would be enforceable under the UCCJA with its four concurrent bases of jurisdiction, it would not be enforceable under this Act. This carries out the policy of the PKPA of strongly discouraging a State from exercising its concurrent "significant connection" jurisdiction under the UCCJA when another State could exercise "home state" jurisdiction.

This section also incorporates the concept of Section 15 of the UCCJA to the effect that a custody determination of another State will be enforced in the same manner as a custody determination made by a court of this State. Whatever remedies are available to enforce a local determination can be utilized to enforce a custody determination of another State. However, it remains a custody determination of the State that issued it. A child-custody determination of another State is not subject to modification

unless the State would have jurisdiction to modify the determination under Part 2.

The remedies provided by this part for the enforcement of a custody determination will normally be used. This part does not detract from other remedies available under other local law. There is often a need for a number of remedies to ensure that a child-custody determination is obeyed. If other remedies would easily facilitate enforcement, they are still available. The petitioner, for example, can still cite the respondent for contempt of court or file a tort claim for intentional interference with custodial relations if those remedies are available under local law.

ANNOTATION

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75). For article, "The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act", see 11 Colo. Law. 1224 (1982). For article, "Interstate Custody Problems Revisited", see 11 Colo. Law. 2596 (1982).

Annotator's note. Since § 14-13-303 is similar to § 14-13-114 as it existed prior to the 2000 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

Intent of child custody jurisdiction act. The uniform act attempts to guarantee reasonable security and continuity of environment to children by discouraging their unilateral removal from one state to another to avoid obeying custodial orders. Kraft v. District Court, 197 Colo. 10, 593 P.2d 321 (1979).

Section 14-13-115 and this section require court to recognize valid custody decrees of other jurisdictions and not to modify such decrees unless the rendering state no longer has jurisdiction or has declined to exercise jurisdiction. Woodhouse v. District Court, 196 Colo. 558, 587 P.2d 1199 (1978).

If the courts of another state have continuing jurisdiction over custody and have not declined to exercise that jurisdiction, then a Colorado court is precluded by this section and § 14-13-115 from exercising jurisdiction in the case, at least in the absence of a grave emergency. Brock v. District Court, 620 P.2d 11 (Colo. 1980).

The uniform act establishes additional conditions and restrictions before Colorado courts can modify existing foreign custody decrees. In re Glass, 36 Colo. App. 91, 537 P.2d 1092 (1975).

If the state which rendered the custody decree still has jurisdiction, other states cannot modify the decree. Fry v. Ball, 190 Colo. 128, 544 P.2d 402 (1975).

A Colorado court must recognize and refrain from modifying a custody decree of another state where the sister state had jurisdiction at the time its decree was entered and has continuing jurisdiction at the

time the action to modify is instituted in this state. Fry v. Ball, 190 Colo. 128, 544 P.2d 402 (1975).

If, at the time of filing, another state is exercising continuing jurisdiction substantially in conformity with the act, a Colorado court is prohibited from exercising jurisdiction. People in Interest of K.G., 876 P.2d 1 (Colo. App. 1993).

Recognition of modification decree of another state. Jurisdiction to determine child custody may change to another state, and when that occurs the courts of this state must recognize the modification decree if the modifying state assumed jurisdiction under statutory provisions substantially in accordance with the uniform child custody jurisdiction act or under factual circumstances meeting the jurisdictional standards of this article. County of Clearwater v. Petrash, 41 Colo. App. 143, 589 P.2d 1370 (1978), aff'd in part, rev'd on other grounds, 198 Colo. 231, 598 P.2d 138 (1979).

Mere conclusory ruling of jurisdiction by foreign court need not bind Colorado court, and the Colorado court should seek information to determine the most appropriate forum by communicating with the foreign court. Lynch v. Lynch, 770 P.2d 1383 (Colo. App. 1989).

Colorado not required to give full faith and credit to another state's custody order if order was not entered in compliance with the PKPA. Under the PKPA, a state's custody determination is in conformance with the PKPA if the court of the state has jurisdiction under its own law and the exercise of jurisdiction meets one of the conditions set forth in the PKPA. Because Nebraska, like Colorado, has adopted the UCCJEA, and the UCCJEA is substantively identical to the PKPA, the provisions of Nebraska's state law conform to the PKPA. Therefore, because Nebraska lacked jurisdiction to enter the custody order under its own law, it lacked jurisdiction to enter the order under the PKPA and Colorado is not required to recognize and enforce the order pursuant to the PKPA. In re L.S., 257 P.3d 201 (Colo. 2011).

Where New York family court referee determined that it lacked exclusive, continuing jurisdiction to modify New York custody order and declined jurisdiction, a New York Supreme Court (trial court) lacked jurisdiction to enter order in a subsequent motion to modify custody. New York has adopted the UCCJEA and, therefore, the jurisdictional provisions of New York law are substantially identical to the PKPA. Consequently, because the second New York court did not have jurisdiction over the matter under New York law, the PKPA does not require that Colorado accord full faith and credit to the second court's custody modification order and the Colorado court erred in enforcing the New York order modifying custody. In re Dedie & Springston, 255 P.3d 1142 (Colo. 2011).

Recognition of decrees of states not adopting act. Although a state has not adopted the uniform child and custody jurisdiction act, Colorado will recognize the custody decree issued by a court of that state if it has assumed jurisdiction under the

standards of the act. Kraft v. District Court, 197 Colo. 10, 593 P.2d 321 (1979).

Court may grant other than temporary relief where out-of-state application impractical. Generally, judicial relief should not extend beyond the issuance of temporary protective orders pending the application to the court of the rendering state for appropriate modification of the custody decree. Only when there are compelling reasons, articulated in the record, that render such out-of-state application impractical, should a Colorado court grant anything but temporary relief under its parens patriae jurisdiction. Brock v. District Court, 620 P.2d 11 (Colo. 1980).

Applied in In re Edilson, 637 P.2d 362 (Colo. 1981); McCarron v. District Court ex rel. County of Jefferson, 671 P.2d 953 (Colo. 1983).

14-13-304. Temporary visitation or parenting time.

(1) A court of this state that does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(a) A visitation or parenting time schedule made by a court of another state; or

(b) The visitation or parenting time provisions of a child-custody determination of another state that does not provide for a specific visitation or parenting time schedule.

(2) If a court of this state makes an order under paragraph (b) of subsection (1) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under criteria substantially in conformity with those criteria specified in part 2 of this article. The order remains in effect until an order is obtained from the other court or the period expires.

Source: L. 2000: Entire article R&RE, p. 1531, § 1, effective July 1.

OFFICIAL COMMENT

This section authorizes a court to issue a temporary order if it is necessary to enforce visitation rights without violating the rules on nonmodification contained in Section 14-13-303. Therefore, if there is a visitation schedule provided in the custody determination that was made in accordance with Part 2, a court can issue an order under this section implementing the schedule. An implementing order may include make-up or substitute visitation.

A court may also issue a temporary order providing for visitation if visitation was authorized in the custody determination, but no specific schedule was included in the custody determination. Such an order could

include a substitution of a specific visitation schedule for "reasonable and seasonable."

However, a court may not, under subsection (1)(b) provide for a permanent change in visitation. Therefore, requests for a permanent change in the visitation schedule must be addressed to the court with exclusive, continuing jurisdiction under Section 14-13-202 or modification jurisdiction under Section 14-13-203. As under Section 14-13-204, subsection (2) of this section requires that the temporary visitation order stay in effect only long enough to allow the person who obtained the order to obtain a permanent modification in the State with appropriate jurisdiction under Part 2.

14-13-305. Registration of child-custody determination.

(1) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate district court in this state:

(a) A letter or other document requesting registration;

(b) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(c) Except as otherwise provided in section 14-13-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody, allocated parental responsibilities, or granted visitation or parenting time in the child-custody determination sought to be registered.

(2) On receipt of the documents required by subsection (1) of this section, the registering court shall:

(a) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(b) Serve notice upon the persons named pursuant to paragraph (c) of subsection (1) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(3) The notice required by paragraph (b) of subsection (2) of this section must state that:

(a) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) A hearing to contest the validity of the registered determination must be requested within twenty-one days after service of notice; and

(c) Failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(4) A person seeking to contest the validity of a registered order must request a hearing within twenty-one days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) The issuing court did not have jurisdiction under a provision of law adopted by that state that is in substantial conformity with part 2 of this article;

(b) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under part 2 of this article; or

(c) The person contesting registration was entitled to notice, but notice was not given in accordance with standards substantially in conformity with the standards set forth in section 14-13-108, in the proceedings before the court that issued the order for which registration is sought.

(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(6) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Source: L. 2000: Entire article R&RE, p. 1531, § 1, effective July 1. **L. 2012:** (3)(b) amended, (SB 12-175), ch. 208, p. 834, § 37, effective July 1. **L. 2014:** IP(4) amended, (HB 14-1347), ch. 208, p. 769, § 3, effective July 1.

Editor's note: This section is similar to former § 14-13-117 as it existed prior to 2000.

OFFICIAL COMMENT

This remainder of this part provides enforcement mechanisms for interstate child custody determinations.

This section authorizes a simple registration procedure that can be used to predetermine the enforceability of a custody determination. It parallels the process in UIFSA for the registration of child support orders. It should be as much of an aid to pro se litigants as the registration procedure of UIFSA.

A custody determination can be registered without any accompanying request for enforcement. This may be of significant assistance in international cases. For example, the custodial parent under a foreign custody order can receive an advance determination of whether that order would be recognized and enforced before sending the child to the United States for visitation. Article 26 of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 35 I.L.M. 1391 (1996), requires those States which accede to the Convention to provide such a procedure.

14-13-306. Enforcement of registered determination.

(1) A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but may not modify, except in accordance with part 2 of this article, a registered child-custody determination of a court of another state.

Source: L. 2000: Entire article R&RE, p. 1533, § 1, effective July 1.

Editor's note: This section is similar to former §§ 14-13-115 and 14-13-116, as they existed prior to 2000.

OFFICIAL COMMENT

A registered child-custody determination can be enforced as if it was a child-custody determination of this State. However, it remains a custody determination of the State that issued it. A registered custody order is not subject to modification unless the State would have jurisdiction to modify the order under Part 2.

ANNOTATION

Law reviews. For article, "The Rights of Children and the Crisis in Custody Litigation: Modification of Custody in and out of State", see 46 U. Colo. L. Rev. 495 (1974-75). For article, "Recovering the Parentally Kidnapped Child", see 12 Colo. Law. 1798 (1983).

Annotator's note. Section 14-13-306 is similar to §§ 14-13-115 and 14-13-116 as

they existed prior to the 2000 repeal and reenactment of this article. Relevant cases construing § 14-13-116 have been included in the annotations to this section. Cases construing § 14-13-115 have been included under § 14-13-203.

A certified copy of a foreign decree that is introduced into evidence and considered by the jury must be recognized with respect to its effect on defendant's conduct in this state. People v. Haynie, 826 P.2d 371 (Colo. App. 1991).

District court erred in finding that it lacked subject matter jurisdiction to enforce an out-of-state parenting time order. On registering the out-of-state order, the district court was empowered to enforce the order through any remedy normally available under state law, including those outlined in § 14-10-129.5. In re Parental Responsibilities of W.F-L., 2018 COA 164, 433 P.3d 168.

Applied in In re Bechard, 40 Colo. App. 516, 577 P.2d 778 (1978).

14-13-307. Simultaneous proceedings.

If a proceeding for enforcement under this part 3 is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under a provision of law adopted by that state that is in substantial conformity with part 2 of this article, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Source: L. 2000: Entire article R&RE, p. 1533, § 1, effective July 1.

Editor's note: This section is similar to former § 14-13-107 as it existed prior to 2000.

OFFICIAL COMMENT

The pleading rules of Section 14-13-308, require the parties to disclose any pending proceedings. Normally, an enforcement proceeding will take precedence over a modification action since the PKPA requires enforcement of child custody determinations made in accordance with its terms. However, the enforcement court must communicate with the modification court in order to avoid duplicative litigation. The courts might decide that the court with jurisdiction under Part 2 shall continue with the modification action and stay the enforcement proceeding. Or they might decide that the enforcement proceeding shall go forward. The ultimate decision rests with

the court having exclusive, continuing jurisdiction under Section 14-13-202, or if there is no State with exclusive, continuing jurisdiction, then the decision rests with the State that would have jurisdiction to modify under Section 14-13-203. Therefore, if that court determines that the enforcement proceeding should be stayed or dismissed, the enforcement court should stay or dismiss the proceeding. If the enforcement court does not do so, the court with exclusive, continuing jurisdiction under Section 14-13-202, or with modification jurisdiction under Section 14-13-203, could enjoin the parties from continuing with the enforcement proceeding.

ANNOTATION

Annotator's note. Section 14-13-307 is similar to § 14-13-107 as it existed prior to the 2000 repeal and reenactment of this article. Relevant cases construing § 14-13-107 have been included in the annotations under § 14-13-206.

14-13-308. Expedited enforcement of child-custody determination.

(1) A petition under this part 3 in which the petitioner is seeking expedited enforcement pursuant to this section must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2) A petition for expedited enforcement of a child-custody determination pursuant to this section must state:

(a) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(b) Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this article and, if so, the identity of the court, the case number, and the nature of the proceeding;

(c) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence or domestic abuse, protective orders or restraining orders, termination of parental rights, and adoptions and, if so, the identity of the court, the case number, and the nature of the proceeding;

(d) The present physical address of the child and the respondent, if known;

(e) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(f) If the child-custody determination has been registered and confirmed under section 14-13-305, the date and place of registration.

(3) Upon the filing of a petition for expedited enforcement pursuant to this section, the court shall issue an order directing the respondent to appear in person at a hearing, with or without the child, and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(4) An order issued under subsection (3) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under section 14-13-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) The child-custody determination has not been registered and confirmed under section 14-13-305 and that:

(I) The issuing court did not have jurisdiction under a provision of law adopted by that state that is in substantial conformity with part 2 of this article;

(II) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under a provision of law adopted by that state that is in substantial conformity with part 2 of this article;

(III) The respondent was entitled to notice, but notice was not given in accordance with the standards substantially in conformity with the standards of section 14-13-108, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) The child-custody determination for which enforcement is sought was registered and confirmed under a provision of law adopted by that state that is in substantial conformity with section 14-13-304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under a provision of law adopted by that state that is in substantial conformity with part 2 of this article.

Source: L. 2000: Entire article R&RE, p. 1533, § 1, effective July 1.

OFFICIAL COMMENT

This section provides the normal remedy that will be used in interstate cases: the production of the child in a summary, remedial process based on habeas corpus.

The petition is intended to provide the court with as much information as possible. Attaching certified copies of all orders sought to be enforced allows the court to have the necessary information. Most of the information relates to the permissible scope of the court's inquiry. The petitioner has the responsibility to inform the court of all proceedings that would affect the current enforcement action. Specific mention is made of certain proceedings to ensure that they are disclosed. A "procedure relating to domestic violence" includes not only protective order proceedings but also criminal prosecutions for child abuse or domestic violence.

The order requires the respondent to appear at a hearing on the next judicial day. The term "next judicial day" in this section means the next day when a judge is at the courthouse. At the hearing, the court will order the child to be delivered to the petitioner unless the respondent is prepared to assert that the issuing State lacked jurisdiction, that notice was not given in accordance with Section 14-13-108, or that the order sought to be enforced has been vacated, modified, or stayed by a court with jurisdiction to do so under Part 2. The court is also to order payment of the fees and expenses set out in Section 14-13-312. The court may set another hearing to determine whether additional relief available under this state's law should be granted.

If the order has been registered and confirmed in accordance with Section 14-13-304, the only defense to enforcement is that the order has been vacated, stayed or modified since the registration proceeding by a court with jurisdiction to do so under Part 2.

14-13-309. Service of petition and order.

Except as otherwise provided in section 14-13-311, the petition and order must be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

Source: L. 2000: Entire article R&RE, p. 1535, § 1, effective July 1.

OFFICIAL COMMENT

In keeping with other sections of this Act, the question of how the petition and order should be served is left to local law.

14-13-310. Hearing and order.

(1) Unless the court issues a temporary emergency order pursuant to section 14-13-204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(a) The child-custody determination has not been registered and confirmed under section 14-13-305 and that:

(I) The issuing court did not have jurisdiction under part 2 of this article;

(II) The child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under a provision of law adopted by that state that is in substantial conformity with part 2 of this article; or

(III) The respondent was entitled to notice, but notice was not given in accordance with standards in substantial conformity with the standards set forth in section 14-13-108, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) The child-custody determination for which enforcement is sought was registered and confirmed under section 14-13-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under this part 3.

(2) The court shall award the fees, costs, and expenses authorized under section 14-13-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(4) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this part 3.

(5) A privilege against disclosure of communications between partners in a civil union and a defense of immunity based on the relationship of partners in a civil union or parent and child may not be invoked in a proceeding under this part 3.

Source: L. 2000: Entire article R&RE, p. 1535, § 1, effective July 1. **L. 2013:** (5) added, (SB 13-011), ch. 49, p. 164, § 16, effective May 1.

OFFICIAL COMMENT

The scope of inquiry for the enforcing court is quite limited. Federal law requires the court to enforce the custody determination if the issuing state's decree was rendered in compliance with the PKPA. 28 U.S.C. § 1738A(a). This Act requires enforcement of custody determinations that are made in conformity with Part 2's jurisdictional rules.

The certified copy, or a copy of the certified copy, of the custody determination entitling the petitioner to the child is prima facie evidence of the issuing court's jurisdiction to enter the order. If the order is one that is entitled to be enforced under Part 2 and if it has been violated, the burden shifts to the respondent to show that the custody determination is not entitled to enforcement.

It is a defense to enforcement that another jurisdiction has issued a custody determination that is required to be enforced under Part 2. An example is when one court has based its original custody determination on the UCCJA § 3(a)(2) (significant connections) and another jurisdiction has rendered an original custody determination based on the UCCJA § 3(a)(1) (home State). When this occurs, Part 2 of this Act, as well as the PKPA, mandate that the home state determination be enforced in all other States, including the State that rendered the significant connections determination.

Lack of notice in accordance with Section 14-13-108 by a person entitled to notice and opportunity to be heard at the original custody determination is a defense to enforcement of the custody determination. The scope of the defense under this Act is the same as the defense would be under the law of the State that issued the notice. Thus, if the defense of lack of notice would not be available under local law if the respondent purposely hid from the petitioner, took deliberate steps to avoid service of process or elected not to participate in the initial proceedings, the defense would also not be available under this Act.

There are no other defenses to an enforcement action. If the child would be endangered by the enforcement of a custody or visitation order, there may be a basis for the assumption of emergency jurisdiction under Section 14-13-204 of this Act. Upon the finding of an emergency, the court issues a temporary order and directs the parties to proceed either in the court that is exercising continuing jurisdiction over the custody proceeding under Section 14-13-202, or the court that would have jurisdiction to modify the custody determination under Section 14-13-203.

The court shall determine at the hearing whether fees should be awarded under Section 14-13-312. If so, it should order them paid. The court may determine if additional relief is appropriate, including requesting law enforcement officers to assist the petitioner in the enforcement of the order. The court may set a hearing to determine whether further relief should be granted.

The remainder of this section is derived from UIFSA § 316 with regard to the privilege of self-incrimination, spousal privileges, and immunities. It is included to keep parallel the procedures for child

support and child custody proceedings to the extent possible.

14-13-311. Warrant to take physical custody of child.

(1) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(2) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by section 14-13-308 (2).

(3) A warrant to take physical custody of a child must:

(a) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(b) Direct law enforcement officers to take physical custody of the child immediately; and

(c) Provide for the placement of the child pending final relief.

(4) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(5) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(6) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Source: L. 2000: Entire article R&RE, p. 1536, § 1, effective July 1.

OFFICIAL COMMENT

The section provides a remedy for emergency situations where there is a reason to believe that the child will suffer imminent, serious physical harm or be removed from the jurisdiction once the respondent learns that the petitioner has filed an enforcement proceeding. If the court finds such harm exists, it should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. Immediately after the warrant is executed, the respondent is to receive notice of the proceedings.

The term "harm" cannot be totally defined and, as in the issuance of temporary retraining orders, the appropriate issuance of a warrant is left to the circumstances of the case. Those circumstances include cases where the respondent is the subject of a criminal proceeding as well as situations where the respondent is secreting the child in violation of a court order, abusing the child, a flight risk and other circumstances that the court concludes make the issuance of notice a danger to the child. The court must hear the testimony of the petitioner or another witness prior to issuing the warrant. The testimony may be heard in person, via telephone, or by any other means acceptable under local law. The court must State the reasons for the issuance of the warrant. The warrant can be enforced by law enforcement officers wherever the child is found in the State. The warrant may authorize entry upon private property to pick up the child if no less intrusive means are possible. In extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any hour.

The warrant must provide for the placement of the child pending the determination of the enforcement proceeding. Since the issuance of the warrant would not occur absent a risk of serious harm to the child, placement cannot be with the respondent. Normally, the child would be placed with the petitioner. However, if placement with the petitioner is not indicated, the court can order any other appropriate placement authorized under the laws of the court's State. Placement with the petitioner may not be indicated if there is a likelihood that the petitioner also will flee the jurisdiction. Placement with the petitioner may not be practical if the petitioner is proceeding through an attorney and is not present before the court.

This section authorizes the court to utilize whatever means are available under local law to ensure the appearance of the petitioner and child at the enforcement hearing. Such means might include cash bonds, a surrender of a passport, or whatever the court determines is necessary.

14-13-312. Costs, fees, and expenses.

(1) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the prevailing party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child

care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(2) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this article.

Source: L. 2000: Entire article R&RE, p. 1536, § 1, effective July 1.

OFFICIAL COMMENT

This section is derived from the International Child Abduction Remedies Act, 42 U.S.C. § 11607(b)(3). Normally the court will award fees and costs against the non-prevailing party. Included as expenses are the amount of investigation fees incurred by private persons or by public officials as well as the cost of child placement during the proceedings.

The non-prevailing party has the burden of showing that such an award would be clearly inappropriate. Fees and costs may be inappropriate if their payment would cause the parent and child to seek public assistance.

This section implements the policies of Section 8(c) of Pub.L. 96-611 (part of the PKPA) which provides that:

In furtherance of the purposes of section 1738A of title 28, United States Code [this section], as added by subsection (1) of this section, State courts are encouraged to —

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A [this section], necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination ... .

The term "prevailing party" is not given a special definition for this Act. Each State will apply its own standard.

Subsection (2) was added to ensure that this section would not apply to the State unless otherwise authorized. The language is taken from UIFSA § 313 (court may assess costs against obligee or support enforcement agency only if allowed by local law).

14-13-313. Recognition and enforcement.

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this article that enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so

under a provision of law adopted by that state that is in substantial conformity with part 2 of this article.

Source: L. 2000: Entire article R&RE, p. 1537, § 1, effective July 1.

OFFICIAL COMMENT

The enforcement order, to be effective, must also be enforced by other States. This section requires courts of this State to enforce and not modify enforcement orders issued by other States when made consistently with the provisions of this Act.

14-13-314. Appeals.

An appeal may be taken from a final order in a proceeding under this part 3 in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 14-13-204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

Source: L. 2000: Entire article R&RE, p. 1537, § 1, effective July 1.

OFFICIAL COMMENT

The order may be appealed as an expedited civil matter. An enforcement order should not be stayed by the court. Provisions for a stay would defeat the purpose of having a quick enforcement procedure. If there is a risk of serious mistreatment or abuse to the child, a petition to assume emergency jurisdiction must be filed under Section 14-13-204. This section leaves intact the possibility of obtaining an extraordinary remedy such as mandamus or prohibition from an appellate court to stay the court's enforcement action. In many States, it is not possible to limit the constitutional authority of appellate courts to issue a stay. However, unless the information before the appellate panel indicates that emergency jurisdiction would be assumed under Section 14-13-204, there is no reason to stay the enforcement of the order pending appeal.

PART 4

MISCELLANEOUS PROVISIONS

14-13-401. Application and construction.

In applying and construing this article, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2000: Entire article R&RE, p. 1537, § 1, effective July 1.

14-13-402. Severability clause.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

Source: L. 2000: Entire article R&RE, p. 1537, § 1, effective July 1.

14-13-403. Transitional provision.

A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination that was commenced before July 1, 2000, is governed by the law in effect at the time the motion or other request was made.

Source: L. 2000: Entire article R&RE, p. 1537, § 1, effective July 1.

OFFICIAL COMMENT

A child custody proceeding will last throughout the minority of the child. The commencement of a child custody proceeding prior to this Act does not mean that jurisdiction will continued to be governed by prior law. The provisions of this act apply if a motion to modify an existing determination is filed after the enactment of this Act. A motion that is filed prior to enactment may be completed under the rules in effect at the time the motion is filed.

ARTICLE 13.5

Uniform Child Abduction Prevention Act

14-13.5-101. Short title.

14-13.5-102. Definitions.

14-13.5-103. Cooperation and communication among courts.

14-13.5-104. Actions for abduction prevention measures.

14-13.5-105. Jurisdiction.

14-13.5-106. Contents of petition.

14-13.5-107. Factors to determine risk of abduction.

14-13.5-108. Provisions and measures to prevent abduction.

14-13.5-109. Warrant to take physical custody of child.

14-13.5-110. Duration of abduction prevention order.

14-13.5-111. Uniformity of applications and construction.

14-13.5-112. Relation to electronic signatures in global and national commerce act.

PREFATORY NOTE

Child abduction is a serious problem both in scope and effect. A study commissioned by the Office of Juvenile Justice and Delinquency Prevention estimated that 262,100 children were abducted in 1999; 203,900 (78 per cent) of them were abducted by a parent or family member; approximately 1000 of the abductions were international.[11]*See* David Finkelhor, Heather Hammer & Andrea J. Sedlak, National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children, Children Abducted by Family Members: National Estimate and Characteristics (Oct. 2002). The purpose of the Uniform Child Abduction Prevention Act is to deter both predecree and postdecree domestic and international child abductions by parents, persons acting on behalf of a parent or others. Family abductions may be preventable through the identification of risk factors and the imposition of appropriate preventive measures.

The Uniform Child Abduction Prevention Act is premised on the general principle that preventing an abduction is in a child's best interests. Abducted children may suffer long- lasting harm. Federal law recognizes that parental abduction is harmful to children.[22]International Child Abduction Remedies Act, 42 U.S.C. § 11601(a)(1)("The Congress makes the following findings: (1) The international abduction or wrongful retention of children

is harmful to their well-being . . . "). *See also* Dorothy S. Huntington, Parental Kidnapping: A New Form of Child Abuse, available at http://www.hiltonhouse.com/articles/child_abuse-huntington.txt (characterizing child abduction as abuse). Child abductions can occur before or after entry of a child-custody determination. This Act allows the court to impose abduction prevention measures at any time.

Many abductions occur before a court has had the opportunity to enter a child-custody determination. Children at the center of custody disputes are at the highest risk for potential abductions.[33]America's Hidden Crime: When the Kidnapper is Kin 10- 11 (Polly Klaas Foundation 2004). *See also* Janet R. Johnston et al., Early Identification of Risk Factors for Parental Abduction (OJJDP March 2001)(indicating that men are more likely to abduct before an order is entered while women are more likely to abduct after a child custody determination). Jurisdictional laws help deter abductions by specifying the proper state to handle custody litigation. The Uniform Child Custody Jurisdiction Act[44]9 Unif. L. Ann. Part I 115 (1988). sets out four concurrent bases for jurisdiction. Congress passed the Parental Kidnapping Prevention Act of 1980 to deter abductions, discourage interstate conflicts, and promote cooperation between states about custody matters by resolving jurisdictional conflicts.[55]Pub. L. No. 96-611, note 7 to 28 U.S.C. §1738A. The Parental Kidnapping Prevention Act prioritizes the state in which the child has lived for six months preceding the filing of the petition (the home state) as the place for custody litigation[66]28 U.S.C. Section 1738A(c). and prohibits a second state from assuming jurisdiction if there is an action pending in the state that has proper jurisdiction.[77]28 U.S.C.A. Section 1738A(g). The Uniform Child Custody Jurisdiction and Enforcement Act,[88]9 Unif. L. Ann. Part I 657 (1999). now in 45 jurisdictions, also prioritizes home state jurisdiction notwithstanding the child's absence. Jurisdictional laws do not provide prevention measures for abduction.

Post-decree abductions often occur because the existing child-custody determinations lack sufficient protective provisions to prevent an abduction. An award of joint physical custody without a designation of specific times; a vague order granting "reasonable visitation"; or the lack any restrictions on custody and visitation make orders hard to enforce. The awareness of abduction risk factors and preventive measures available can reduce the threat of abduction by giving the court the tools to make the initial child-custody determination clearer, more specific, and more easily enforceable.

If an abduction occurs after a child-custody determination, all states have enforcement remedies. Forty-six jurisdictions use the procedures in Article 3 of the Uniform Child Custody Jurisdiction and Enforcement Act. In addition, courts can punish abductors for contempt and allow tort actions for custodial interference. Several federal laws help locate missing children[99]Missing Children Act, 28 U.S.C. §534 (1982); Missing Children Search Assistance Act and the National Child Search Assistance Act, 42 U.S.C. § 5779 &§

5780 (1990); and the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. 108-21, 117 Stat. 650 (AMBER Alert Program). and criminalize international parental kidnapping.[1010]*See* International Parental Kidnapping Crime Act (IPKCA), 18 U.S.C. § 1204; The Fugitive Felon Act, 18 U.S.C. § 1073; and The Extradition Treaties Interpretation Act of 1998, 18 U.S.C. § 3181. While there is no federal law criminalizing interstate parental kidnapping, there is a mechanism for apprehending persons who violate state parental kidnapping laws and travel across state lines.[1111]Unlawful Flight to Avoid Prosecution, 18 U.S.C. § 1204; The Fugitive Felon Act, 18 U.S.C. § 1073. When enacting the Parental Kidnapping Prevention Act, Congress declared that the Unlawful Flight to Avoid Prosecution provision applies to cases involving parental kidnapping and interstate or international flight to avoid prosecution. Pub. L. No. 96-611, 10(a). While every state criminally forbids custodial interference by parents or relatives of the child, the laws differ as to the elements of the offenses, the punishments given, and whether a child-custody determination must exist for a violation to occur.[1212]Appendix A. Citation List of State Parental Kidnapping Statutes, National Clearinghouse for the Defense of Battered Women, The Impact of Parental Kidnapping Laws and Practice on Domestic Violence Survivors 32 (2005).

If the abduction is international, the Hague Convention on the Civil Aspects of International Child Abduction, currently in effect between the United States and fifty-five countries, facilitates the return of an abducted child to the child's habitual residence.[1313]*See* The Hague Convention on the Civil Aspects of International Child Abduction, 51 Fed. Reg. § 10494 et seq. (1986); the International Child Abduction Remedies Act (ICARA), 42 U.S.C. §§ 11601-11610. For a current list of United States treaty partners, visit www.travel.state.gov/family/abduction/hague_issues/hague_issues_1487.html. Many countries, however, have not ratified the Hague Convention on the Civil Aspects of International Child Abduction, the United States has not accepted all nations' accessions, and some countries that have ratified do not comply with the treaty obligations.

This Act is civil law and complements existing state law. This Act does not limit, contradict, or supercede the Uniform Child Custody Jurisdiction and Enforcement Act or the Uniform Child Custody Jurisdiction Act. This Act is not meant to prevent a legitimate relocation action filed in accordance with the law of the state having jurisdiction to make a child-custody determination nor to prevent a victim of domestic violence from escaping abuse.

The Uniform Child Abduction Prevention Act applies to predecree and intrastate cases, to emergency situations, and to cases in which risk factors exist and the current child- custody determination lacks abduction prevention measures. Only three states have enacted comprehensive child abduction prevention statutes;[1414]*See* Ark. Stat. Ann. § 9-13-401-407 (2005); Cal. Fam. Code § 3048 (2004); Tex. Fam. Code §153.501-

§153.503 (2003). two other states include provisions to reduce the risk of abduction.[1515]*See* Fla. Stat. § 61.45 (2005); Or. Rev. Stat. § 109.035 (2005). This Act will fill a void in the majority of states by identifying circumstances indicating a risk of abduction and providing measures to prevent the abduction of children, predecree or postdecree.

14-13.5-101. Short title.

This article may be cited as the "Uniform Child Abduction Prevention Act".

Source: L. 2007: Entire article added, p. 767, § 1, effective May 14.

14-13.5-102. Definitions.

In this article:

(1) "Abduction" means the wrongful removal or wrongful retention of a child.

(2) "Child" means an unemancipated individual who is less than 18 years of age.

(3) "Child-custody determination" means a judgment, decree, or other order of a court providing for the legal custody or physical custody of a child, allocating parental responsibilities with respect to a child, or providing for visitation or parenting time with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child-custody proceeding" means a proceeding in which the legal custody or physical custody of a child, the allocation of parental responsibilities with respect to a child, or visitation or parenting time with respect to a child is at issue. The term includes a proceeding for divorce, dissolution of marriage, legal separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence or domestic abuse. The term does not include a proceeding involving juvenile delinquency or contractual emancipation.

(5) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

(6) "Petition" includes a motion or its equivalent.

(7) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe or nation.

(9) "Travel document" means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation, or accommodations. The term does not include a passport or visa.

(10) "Wrongful removal" means the taking of a child that breaches rights of custody or orders concerning the allocation of parental responsibilities or breaches rights of visitation or parenting time given or recognized under the law of this state.

(11) "Wrongful retention" means the keeping or concealing of a child that breaches rights of custody or orders concerning the allocation of parental responsibilities or breaches rights of visitation or parenting time given or recognized under the law of this state.

Source: L. 2007: Entire article added, p. 767, § 1, effective May 14.

OFFICIAL COMMENT

To the extent possible, the definitions track the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-101, et. seq., C.R.S.]. The definition of a child as a person under age 18 is the same as in Section 102(2) of the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-102 (2), C.R.S.]. State law determines when a child becomes emancipated before age 18. This Act is limited to the abduction of minors even though the risk of abduction may apply to a disabled adult who has an appointed adult guardian.

The definition of "child-custody determination" is the same as the definition in Section 102(3) of the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-102 (3), C.R.S.]. This Act uses the traditional terminology of "custody" and "visitation" because that is the language used in the Uniform Child Custody Jurisdiction and Enforcement Act although local terminology may differ. The definition of a child-custody proceeding differs insignificantly from Section 102(4) of the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-102 (4), C.R.S.].

The definition of abduction covers wrongful removal or wrongful retention. The definition is broad enough to encompass not only an abduction committed by either parent or a person acting on behalf of the parent but also other abductions. Generally both parents have the right to companionship and access to their child unless a court states otherwise. Abductions can occur against an individual or other entity with custody rights, as well as against

an individual with visitation or access rights. A parent with joint legal or physical custody rights, by operation of law, court order, or legally binding agreement, commits an abduction by wrongfully interfering with the other parent's rights. A removal or retention of a child can be "wrongful" predecree or postdecree. An abduction is wrongful where it is in breach of an existing "child-custody determination" or, if predecree, in violation of rights attributed to a person by operation of law. The term "breaches rights of custody" tracks Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction.

14-13.5-103. Cooperation and communication among courts.

Sections 14-13-110, 14-13-111, and 14-13-112 shall apply to cooperation and communications among courts in proceedings under this article.

Source: L. 2007: Entire article added, p. 768, § 1, effective May 14.

OFFICIAL COMMENT

It is possible, even likely, that abduction situations will involve more than one state. Thus, there is a need for mechanisms for communication among courts, for testimony to be obtained quickly by means other than physical presence, and for cooperation between courts in different states. Sections 110, 111, and 112 of the Uniform Child Custody Jurisdiction and Enforcement Act [sections 14-13-110, 14-13-111, and 14-13-112, C.R.S.] provide mechanisms to deal with these issues. States that do not have the Uniform Child Custody Jurisdiction and Enforcement Act may want to include these provisions or use some similar provision of existing state law.

14-13.5-104. Actions for abduction prevention measures.

(1) A court on its own motion may order abduction prevention measures in a child-custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

(2) A party to a child-custody determination or another individual or entity having a right under the law of this state or any other state to seek a child-custody determination for the child may file a petition seeking abduction prevention measures to protect the child under this article.

Source: L. 2007: Entire article added, p. 768, § 1, effective May 14.

OFFICIAL COMMENT

An abduction may occur before a child-custody proceeding has commenced, after the filing but before entry of a child-custody determination, or in violation of an existing child- custody determination. To obtain abduction prevention measures, either the court on its own may impose the measures or a party to a child custody proceeding or an individual or entity having the right to seek custody may file a petition seeking abduction prevention measures.

A court hearing a child custody case may determine that the evidence shows a credible risk of abduction. Therefore, even without a party filing a petition under this Act, the court on its own motion can impose appropriate abduction prevention measures. Usually, however, a parent who fears that the other parent or family members are preparing to abduct the child will file a petition in an existing custody dispute. An individual or other entity, such as the state child welfare agency, which has a right to lawful custody may file a petition alleging a risk of abduction and seeking prevention measures with respect to a child who is not yet the subject of a child-custody determination.

14-13.5-105. Jurisdiction.

(1) A petition under this article 13.5 may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child at issue under the "Uniform Child-custody Jurisdiction and Enforcement Act", article 13 of this title 14. A court with jurisdiction to modify an order concerning the allocation of parental rights and responsibilities pursuant to this article 13.5 may exercise jurisdiction during the pendency of an appeal brought with respect to an order allocating parental rights and responsibilities.

(2) A court of this state has temporary emergency jurisdiction under section 14-13-204, if the court finds a credible risk of abduction.

Source: L. 2007: Entire article added, p. 769, § 1, effective May 14. **L. 2021:** (1) amended, (HB 21-1031), ch. 116, p. 451, § 6, effective May 7.

Editor's note: Section 8 of chapter 116 (HB 21-1031), Session Laws of Colorado 2021, provides that the act changing this section applies to any request to modify an order appealed on, after, or before May 7, 2021.

Cross references: For the legislative declaration in HB 21-1031, see section 1 of chapter 116, Session Laws of Colorado 2021.

OFFICIAL COMMENT

This Act complements, but does not limit, contradict, or supercede the Uniform Child Custody Jurisdiction and Enforcement Act, 9 U.L.A. Part I 657 (1999), or the Uniform Child Custody Jurisdiction Act, 9 U.L.A. Part I 115 (1988). A court must have jurisdiction sufficient to make an initial child-custody determination, a modification, or temporary emergency jurisdiction to issue prevention measures under this Act.

The Parental Kidnapping Prevention Act prioritizes the child's home state as the primary jurisdictional basis; prohibits a court in one state from exercising jurisdiction if a valid custody proceeding is already pending in another state; and requires that states give full faith and credit to sister state decrees made in accordance with its principles. The Uniform Child Custody Jurisdiction and Enforcement Act follows the Parental Kidnapping Prevention Act.

A court has temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act only if the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. This Act equates a credible risk of abduction with threatened mistreatment or abuse for emergency jurisdiction purposes.

If a state would be able to exercise emergency jurisdiction under Section 204 the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-204, C.R.S.], it can do so even if another court has issued a child-custody determination and has continuing exclusive jurisdiction. The reference to Section 204 brings in all of its provisions that include communication, length of time of temporary orders, and the like.

Under Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-208, C.R.S.], if a court has jurisdiction because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction. However, as the comment to Section 208 explains, domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence. Domestic violence also shall be considered in a court's inconvenient forum analysis under Section 207(b)(1) of the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-207 (2)(a), C.R.S.].

14-13.5-106. Contents of petition.

(1) A petition under this article must be verified and include a copy of any existing child-custody determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in section 14-13.5-107. Subject to section 14-13-209, if reasonably ascertainable, the petition must contain:

(a) The name, date of birth, and gender of the child;

(b) The customary address and current physical location of the child;

(c) The identity, customary address, and current physical location of the respondent;

(d) A statement of whether a prior action to prevent abduction, domestic violence, or domestic abuse has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;

(e) A statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect and the date, location, and disposition of the case; and

(f) Any other information required to be submitted to the court for a child-custody determination under section 14-13-209.

Source: L. 2007: Entire article added, p. 769, § 1, effective May 14.

OFFICIAL COMMENT

The contents of the petition follow those for pleadings under Section 209 of the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-209, C.R.S.]. The information is made subject to state law [section 14-13-209 (5), C.R.S.] on the protection of names or identifying information in certain cases. A number of states have enacted laws relating to the protection of victims in domestic violence and child abuse cases by keeping confidential the victims' names, addresses, and other information. These procedures must be followed if the state law requires their applicability.

The requirement for information on domestic violence or child abuse is to alert the court to the possibility that a batterer or abuser is attempting to use the Act. Domestic violence underlies large numbers of parental kidnapping. One study found that approximately one half of abductors had been violent toward the other parent during the marriage or relationship. Some batterers abduct their children during or after custody litigation; others abduct before initiating legal proceedings. The court should not

allow a batterer to use this Act to gain temporary custody or additional visitation in an uncontested hearing. A person who has committed domestic violence or child abuse poses a risk of harm to the child. Such a person, however, may still seek relief in a contested hearing where the issues can be fully examined by the court. In order to screen for domestic violence or child abuse, the petition requires disclosure of all relevant information and the court can inquire about domestic violence at any hearing.

Notice and opportunity to be heard should be given according to the law of the state and may be by publication if other means are not effective. See Section 108(a) of the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-108, C.R.S.].

14-13.5-107. Factors to determine risk of abduction.

(1) In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

(a) Has previously abducted or attempted to abduct the child;

(b) Has threatened to abduct the child;

(c) Has recently engaged in activities that may indicate a planned abduction, including:

(I) Abandoning employment;

(II) Selling a primary residence;

(III) Terminating a lease;

(IV) Closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;

(V) Applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or

(VI) Seeking to obtain the child's birth certificate or school or medical records;

(d) Has engaged in domestic violence, domestic abuse, stalking, or child abuse or neglect;

(e) Has refused to follow a child-custody determination;

(f) Lacks strong familial, financial, emotional, or cultural ties to the state or the United States;

(g) Has strong familial, financial, emotional, or cultural ties to another state or country;

(h) Is likely to take the child to a country that:

(I) Is not a party to the "Hague Convention on the Civil Aspects of International Child Abduction" and does not provide for the extradition of an abducting parent or for the return of an abducted child;

(II) Is a party to the "Hague Convention on the Civil Aspects of International Child Abduction" but:

(A) The "Hague Convention on the Civil Aspects of International Child Abduction" is not in force between the United States and that country;

(B) Is noncompliant according to the most recent compliance report issued by the United States department of state; or

(C) Lacks legal mechanisms for immediately and effectively enforcing a return order under the "Hague Convention on the Civil Aspects of International Child Abduction";

(III) Poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;

(IV) Has laws or practices that would:

(A) Enable the respondent, without due cause, to prevent the petitioner from contacting the child;

(B) Restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or

(C) Restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;

(V) Is included by the United States department of state on a current list of state sponsors of terrorism;

(VI) Does not have an official United States diplomatic presence in the country; or

(VII) Is engaged in active military action or war, including a civil war, to which the child may be exposed;

(i) Is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;

(j) Has had an application for United States citizenship denied;

(k) Has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a social security card, a driver's license, or other government-issued identification card or has made a misrepresentation to the United States government;

(l) Has used multiple names to attempt to mislead or defraud; or

(m) Has engaged in any other conduct the court considers relevant to the risk of abduction.

(2) In the hearing on a petition under this article, the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

Source: L. 2007: Entire article added, p. 769, § 1, effective May 14.

OFFICIAL COMMENT

The list of risk factors constitutes a summary of the wide variety of types of behaviors and characteristics that researchers have found to be present. The risk factors are based on research that has been done during the last twelve years. Research also shows that abducting parents dismiss the value of the other parent in the child's life; have young children or children vulnerable to influence; and often have the support of their family and others. Parents who have made credible threats to abduct a child or have a history are particularly high risk especially when accompanied by other factors, such as quitting a job, selling a home, and moving assets. See Janet Johnston & Linda Girdner, Family Abductors: Descriptive Profiles and Preventative Interventions (U.S. Dep't of Justice, OJJDP 2001 NCJ 182788); ABA, Early Identification of Risk Factors for Parental Abduction (NCJ185026). The more of these factors that are present, the more likely the chance of an abduction. However, the mere presence of one or more of these factors does not mean that an abduction will occur just as the absence of these factors does not guarantee that no abduction will occur. Some conduct described in the factors can be done in conjunction with a relocation petition, which would negate an inference that the parent is planning to abduct the child.

International abductions pose more obstacles to return of a child than do abductions within the United States. Courts should consider evidence that the respondent was raised in another country and has family support there, has a legal right to work in a foreign country and has the ability to speak that foreign language. There are difficulties associated with securing return of children from countries that are not treaty partners under the Hague Convention on the Civil Aspects of Child Abduction or are not compliant with the Convention. Compliance Reports are available at the United States Department of State website or may be obtained by contacting the Office of Children's Issues in Department of State.

Courts should be particularly sensitive to the importance of preventive measures where there is an identified risk of a child

being removed to countries that are guilty of human rights violations, including arranged marriages of children, child labor, lack of child abuse laws, female genital mutilation, sexual exploitation, any form of child slavery, torture, and the deprivation of liberty. These countries pose potentially serious obstacles to return of a child and pose the possibility of harm.

Courts need to be sensitive to domestic violence issues. Batterers often abduct their children before as well as during and after custody litigation. However, courts also need to be aware of the dynamics of domestic violence. Rather than a vindictive reason for taking the child, a victim fleeing domestic violence may be attempting to protect the victim and the child. Almost half of the parents in one parental kidnapping study were victims of domestic violence and half of the parents who were contemplating abducting their children were motivated by the perceived need to protect their child from physical, sexual, and emotional abuse. Geoffrey L. Greif & Rebecca L. Hegar, When Parents Kidnap: The Families Behind the Headlines 8 (1993). Some of the risk factors involve the same activities that might be undertaken by a victim of domestic violence who is trying to relocate or flee to escape violence. If the evidence shows that the parent preparing to leave is fleeing domestic violence, the court must consider that any order restricting departure or transferring custody may pose safety issues for the respondent and the child, and therefore, should be imposed only when the risk of abduction, the likely harm from the abduction, and the chances of recovery outweigh the risk of harm to the respondent and the child.

The Uniform Child Custody Jurisdiction and Enforcement Act recognizes that domestic violence victims should be considered. The Comment to Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (Jurisdiction Declined by Reason of Conduct) [section 14-13-208,C.R.S.] states that "Domestic violence victims should not be charged with unjustifiable conduct for conduct that occurred in the process of fleeing domestic violence, even if their conduct is technically illegal. An inquiry must be made whether the flight was justified under the circumstances of the case."

ANNOTATION

A court may not impose abduction prevention measures without first finding that there is a credible risk by addressing all of the factors listed in subsection (1). In re Badawiyeh, 2023 COA 4, 528 P.3d 194.

14-13.5-108. Provisions and measures to prevent abduction.

(1) If a petition is filed under this article, the court may enter an order that must include:

(a) The basis for the court's exercise of jurisdiction;

(b) The manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;

(c) A detailed description of each party's custody and visitation rights, residential arrangements for the child, and any child-custody determinations in effect;

(d) A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and

(e) Identification of the child's country of habitual residence at the time of the issuance of the order.

(2) If, at a hearing on a petition under this article or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order must include the provisions required by subsection (1) of this section and measures and conditions, including those in subsections (3), (4), and (5) of this section, that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties and the child-custody determinations in effect at the time of the filing of the petition under this article. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, domestic abuse, stalking, or child abuse or neglect.

(3) An abduction prevention order may include one or more of the following:

(a) An imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

(I) The travel itinerary of the child;

(II) A list of physical addresses and telephone numbers at which the child can be reached at specified times; and

(III) Copies of all travel documents;

(b) A prohibition of the respondent directly or indirectly from:

(I) Removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;

(II) Removing or retaining the child in violation of a child-custody determination;

(III) Removing the child from school or a child-care or similar facility; or

(IV) Approaching the child at any location other than a site designated for supervised visitation or supervised parenting time;

(c) A requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;

(d) With regard to the child's passport:

(I) A direction that the petitioner place the child's name in the United States department of state's child passport issuance alert program;

(II) A requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and

(III) A prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(e) As a prerequisite to exercising custody, parental responsibilities, or visitation or parenting time, a requirement that the respondent provide:

(I) To the United States department of state office of children's issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(II) To the court:

(A) Proof that the respondent has provided the information in subparagraph (I) of this paragraph (e); and

(B) An acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;

(III) To the petitioner, proof of registration with the United States embassy or other United States diplomatic presence in the destination country and with the central authority for the "Hague Convention on the Civil Aspects of International Child Abduction", if that convention is in effect between the United States and the destination country, unless one of the parties objects; and

(IV) A written waiver under the federal "Privacy Act of 1974", 5 U.S.C. Section 552a, with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(f) Upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child-custody determination issued in the United States.

(4) In an abduction prevention order, the court may impose conditions on the exercise of custody, parental responsibilities, or visitation or parenting time that:

(a) Limit visitation or parenting time or require that visitation or parenting time with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(b) Require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorneys fees and costs if there is an abduction; and

(c) Require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(5) To prevent imminent abduction of a child, a court may:

(a) Issue a warrant to take physical custody of the child under section 14-13.5-109 or the law of this state other than this article;

(b) Direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under this article or the law of this state other than this article; or

(c) Grant any other relief allowed under the law of this state other than this article.

(6) The remedies provided in this article are cumulative and do not affect the availability of other remedies to prevent abduction.

Source: L. 2007: Entire article added, p. 771, § 1, effective May 14.

OFFICIAL COMMENT

This act provides courts with a choice of remedies. Ideally the court will choose the least restrictive measures and conditions to maximize opportunities for continued parental contact while minimizing the opportunities for abduction. The most restrictive measures should be used when there have been prior custody violations and overt threats to take the child; when the child faces substantial potential harm from an abducting parent who may have serious mental or personality disorder, history of abuse or violence or no prior relationship with the child; or when the obstacles to recovering the child are formidable due to countries not cooperating and enforcing orders from the United States, not being signatories to the Hague Convention on the Civil Aspects of International Child Abduction or non-compliant. This section of the Act lists the possible prevention measures categorized as travel restrictions, conditions on the exercise of custody and

visitation, and urgent measures when abduction is imminent or in progress.

If a person files a petition under this Act, even if the court decides not to order restrictive measures or impose conditions, the court may clarify and make more specific the existing child-custody determination. To enter an abduction prevention order, the court must have jurisdiction to make a child-custody determination even if it is emergency jurisdiction. The court should set out the basis for the court's exercise of jurisdiction. The more apparent on the face of the document that the court issuing the order had proper jurisdiction, the more likely courts in other states and countries are to recognize it as valid. The court should also include a statement showing that the parties were properly served and given adequate notice. This makes it apparent on the face of the order that due process was met. See Sections 108 and 205 of the Uniform Child Custody Jurisdiction and Enforcement Act [sections 14-13- 108 and 14-13-205, C.R.S.]. States do not require personal jurisdiction to make a child- custody determination.

The court may make an existing child-custody order clearer and more specific. Vague orders are difficult to enforce without additional litigation. The term "reasonable visitation" can lead to conflicts between the parents and make it difficult for law enforcement officers to know if the order is being violated. The court may specify the dates and times for each party's custody and visitation, including holidays, birthdays, and telephone or Internet contact. Because joint custody arrangements create special enforcement problems, the court should ensure that the order specifies the child's residential placement at all times. Whenever possible, the residential arrangements should represent the parents' agreement. However, to prevent abductions, it is important for the court order to be specific as to the residential arrangements for the child. If there is a threat of abduction, awarding sole custody to one parent makes enforcement easier.

The court may also include language in the prevention order to highlight the importance of both parties complying with the court order by including in bold language: "VIOLATION OF THIS ORDER MAY SUBJECT THE PARTY IN VIOLATION TO CIVIL AND CRIMINAL PENALTIES."

Because every abduction case may be a potential international abduction case, the prevention order should identify the place of habitual residence of a child. Although the Hague Convention on the Civil Aspects of International Child Abduction does not define "habitual residence" and the determination is made by the court in the country hearing a petition for return of a child, a statement in the child-custody determination or prevention order may help. A typical statement reads:

> The State of _____, United States of America, is the habitual residence of the minor children within the meaning of the Hague

Convention on the Civil Aspects of International Child Abduction.

If the court finds a credible risk of abduction, this Act provides numerous measures to prevent an abduction. Courts can require a party traveling outside a specified geographical area to provide the other party with all relevant information about where the child will be and how to contact the child. The court can impose travel restrictions prohibiting the respondent from leaving the United States or a specific geographical area; from removing the child from school, day care or other facilities, and can restrict contact other than as specified in the order. The court may also impose passport restrictions and require the respondent to provide assurances and safeguards as a condition of traveling with the child.

The court may also choose to impose restrictions on custody or visitation. The most common, and one of the most effective, restrictions is supervised visitation. Visitation should remain supervised until the court decides the threat of abduction has passed. In addition, the court may require the posting of a bond sufficient to serve both as a deterrent and as a source of funds for the cost of the return of the child. If domestic violence is present, the court may want to order the abusive person to obtain education, counseling or attend a batterers' intervention and prevention program.

Because of international abduction cases are the most complex and difficult, reasonable restrictions to prevent such abductions are necessary. If a credible risk of international abduction of the child exists, passport controls and travel restrictions may be indispensable. It may be advantageous in some cases to obtain a "mirror" or reciprocal order. Before exercising rights, the respondent would need to get a custody order from the country to which the respondent will travel that recognizes both the United States order and the court's continuing jurisdiction. The foreign court would need to agree to order return of the child if the child was taken in violation of the court order. This potentially expensive and time consuming remedy should only be ordered when likely to be of assistance. Because the foreign court may subsequently modify its order, problems can arise.

The court may do whatever is necessary to prevent an abduction, including using the warrant procedure under this act or under the law of the state. Many law enforcement officers are unclear about their role in responding to parental kidnapping cases. One study showed that 70 percent of law enforcement agencies reported that they did not have written policies and procedures governing child abduction cases. A provision in the custody order directing law enforcement officer to "accompany and assist" a parent to recover an abducted child may be useful but is not included in this Act.

The remedies provided in this Act are intended to supplement and complement existing law.

14-13.5-109. Warrant to take physical custody of child.

(1) If a petition under this article contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(2) The respondent on a petition under subsection (1) of this section must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(3) An ex parte warrant under subsection (1) of this section to take physical custody of a child must:

(a) Recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(b) Direct law enforcement officers to take physical custody of the child immediately;

(c) State the date and time for the hearing on the petition; and

(d) Provide for the safe interim placement of the child pending further order of the court.

(4) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant databases of the national crime information center system and similar state databases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

(5) The petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

(6) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

(7) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under subsection (1) of this section for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorneys fees, costs, and expenses.

(8) This article does not affect the availability of relief allowed under the law of this state other than this article.

Source: L. 2007: Entire article added, p. 774, § 1, effective May 14.

OFFICIAL COMMENT

This section of the Act authorizes issuance of a warrant in an emergency situation, such as an allegation that the respondent is preparing to abduct the child to a foreign country and is on the way to the airport. The harm is the credible risk of imminent removal. If the court finds such a risk, the court should temporarily waive the notice requirements and issue a warrant to take physical custody of the child. Immediately after the warrant is executed, the respondent is to receive notice of the proceedings. This section mirrors Section 311 of the Uniform Child Custody Jurisdiction and Enforcement Act [section 14-13-311, C.R.S.] on warrants to pick up a child which are available when there is an existing child-custody determination. In many states, the term used in civil cases is "writ of attachment."

The court should hear the testimony of the petitioner or another witness before issuing the warrant. The testimony may be heard in person, by telephone, or by any other means acceptable under local law, which may include video conferencing or use of other technology.

Domestic violence includes "family" violence. Because some batterers may try to use the warrant procedure to prevent victims and the children from escaping domestic violence or child abuse, the court should check relevant state and national databases to see if either the petitioner or respondent's name is listed or if relevant information exists that has not been disclosed before issuing the warrant and ordering placement. Lundy Bancroft & Jay G. Silverman, The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics 73, 75 (2002)(indicating that most parental abductions take place in the context of a history of domestic violence because threatening to take the child from the mother is a form of control).

Some courts have computer terminals on the bench and a database search takes seconds. Courts without computer access can seek the assistance of law enforcement. Unless impracticable, the court should conduct a search of all person databases of the National Crime Information Center system, including the protection order file, the historical protection order file, the warrants file, the sex offender registry, and the persons on supervised release file. In addition, it is recommended that courts run searches in the National Law Enforcement Telecommunication System in the petitioner's state of birth, current state of residence, and other recent states of residence. Civil courts are authorized by statute and National Crime Information Center policy to have access to information in several files for domestic violence and stalking cases. Because child abduction involves family members and can harm children, and violence between the parents is often a factor leading to child abduction, cases in which a parent alleges a risk of wrongful removal should permit access to the relevant databases.

The court should also view comparable state databases, such as the state department of social service registry of persons found to have abused or neglected children. If the petitioner or respondent are listed for a reason related to a crime of domestic or family violence, the court may refuse to issue a warrant or order any appropriate placement authorized under the laws of the state. The warrant must provide for the placement of a child pending the hearing. Temporary placement will most often be with the petitioner unless the database check reveals the petitioner is a likely or known abuser.

The court must state the reasons for issuance of the warrant. The warrant can be enforced by law enforcement officers wherever the child is found in the state. The warrant may authorize entry upon private property to pick up the child if no less intrusive means are possible. In extraordinary cases, the warrant may authorize law enforcement to make a forcible entry at any hour. This section also authorizes law enforcement officers to enforce out of state warrants.

This section of the Act applies only to wrongful removals, not wrongful retentions. It does not hinder a court from issuing any other immediate ex parte relief to prevent a wrongful removal or retention as may be allowed under law other than this act.

14-13.5-110. Duration of abduction prevention order.

(1) An abduction prevention order remains in effect until the earliest of:

(a) The time stated in the order;

(b) The emancipation of the child;

(c) The child's attaining eighteen years of age; or

(d) The time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under sections 14-13-201 to 14-13-203.

Source: L. 2007: Entire article added, p. 775, § 1, effective May 14.

14-13.5-111. Uniformity of applications and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: L. 2007: Entire article added, p. 775, § 1, effective May 14.

14-13.5-112. Relation to electronic signatures in global and national commerce act.

This article modifies, limits, and supersedes the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of the act, 15 U.S.C. sec. 7001(c), of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. sec. 7003(b).

Source: L. 2007: Entire article added, p. 775, § 1, effective May 14.

ARTICLE 13.7

Uniform Deployed Parents Custody and Visitation Act

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PART 1

GENERAL PROVISIONS

14-13.7-101. Short title.

This article shall be known and may be cited as the "Uniform Deployed Parents Custody and Visitation Act".

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 624, § 2, effective May 10.

14-13.7-102. Definitions.

In this article 13.7:

(1) "Adult" means an individual who has attained eighteen years of age or who is an emancipated minor.

(2) "Caretaking authority" means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.

(3) "Child" means:

(a) An unemancipated individual who has not attained eighteen years of age; or

(b) An adult son or daughter by birth or adoption, or under law of this state other than this article, who is the subject of a court order concerning custodial responsibility.

(4) "Court" means a tribunal, including an administrative agency, authorized under law of this state other than this article to make, enforce, or modify a decision regarding custodial responsibility.

(5) "Custodial responsibility" includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.

(6) "Decision-making authority" means the power to make major decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

(7) "Deploying parent" means a service member who is deployed or has been notified of impending deployment and is:

(a) A parent of a child under law of this state other than this article; or

(b) An individual who has custodial responsibility for a child under law of this state other than this article.

(8) "Deployment" means the movement or mobilization of a service member for more than ninety days but less than eighteen months pursuant to uniformed service orders that:

(a) Are designated as unaccompanied;

(b) Do not authorize dependent travel; or

(c) Otherwise do not permit the movement of family members to the location to which the service member is deployed.

(8.5) "Deployment order" means a record provided by a uniformed service to a service member directing a deployment.

(9) "Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this article.

(10) "Limited contact" means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

(11) "Nonparent" means an individual other than a deploying parent or other parent.

(12) "Other parent" means an individual who, in common with a deploying parent, is:

(a) A parent of a child under law of this state other than this article; or

(b) An individual who has custodial responsibility for a child under law of this state other than this article.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Return from deployment" means the conclusion of a service member's deployment as specified in uniformed service orders.

(15) "Service member" means a member of a uniformed service.

(16) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt with a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(18) "Uniformed service" means:

(a) Active and reserve components of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard of the United States;

(b) The United States merchant marine;

(c) The commissioned corps of the United States public health service;

(d) The commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(e) The National Guard of a state.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 624, § 2, effective May 10. **L. 2021:** IP and (18)(a) amended, (HB 21-1231), ch. 206, p. 1077, § 4, effective May 28.

14-13.7-103. (Reserved)

14-13.7-104. Jurisdiction.

(1) A court may issue an order regarding custodial responsibility under this article only if the court has jurisdiction under article 13 of this title.

(2) If a court has issued an interim order regarding custodial responsibility pursuant to part 3 of this article, the residence of the deploying parent is not changed by reason of the deployment for the purposes of article 13 of this title.

(3) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to part 2 of this article, the residence of the deploying parent is not changed by reason of the deployment for the purposes of article 13 of this title.

(4) If a court in another state has issued an interim order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of article 13 of this title.

(5) This section does not prevent a court from exercising emergency jurisdiction under article 13 of this title.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 627, § 2, effective May 10.

14-13.7-105. Notification required of deploying parent.

(1) Except as otherwise provided in subsection (4) of this section and subject to subsection (3) of this section, in cases where there has been a prior determination of custody, a deploying parent shall notify in a record the other parent of a pending deployment not later than twelve calendar days after receiving deployment orders unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within twelve calendar days, the deploying parent shall give the notification as soon as reasonably possible.

(2) Except as otherwise provided in subsection (4) of this section and subject to subsection (3) of this section, each parent shall provide in a record to the other parent a plan for fulfilling

that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (1) of this section.

(3) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (1) of this section or notification of a plan for custodial responsibility during deployment under subsection (2) of this section may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(4) Notification in a record under subsection (1) or (2) of this section is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 627, § 2, effective May 10.

14-13.7-106. Duty to notify of change of address.

(1) Except as otherwise provided in subsection (2) of this section, an individual to whom custodial responsibility has been granted during deployment pursuant to part 2 or 3 of this article shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is terminated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect. This notice provision does not alter the provisions of section 14-10-129.

(2) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (1) of this section may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 628, § 2, effective May 10.

14-13.7-107. General consideration in custody proceeding of parent's military service.

In a proceeding for custodial responsibility of a child of a service member, a parent's past deployment or possible future deployment in itself may not serve as the sole basis in determining

the best interest of the child. Nothing in this section shall be construed as prohibiting the court from applying section 14-10-124 in determining the best interest of the child.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 628, § 2, effective May 10.

PART 2

AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

14-13.7-201. Form of agreement.

(1) The parents of a child may enter into an interim agreement under this article granting custodial responsibility during deployment.

(2) An agreement under subsection (1) of this section must be:

(a) In writing; and

(b) Signed by both parents and any nonparent to whom custodial responsibility is granted.

(3) Subject to subsection (4) of this section, an agreement under subsection (1) of this section, if feasible, must:

(a) Identify the destination, duration, and conditions of the deployment that is the basis for the agreement;

(b) Specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;

(c) Specify any decision-making authority that accompanies a grant of caretaking authority;

(d) Specify any grant of limited contact to a nonparent;

(e) If, under the agreement, custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(f) Specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;

(g) Specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(h) Acknowledge that any party's child-support obligation cannot be modified by the agreement alone, and that changing the terms of the obligation during deployment requires modification by court order;

(i) Provide that the agreement will terminate according to the procedures under part 4 of this article after the deploying parent returns from deployment; and

(j) If the agreement must be filed pursuant to section 14-13.7-205, specify which parent is required to file the agreement.

(4) The omission of any of the items specified in subsection (3) of this section does not invalidate an agreement under this section.

(5) The agreement may be submitted to the court for approval to become an enforceable order.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 628, § 2, effective May 10.

14-13.7-202. Nature of authority created by agreement.

(1) An agreement under this part 2 is an interim agreement and terminates pursuant to part 4 of this article after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under section 14-13.7-203. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.

(2) A nonparent who has caretaking authority, decision-making authority, or limited contact by an agreement under this part 2 has standing to enforce the agreement until it has been terminated by court order, by modification under section 14-13.7-203, or under part 4 of this article.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 629, § 2, effective May 10.

14-13.7-203. Modification of agreement.

(1) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this part 2.

(2) If an agreement is modified under subsection (1) of this section before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(3) If an agreement is modified under subsection (1) of this section during deployment of a deploying parent, the modification must be agreed to in a record that is signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement, and the modified agreement may be submitted to the court for approval to become an enforceable order.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 629, § 2, effective May 10.

14-13.7-204. Power of attorney.

A deploying parent, by power of attorney, may delegate all or part of his or her custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this article, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 630, § 2, effective May 10.

14-13.7-205. Filing agreement or power of attorney with court.

An agreement or power of attorney under this part 2 must be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support must be provided to the court with the agreement or power.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 630, § 2, effective May 10.

PART 3

JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

14-13.7-301. Definition.

In this part 3, "close and substantial relationship" means a relationship between a child and a nonparent who has had physical care of the child for more than one hundred eighty-two days.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 630, § 2, effective May 10.

14-13.7-302. Proceeding for interim custody order.

(1) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue an interim order, consistent with the best interests of the child, granting custodial responsibility, unless prohibited by the "Servicemembers Civil Relief Act", 50 U.S.C. appendix sections 521 and 522. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(2) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under section 14-13.7-104 or, if there is no pending proceeding in a court with jurisdiction under section 14-13.7-104, in a new action for granting custodial responsibility during deployment.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 630, § 2, effective May 10.

14-13.7-303. Expedited hearing.

If a motion to grant custodial responsibility is filed under section 14-13.7-302 (2) before a deploying parent deploys, the court shall conduct an expedited hearing.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 631, § 2, effective May 10.

14-13.7-304. Testimony by electronic means.

In a proceeding under this part 3, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 631, § 2, effective May 10.

14-13.7-305. Effect of prior judicial order or agreement.

(1) In a proceeding for a grant of custodial responsibility pursuant to this part 3, the following rules apply:

(a) A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of law of this state other than this article for modifying a judicial order regarding custodial responsibility;

(b) The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under part 2 of this article, unless the court finds that the agreement is not in the best interest of the child.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 631, § 2, effective May 10.

14-13.7-306. Grant of caretaking or decision-making authority to nonparent.

(1) On motion of a deploying parent and in accordance with law of this state other than this article, if it is in the best interest of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.

(2) Unless a grant of caretaking authority to a nonparent under subsection (1) of this section is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(a) The amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or

(b) In the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

(3) If a court finds that it is in the best interests of the child, the court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 631, § 2, effective May 10.

14-13.7-307. Grant of limited contact.

On a motion of a deploying parent, and in accordance with law of this state other than this article, unless the court finds that the contact would not be in the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 632, § 2, effective May 10.

14-13.7-308. Nature of authority created by interim custody order.

(1) A grant of authority under this part 3 is an interim grant of authority and terminates under part 4 of this article after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom it is granted.

(2) A nonparent granted caretaking authority, decision-making authority, or limited contact under this part 3 has standing to enforce the grant until it is terminated by court order or under part 4 of this article.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 632, § 2, effective May 10.

14-13.7-309. Content of interim custody order.

(1) An order granting custodial responsibility under this part 3 must:

(a) Designate the order as an interim order; and

(b) Identify to the extent feasible the destination, duration, and condition of the deployment.

(2) If applicable, an order for custodial responsibility under this part 3 must:

(a) Specify the allocation of caretaking authority, decision-making authority, or limited contact among the deploying parent, the other parent, and any nonparent;

(b) If the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;

(c) Provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless the court finds it is not in the best interest of the child, and allocate any costs of communications;

(d) Provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless the court finds it is not in the best interest of the child;

(e) Provide for reasonable contact between the deploying parent and the child after return from deployment until the interim order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the interim order; and

(f) Provide that the order will terminate pursuant to part 4 of this article after the deploying parent returns from deployment.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 632, § 2, effective May 10.

14-13.7-310. Order for child support.

If a court has issued an order granting caretaking authority under this part 3, or an agreement granting caretaking authority has been executed under part 2 of this article, the court may enter an interim order for child support consistent with law of this state other than this article if the court has jurisdiction under the "Uniform Interstate Family Support Act", article 5 of this title.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 633, § 2, effective May 10.

14-13.7-311. Modifying or terminating grant of custodial responsibility to nonparent.

(1) Except for an order under section 14-13.7-305, except as otherwise provided in subsection (2) of this section, and consistent with the "Servicemembers Civil Relief Act", 50

U.S.C. appendix sections 521 and 522, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this part 3 and it is in the best interest of the child. A modification is an interim modification and terminates pursuant to part 4 of this article after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(2) On motion of a deploying parent, the court shall terminate a grant of limited contact, unless it is not in the best interests of the child.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 633, § 2, effective May 10.

PART 4

RETURN FROM DEPLOYMENT

14-13.7-401. Procedure for terminating interim grant of custodial responsibility established by agreement.

(1) At any time after return from deployment, an interim agreement granting custodial responsibility under part 2 of this article may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(2) An interim agreement under part 2 of this article granting custodial responsibility terminates:

(a) If an agreement to terminate under subsection (1) of this section specifies a date for termination on that date; or

(b) If the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(3) In the absence of an agreement to terminate under subsection (1) of this section, an interim agreement granting custodial responsibility terminates under part 2 of this article thirty-five days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(4) If an interim agreement granting custodial responsibility was filed with a court pursuant to section 14-13.7-205, an agreement to terminate the interim agreement must also be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support must be provided to the court with the agreement to terminate.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 633, § 2, effective May 10.

14-13.7-402. Consent procedure for terminating interim grant of custodial responsibility established by court order.

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate an interim order for custodial responsibility issued under part 3 of this article. After an agreement has been filed, the court shall issue an order terminating the interim order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 634, § 2, effective May 10.

14-13.7-403. Visitation before termination of interim grant of custodial responsibility.

After a deploying parent returns from deployment until an interim agreement or an interim order for custodial responsibility established under part 2 or 3 of this article is terminated, the court shall immediately issue an interim order granting the deploying parent reasonable contact with the child consistent with the deployed parent's post deployment leave, unless the court finds it is not in the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 634, § 2, effective May 10.

14-13.7-404. Termination by operation of law of interim grant of custodial responsibility established by court order.

(1) If an agreement between the parties to terminate an interim order for custodial responsibility under part 3 of this article has not been filed, the order terminates thirty-five days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(2) A proceeding seeking to prevent termination of an interim order for custodial responsibility is governed by sections 14-10-124 and 14-10-129.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 634, § 2, effective May 10.

PART 5

MISCELLANEOUS PROVISIONS

14-13.7-501. Uniformity of application and construction.

In applying and construing this uniform act, consideration may be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it if it is consistent with the public policy of the state.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 634, § 2, effective May 10.

14-13.7-502. Relation to electronic signatures in global and national commerce act.

This article modifies, limits, or supersedes the "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101 (c) of that act, 15 U.S.C. section 7001 (c), or authorize electronic delivery of any of the notices described in section 103 (b) of that act, 15 U.S.C. section 7003 (b).

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 635, § 2, effective May 10.

14-13.7-503. Saving clause.

This article does not affect the validity of an interim court order concerning custodial responsibility during deployment that was entered before July 1, 2013.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 635, § 2, effective May 10.

14-13.7-504. Effective date.

This article takes effect July 1, 2013.

Source: L. 2013: Entire article added, (HB 13-1200), ch. 174, p. 635, § 2, effective May 10.

CHILD SUPPORT

ARTICLE 14

Child Support Enforcement Procedures

14-14-101. Short title.
14-14-102. Definitions.
14-14-103. Additional remedies.
14-14-104. Recovery for child support debt.
14-14-105. Continuing garnishment.
14-14-106. Interest.
14-14-107. Wage assignment - applicability. (Repealed)
14-14-108. Child support debt offset. (Repealed)
14-14-109. Security, bond, or guarantee.
14-14-110. Contempt of court.
14-14-111. Immediate deductions for family support obligations - legislative declaration - procedures - applicability. (Repealed)
14-14-111.5. Income assignments for child support or maintenance.
14-14-112. Deductions for health insurance.
14-14-113. Recordation of social security numbers in certain family matters.

14-14-101. Short title.

This article shall be known and may be cited as the "Colorado Child Support Enforcement Procedures Act".

Source: L. 81: Entire article added, p. 905, § 1, effective June 8.

14-14-102. Definitions.

As used in this article 14, unless the context otherwise requires:

(1) "Court" means any court in this state having jurisdiction to determine the liability of persons for the support of another person.

(2) "Delegate child support enforcement unit" means the unit of a county department of human or social services or its contractual agent that is responsible for carrying out the

provisions of this article 14. The term "contractual agent" includes a private child support collection agency, operating as an independent contractor with a county department of human or social services, or a district attorney's office, that contracts to provide any services that the delegate child support enforcement unit is required by law to provide.

(3) "Dependent child" means any person who is legally entitled to or the subject of a court order for the provision of proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well-being who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(4) "Duty of support" means a duty of support imposed by law or by order, decree, or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance or otherwise. "Duty of support" includes the duty to pay arrearages of support past-due and unpaid.

(4.3) "Employer", for purposes of income withholding pursuant to section 14-5-501, includes any person, company, or corporation, Pinnacol Assurance, or other insurance carrier paying any type of workers' compensation benefits pursuant to articles 40 to 47 of title 8, C.R.S.

(4.5) "Family support registry" means a central registry maintained and operated by the state department of human services pursuant to section 26-13-114, C.R.S., that receives, processes, disburses, and maintains a record of the payment of child support, child support when combined with maintenance, maintenance, child support arrears, or child support debt.

(4.7) "Health insurance" means medical insurance or medical and dental insurance coverage or both of human beings against bodily injury or illness. Such coverage may be provided through a parent's employer or may be acquired individually by the parent.

(5) "Obligee" means any person or agency to whom a duty of support is owed or any person or agency who has commenced a proceeding for the establishment or enforcement of an alleged duty of support.

(6) "Obligor" means any person owing a duty of support, or against whom a proceeding for the establishment or enforcement of a duty of support is commenced.

(6.5) "Plan" means a group health benefit plan or combination of plans, other than public assistance programs, that provides medical care or benefits for a child. "Plan" includes, but is not limited to, a health maintenance organization, self-funded group, state or local government group health plan, church group plan, medical or health service corporation, or other similar plan.

(7) "Public assistance" means assistance payments and social services provided to or on behalf of eligible recipients through programs administered or supervised by the state department of human services, either in cooperation with the federal government or independently without federal aid, pursuant to article 2 of title 26, or by the department of early childhood pursuant to part 1 of article 4 of title 26.5.

(8) "Support order" means any judgment, decree, or order of support in favor of an obligee, whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

(9) "Wages" means income to an obligor in any form, including, but not limited to, actual gross income; compensation paid or payable for personal services, whether denominated as wages; earnings from an employer; salaries; payment to an independent contractor for labor or services; commissions; 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; rents; bonuses; severance pay; retirement benefits and pensions, including, but not limited to, those paid pursuant to articles 51, 54, 54.5, and 54.6 of title 24, and article 30 of title 31; workers' compensation benefits; 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; disability benefits; dividends; royalties; trust account distributions; any moneys drawn by a self-employed individual for personal use; 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; interest; trust income; annuities; payments received from a third party to cover the health-care cost of the child but which payments have not been applied to cover the child's health-care costs; state tax refunds; and capital gains. "Wages", for the purposes of child support enforcement, may also include unemployment compensation benefits, but only subject to the provisions and requirements of section 8-73-102 (5).

Source: L. 81: Entire article added, p. 905, § 1, effective June 8. **L. 82:** (3) amended, p. 281, § 4, effective April 2. **L. 83:** (3) amended, p. 651, § 1, effective March 3. **L. 84:** (9) added, p. 480, § 1, effective July 1. **L. 87:** (9) amended, p. 596, § 26, effective July 10. **L. 89:** (9) amended, p. 793, § 17, effective July 1. **L. 90:** (4.5) added, p. 1414, § 14, effective June 8; (2) and (9) amended, pp. 891, 564, §§ 12, 36, effective July 1. **L. 92:** (9) amended, p. 578, § 6, effective July 1; (4.7) added, p. 169, § 3, effective August 1. **L. 93:** (9) amended, p. 1872, § 6, effective June 1. **L. 94:** (9) amended, p. 1539, § 7, effective May 31; (4.5)(a) and (7) amended, p. 2646, § 109, effective July 1; (9) amended, p. 1253, § 7, effective July 1. **L. 96:** (4.5) and (9) amended, p. 599, § 9, effective July 1. **L. 97:** (4.3) added, p. 562, § 7, effective July 1. **L. 98:** (9) amended, p. 921, § 8, effective July 1. **L. 99:** (9) amended, p. 621, § 16, effective August 4. **L. 2001:** (4.3) amended, p. 721, § 3, effective May 31. **L. 2002:** (4.3) amended, p. 1892, § 52, effective July 1; (6.5) added, p. 23, § 1, effective July 1. **L. 2003:** (2) amended, p. 1265, § 52, effective July 1. **L.**

2004: (4.5) amended, p. 387, § 3, effective July 1. **L. 2005:** (2) amended, p. 498, § 2, effective August 8. **L. 2009:** (9) amended, (SB 09-282), ch. 288, p. 1397, § 60, effective January 1, 2010. **L. 2018:** IP and (2) amended, (SB 18-092), ch. 38, p. 401, § 16, effective August 8. **L. 2020:** (9) amended, HB (20-1402), ch. 216, p. 1045, § 24, effective June 30. **L. 2022:** (7) amended, (HB 22-1295), ch. 123, p. 829, § 31, effective July 1.

Editor's note: Amendments to subsection (9) by Senate Bill 94-088 and House Bill 94-1345 were harmonized.

Cross references: For the legislative declaration contained in the 1994 act amending subsections (4.5)(a) and (7), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

14-14-103. Additional remedies.

The remedies provided in this article are in addition to and not in substitution for any other remedies.

Source: L. 81: Entire article added, p. 906, § 1, effective June 8.

14-14-104. Recovery for child support debt.

(1) Any payment of public assistance by a county department of human or social services made to or for the benefit of any dependent child or children creates a debt, which is due and owing to the county department of human or social services, recoverable by the county as a debt due to the state by the parent or parents who are responsible for support of the dependent child or children, or by the parent whose rights were terminated pursuant to section 19-5-105.5 and who was ordered to pay child support for the benefit of a dependent child, in an amount to be determined as follows:

(a) Where there has been a court order directed to a parent, the child support debt of that parent is an amount equal to the amount of public assistance paid to the extent of the full amount of arrearages under the order. However, the county department of human or social services, through its delegate child support enforcement unit, may petition for modification of the order on the same grounds as a party to the action.

(b) Where there has been no court or administrative order for child support, the county department of human or social services, through its delegate child support enforcement unit, may initiate a court or administrative action to establish the amount of child support debt accrued, and the court or delegate child support enforcement unit, after hearing or upon stipulation or upon a default order, shall enter an order for child support debt. The debt must be based on the amount of current child support due, or which would have been due if there were an existing order for child support, under the current child support enforcement guidelines in effect on the date of the stipulation, default order, or hearing to establish the child support debt times the number of months the family received public assistance. The total amount of child support debt must not exceed the total amount paid for public assistance. A child support debt established pursuant to this subsection (1)(b) is in addition to any subsequent child support debt accrued pursuant to subsection (1)(a) of this section.

(2) The county department of human or social services, through its delegate child support enforcement unit, must be subrogated to the right of the dependent child or children or person having legal and physical custody of said child or children or having been allocated decision-making authority with respect to the child or children to pursue any child support action existing under the laws of this state to obtain reimbursement of public assistance expended. If a court enters a judgment for or orders the payment of any amount of child support to be paid by an obligor, the county department of human or social services must be subrogated to the debt created by such judgment or order.

(3) An agreement between any one parent or custodial person or person allocated parental responsibilities and the obligor, either relieving the obligor of any duty of support or responsibility therefor or purporting to settle past, present, or future child support obligations either as settlement or as prepayment, must not act to reduce or terminate any rights of the county department of human or social services to recover from that obligor for any public assistance provided unless the county department of human or social services, through its delegate child support enforcement unit, has consented to the agreement, in writing, and the written consent has been incorporated into and made a part of the agreement.

(4) Any parental rights with respect to custody or decision-making responsibility with respect to a child or parenting time that are granted by a court of competent jurisdiction or are subject to court review must remain unaffected by the establishment or enforcement of a child support debt or obligation by the county department of human or social services or other person pursuant to the provisions of this article 14; and the establishment or enforcement of any such child support debt or obligation must also remain unaffected by such parental rights with respect to custody or decision-making responsibility with respect to a child or parenting time.

(5) No child support debt under this section shall be created in the case of, or at any time collected from, a parent who receives assistance under the Colorado works program as described

in part 7 of article 2 of title 26, C.R.S., for the period such parent is receiving such assistance, unless by order of a court of competent jurisdiction.

(6) Creation of a child support debt pursuant to this section must not modify or extinguish any rights that the county department of human or social services has obtained or may obtain under an assignment of child support rights, including the right to recover and retain unreimbursed public assistance.

(7) When a portion of a public assistance grant, paid to or for the benefit of a dependent child, includes moneys paid to provide the custodial parent or the parent with whom the child resides the majority of the time or caretaker relative with necessities including but not limited to shelter, medical care, clothing, or transportation, then those moneys are deemed to be paid to or for the benefit of the dependent child.

(8) Notwithstanding rule 98 of the Colorado rules of civil procedure, venue for an action to establish child support debt is proper in any county where public assistance was or is being paid, in any county where the obligor parent resides, or in any county where the child resides.

(9) A copy of the computer printout obtained from the state department of human services of the record of payments of assistance under the Colorado works program as described in part 7 of article 2 of title 26, C.R.S., made on behalf of a child whose custodian has been receiving child support enforcement services pursuant to section 26-13-106, C.R.S., shall be admissible into evidence as proof of such payments in any proceeding to establish child support debt and shall be prima facie evidence of the amount of child support debt owing on behalf of said child.

Source: L. 81: Entire article added, p. 906, § 1, effective June 8. **L. 89:** (1)(b) amended and (8) added, p. 793, § 18, effective July 1. **L. 90:** (9) added, p. 891, § 13, effective July 1. **L. 91:** (8) amended, p. 253, § 9, effective July 1. **L. 93:** (1) amended, p. 1560, § 9, effective June 6; (4) amended, p. 581, § 17, effective July 1. **L. 94:** (9) amended, p. 2646, § 110, effective July 1. **L. 97:** (5) and (9) amended, p. 1241, § 38, effective July 1. **L. 98:** (2), (3), (4), and (7) amended, p. 1401, § 51, effective February 1, 1999. **L. 2007:** (1)(b) amended, p. 1652, § 8, effective May 31. **L. 2013:** IP(1) amended, (SB 13-227), ch. 353, p. 2062, § 11, effective May 28. **L. 2018:** (1) to (4) and (6) amended, (SB 18-092), ch. 38, p. 401, § 17, effective August 8.

Cross references: For the legislative declaration contained in the 1993 act amending subsection (4), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the 1994 act amending subsection (9), see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration in SB 18-092, see section 1 of chapter 38, Session Laws of Colorado 2018.

ANNOTATION

A determination of accrued child support debt of an absent parent when there has been no prior order of support does not violate due process or equal protection provisions of the constitution nor subject the obligor to an ex post facto law or a retrospective statute. People ex rel. J.A.E.S., 7 P.3d 1021 (Colo. App. 2000).

Guidelines must be applied to the parent's current income, rather than to the income at the time the debt arose. This does not implicate due process or equal protection, since the current income standards requires consideration of parent's current ability to repay the debt. Montezuma Dept. of Soc. Servs. v. Laner, 937 P.2d 903 (Colo. App. 1997).

Trial court's ruling on the amount of debt could not stand where court applied a previous version of the statute in effect when the debt arose. The current version of the statute should be applied to determine the amount of the debt as the bill enacting the new statute applied to orders establishing debt on or after the date the statute took effect. Montezuma Dept. of Soc. Servs. v. Laner, 937 P.2d 903 (Colo. App. 1997).

A mother's assignment to department of social services of support rights against father for period in which mother received public assistance was total and unconditional and mother had no entitlement to either support payments or any interest thereon, barring any reassignment back to her. Edis v. Edis, 742 P.2d 954 (Colo. App. 1987).

In determining child support debt based on prior payments of public assistance, the trial court must enter an order equal to or more than the amount of public assistance paid. People in Interest of A.A.V. v. J.R., 815 P.2d 997 (Colo. App. 1991).

Section requires court to enter order in favor of county department of social services against responsible parent in the exact amount of public assistance paid, regardless of parent's ability to pay. In re Ward, 856 P.2d 67 (Colo. App. 1993).

An obligor is liable to the county department of social services for an amount not exceeding the full amount of public assistance paid during the period when no order for child support existed. People ex rel. J.A.E.S., 7 P.3d 1021 (Colo. App. 2000).

Subsection (2) provides that the county department of social services shall be subrogated to the debt created by a judgment or order for payment of child support by an obligor and to the right of the dependent child or children or person having legal or physical custody of such child or children to pursue any child support action to obtain reimbursement of public assistance expended. In re Cespedes, 895 P.2d 1172 (Colo. App. 1995).

Mother was a real party in interest and entitled to seek an increase in child support since only part of the mother's right to receive child support had been assigned to the department of human services for

purposes of receiving AFDC payments. In re Cespedes, 895 P.2d 1172 (Colo. App. 1995).

Subsection (2) allows a custodial parent to seek an increase in child support that includes the amount of public assistance received, provided that any such increase is subject to the state's right to subrogation. In re Cespedes, 895 P.2d 1172 (Colo. App. 1995).

Even if it is assumed that the doctrine of laches applies against the department of social services, the trial court had ample support for rejection of the defense. Social services acted as promptly as it could and pursued efforts to obtain reimbursement shortly after confirming father's address and income. Montezuma Dept. of Soc. Servs. v. Laner, 937 P.2d 903 (Colo. App. 1997).

Applied in People in Interest of A.L.B., 683 P.2d 813 (Colo. App. 1984); People in Interest of E.P.G., 732 P.2d 250 (Colo. App. 1986).

14-14-105. Continuing garnishment.

(1) A writ of garnishment for the collection from earnings of judgments for arrearages for child support, for maintenance when combined with child support, for child support debts, or for maintenance shall be continuing; shall have priority over any garnishment, lien, or income assignment other than a writ previously served on the same garnishee pursuant to this subsection (1) or a wage assignment activated pursuant to section 14-14-107 or section 14-14-111, as those sections existed prior to July 1, 1996, or an income assignment activated pursuant to section 14-14-111.5; and shall require the garnishee to withhold, pursuant to section 13-54-104 (3), C.R.S., the portion of earnings subject to garnishment at each succeeding earnings disbursement interval until such judgment is satisfied or the garnishment is released by the court or in writing by the judgment creditor.

(2) No employer may discharge an employee solely for the reason that his earnings have been subjected to garnishment pursuant to this section. Any such discharge in violation of this subsection (2) shall subject the employer to liability for damages.

Source: L. 81: Entire article added, p. 907, § 1, effective June 8. **L. 86:** (1) amended, p. 725, § 4, effective July 1. **L. 87:** (1) amended, p. 591, § 10, effective July 10. **L. 96:** (1) amended, p. 600, § 10, effective July 1.

Cross references: For provisions concerning garnishment generally, see article 54.5 of title 13.

ANNOTATION

Writ of garnishment for child support has priority over attorney's lien. Rios v. Mireles, 937 P.2d 840 (Colo. App. 1996).

14-14-106. Interest.

(1) (a) Interest per annum at four percent greater than the statutory rate set forth in section 5-12-101 on any arrearages and child support debt due and owing before July 1, 2021, may be compounded monthly and may be collected by the judgment creditor; however, such interest may be waived by the judgment creditor and such creditor is not required to maintain interest balance due accounts. After July 1, 2021, interest on child support arrearages and child support debt accrues at the interest rate specified in subsection (1)(b) of this section.

(b) Interest per annum at two percent greater than the statutory rate set forth in section 5-12-101 on any arrearages and child support debt due and owing on and after July 1, 2021, may be compounded annually and may be collected by the judgment creditor; except that such interest may be waived by the judgment creditor and such creditor is not required to maintain interest balance due accounts.

(2) If the judgment creditor seeks interest on child support arrearages as set forth in subsection (1) of this section, the debtor obligor may apply to the court to request that the court find good cause to use discretion in disallowing the calculated interest, or a portion thereof, on child support arrearages. In so doing, the court shall consider but is not limited to the following:

(a) Whether good cause existed for the nonpayment of the child support;

(b) Whether payment of the interest would result in undue hardship or substantial injustice for the obligor owing the interest; and

(c) Whether the disallowance or reduction of interest would result in undue hardship and substantial injustice to the person to whom the interest is owed.

(3) The court may determine an equitable period of repayment of any interest and arrears owed, if applicable, as set forth in this section.

Source: L. 81: Entire article added, p. 908, § 1, effective June 8. **L. 86:** Entire section amended, p. 725, § 5, effective July 1. **L. 88:** Entire section amended, p. 633, § 9, effective July 1. **L. 94:** Entire section amended, p. 1539, § 8, effective May 31. **L. 97:** Entire section amended, p. 1241, § 39, effective July 1. **L. 2003:** Entire section amended, p. 1266, § 53, effective July 1. **L. 2021:** Entire section amended, (HB 21-1220), ch. 212, p. 1120, § 3, effective July 1.

Cross references: For the statutory rate of interest, see § 5-12-102.

ANNOTATION

Law reviews. For article, "An Update of Appendices from Collecting Pre-and Past-judgment Interest in Colorado", see 15 Colo. Law. 990 (1986).

Interest on child support judgment. Trial court is without discretion to deny interest. Therefore, interest on child support arrearages accruing from the date each installment became due shall be included in the judgment. In re Schutte, 721 P.2d 160 (Colo. App. 1986).

This section is applicable only for support past due and unpaid by an obligor and not available against the Denver department of social services for amounts collected from obligor which the court ordered paid to ex-wife. People in Interest of D.C., 797 P.2d 840 (Colo. App. 1990).

This section does not apply to retroactive modification of support, since debt is not mature until after entry of order. In re Schutte, 721 P.2d 16 (Colo. App. 1986); In re Armit, 878 P.2d 101 (Colo. App. 1994).

Court does not have discretion as to amount of interest or whether interest is compounded monthly. Statute vests in the judgment creditor the option to collect the increased rate, to compound the interest monthly, and to waive the interest. In re Tognoni, 313 P.3d 655 (Colo. App. 2011).

Laches may be asserted as a defense to a claim for interest on child support arrearages. Although laches may not be asserted against the principal amount of the child support debt, laches may bar recovery of interest if the three elements of laches are met: (1) full knowledge of the facts by the party against whom the defense is asserted; (2) unreasonable delay by the party against whom the defense is asserted in pursuing an available remedy; and (3) intervening reliance by and prejudice to the party asserting the defense. In re Johnson, 2016 CO 67, 380 P.3d 150.

14-14-107. Wage assignment - applicability. (Repealed)

Source: L. 81: Entire article added, p. 908, § 1, effective June 8. **L. 83:** (1)(a) and IP(3) amended and (2) R&RE, pp. 652, 653, §§ 1-3, effective June 1. **L. 84:** (1)(a), IP(2)(a), (2)(a)(III), (2)(a)(IV), (2)(b), and (2)(c) amended and (2)(a)(V) and (3.5) added, pp. 480, 481, §§ 2, 3, effective July 1. **L. 85:** (1)(a), (2)(a) to (2)(c), IP(3), (3)(a)(IV), (3)(c), (3.5), (4)(d), and (9) amended and (1)(d), (1.5), (3.4), (4)(e), and (10) to (13) added, pp.592, 595, §§ 12-15, effective July 1. **L. 86:** (1)(a), (1)(b), (1.5)(a), (2)(a)(II), (2)(c), (3)(a)(I), (5), and (7) amended and (1)(e) to (1)(g) and (4)(f) added, pp. 725, 727, §§ 6-8, effective July 1. **L. 87:** Entire section R&RE, p. 580, § 1, effective July 10. **L. 88:** (5)(c)(IX), (5)(c)(XI), IP(7), (7)(d)(IV), and (9)(a) amended, p. 634, § 10, effective July 1. **L. 89:** (15) added, p. 810, § 2, effective June 5. **L. 90:** (2)(e),

(5)(c)(VIII), (6)(b)(I), (7)(d)(III), (7)(d)(IV), and (7)(g) amended and (6)(b)(III) added, p. 1414, § 15, effective June 8; (15) amended, p. 892, § 14, effective July 1. **L. 92:** (2)(a), IP(7), (7)(c)(III), (7)(c)(IV), (9), and (11) amended and (7)(d.5) and (7)(d.6) added, p. 203, § 11, effective August 1. **L. 93:** (9) amended, p. 1561, § 10, effective September 1. **L. 94:** (9)(e), amended, p. 1539, § 9, effective May 31; IP(7) amended, p. 2048, § 8, effective June 3; (14) amended, p. 2646, § 111, effective July 1. **L. 96:** Entire section repealed, p. 600, § 11, effective July 1.

14-14-108. Child support debt offset. (Repealed)

Source: L. 83: Entire section added, p. 654, § 1, effective June 10. **L. 85:** Entire section repealed, p. 604, § 24, effective July 1.

Cross references: For present provisions concerning a state income tax refund offset for child support debts or child support arrearages, see § 26-13-111.

14-14-109. Security, bond, or guarantee.

(1) In any action in which child support is ordered, an interested party may apply to the court for an order requiring that the obligor post security, a bond, or other form of guarantee to secure payment of the child support ordered. In considering such request, the court shall consider, among other factors, the nature of the obligor's employment and whether the obligor's income is unreachable by a wage assignment entered pursuant to section 14-14-107 prior to July 1, 1996, or by immediate deduction for a family support obligation pursuant to section 14-14-111 as it existed prior to July 1, 1996, or by an income assignment entered pursuant to section 14-14-111.5 on or after July 1, 1996.

(2) If the request to post security, a bond, or other guarantee is made subsequent to the issuance of a child support order, a copy of the request shall be sent to the obligor at his last-known address by certified mail no later than twenty days prior to the date set for a hearing on the issue. Such notice shall contain a statement of the obligor's rights to appear and contest the request.

(3) When a request to post security, a bond, or other guarantee is before the court, the court shall make findings on the appropriateness of the request based on the evidence presented and shall then either grant or deny the request.

Source: L. 85: Entire section added, p. 595, § 16, effective July 1. **L. 96:** (1) amended, p. 622, § 32, effective July 1.

ANNOTATION

Law reviews. For article, "Securing Future Child Support Obligations", see 51 Colo. Law. 38 (Jan. 2022).

14-14-110. Contempt of court.

(1) Evidence of noncompliance with an order for child support, or maintenance when combined with child support, in the form of an affidavit from the clerk of the court or in the form of a copy of the record of payments certified by the clerk of the court or in the form of a copy of the record of payment maintained by the family support registry is prima facie evidence of contempt of court.

(2) In determining whether or not the obligor is in contempt of court, the court may consider that the required payment has been made prior to the hearing to determine contempt or that owing to physical incapacity or other good cause the obligor was unable to furnish the support, care, and maintenance required by the order for the period of noncompliance alleged in the motion.

(3) If, after personal service of the citation and a copy of the motion and affidavit, the obligor fails to appear at the time so designated, the court may issue a warrant for the obligor's arrest. Upon issuance of the warrant, the court shall direct by endorsement thereon the amount of the bond required.

(4) Pursuant to subsection (3) of this section, where the obligor has been released upon deposit of cash, stocks, or bonds, or upon surety bond secured by property, if the obligor fails to appear in accordance with the primary condition of the bond, the court shall declare a forfeiture. Notice of the order of forfeiture shall be mailed immediately by the court to the obligor and sureties, if any, at the last-known address. If the obligor does not appear and surrender to the court having jurisdiction within thirty days after the date of the forfeiture, or within that period satisfy the court that appearance and surrender by the obligor is impossible and without the obligor's fault, the court shall enter judgment against the obligor and the sureties, if any, for the amount of the bail and costs of the court proceedings.

(5) Any moneys collected or paid upon any such execution or in any case upon said bond shall be turned over to the clerk of the court in which the bond is given to be applied to the child

support obligation, including where the obligation is assigned to the department of human services pursuant to section 26-2-111 (3), C.R.S.

Source: L. 86: Entire section added, p. 730, § 1, effective May 1. **L. 93:** Entire section amended, p. 1561, § 11, effective September 1. **L. 94:** (1) amended, p. 1540, § 10, effective May 31; (5) amended, p. 2647, § 112, effective July 1. **L. 97:** (4) amended, p. 562, § 8, effective July 1; (5) amended, p. 1241, § 40, effective July 1.

Cross references: For the legislative declaration contained in the 1994 act amending subsection (5), see section 1 of chapter 345, Session Laws of Colorado 1994.

14-14-111. Immediate deductions for family support obligations - legislative declaration - procedures - applicability. (Repealed)

Source: L. 89: Entire section added, p. 805, § 1, effective June 5. **L. 90:** (2)(b)(I), (4)(b)(IV)(B), (4)(b)(IV)(C), (4)(b)(IV)(D), (4)(b)(VII), and (11) amended, p. 1415, § 16, effective June 8; (2)(a) and (4)(b)(IV)(B) amended, p. 892, § 15, effective July 1. **L. 92:** (2)(b), (2)(c), (4)(b)(III)(C), (6), and (16) amended and (4)(b)(IV.5) and (4)(b)(IV.6) added, p. 207, § 12, effective August 1. **L. 93:** (2)(b) amended, p. 1562, § 12, effective September 1. **L. 94:** (4)(a) amended, p. 2049, § 9, effective June 3. **L. 96:** Entire section repealed, p. 600, § 11, effective July 1.

14-14-111.5. Income assignments for child support or maintenance.

(1) **Legislative declaration.** The general assembly hereby finds and declares that, for the good of the children of Colorado and to promote family self-sufficiency, there is a need to strengthen Colorado's child support enforcement laws and to simplify, streamline, and clarify the existing laws relating to wage assignments previously provided for in section 14-14-107 and immediate deductions for family support obligations previously provided for in section 14-14-111. In support of this effort, the general assembly hereby adopts the term "income assignment" to be used to provide consistency and standardization of the process for collecting child support and maintenance.

(2) (a) Whenever an obligation for child support, maintenance, child support when combined with maintenance, retroactive support, medical support, child support arrears, or child support debt is initially determined, whether temporary or permanent or whether modified, the amount of

child support, maintenance, child support when combined with maintenance, retroactive support, medical support, child support arrears, or child support debt shall be ordered by the court or delegate child support enforcement unit to be activated immediately as an income assignment subject to section 13-54-104 (3), from the income, as defined in section 14-10-115 (3), that is due or is to become due in the future from the obligor's employer, employers, or successor employers or other payor of funds, regardless of the source, of the person obligated to pay the child support, maintenance, child support when combined with maintenance, retroactive support, medical support, child support arrears, or child support debt.

(b) Any order for support must include the following, if available:

(I) The name, date of birth, and sex of each child for whom the support is ordered;

(II) The obligee's name, residential and mailing addresses, and date of birth;

(III) The total amount of current support to be paid monthly in each category of support;

(IV) The date of commencement of the order and the date or dates of the month that the payments are due;

(V) The total amount of arrears that is due, if any, in each category of support as of the date of the order; and

(VI) The obligor's name, residential and mailing addresses, and date of birth.

(3) **Activation of income assignment.** Income assignments must be activated in accordance with the following provisions:

(a) **Immediate activation of income assignments.**

(I) (A) Upon entry of an order for child support, maintenance, child support when combined with maintenance, retroactive support, medical support, child support arrears, or child support debt, the obligee, the obligee's representative, or the delegate child support enforcement unit shall cause a notice of income assignment to be served immediately as described in subsection (4) of this section.

(B) Unless an income assignment is required to be immediately activated pursuant to subsection (3)(a)(I)(A) of this section, or the income assignment is not subject to immediate activation pursuant to subsection (3)(a)(II) of this section, an income assignment may be immediately activated by the obligee, the obligee's representative, or the delegate child support enforcement unit by causing a notice to withhold income for support to be served upon the employer, trustee, or other payor of funds pursuant to subsection (4) of this section.

(II) **Exceptions to immediate activation of income assignments.** Income is not subject to immediate activation of an income assignment pursuant to this subsection (3)(a) in any case in which:

(A) One of the parties demonstrates, and the court or the delegate child support enforcement unit finds in writing, that there is good cause not to require immediate activation of an income assignment. For the purposes of this sub-subparagraph (A), "good cause" means the following: There is a written determination and explanation by the court or delegate child support enforcement unit stating why implementing immediate activation of an income assignment would not be in the best interests of the child; and the obligor has signed a written agreement to keep the delegate child support enforcement unit, the obligee, or the obligee's representative informed of the obligor's current employer and information on any health insurance coverage to which the obligor has access; and proof is provided that the obligor made timely payments without the necessity of income assignment in previously ordered child support obligations.

(B) A written agreement is reached between both parties that provides for an alternative arrangement, and such agreement is reviewed and approved in the record by the court. For purposes of this subsection (3)(a)(II)(B), the delegate child support enforcement unit is considered a party in all cases in which the custodian of a child is receiving support enforcement services from a delegate child support enforcement unit pursuant to section 26-13-106 (1) and as such must consent to the alternative written agreement. In all cases in which the custodian of a child is receiving support enforcement services from a delegate child support enforcement unit pursuant to section 26-13-106 (2), the obligee or the obligee's representative shall provide the delegate child support enforcement unit with notice of any agreement reached between the parties pursuant to this subsection (3)(a)(II)(B).

(b) (I) to (III) Repealed.

(IV) **Agreement to activate.** When an income assignment is activated pursuant to this subsection (3) and arrears are owed, as verified by the affidavit of arrears, the parties may agree to an amount of payment on the arrears, or the court or delegate child support enforcement unit may determine an appropriate amount for payment.

(V) Repealed.

(VI) A payment on arrears, plus interest, for support, if any, shall be included in an activated income assignment; however, the combined payment on current support and arrears is subject to section 13-54-104 (3), C.R.S.

(VII) **Objections to income assignment.**

(A) The obligor may file with the court a written objection to the activation of an income assignment pursuant to this subsection (3) no later than fourteen days after actual notice. The obligor shall mail a copy of the written objection to the obligee or the obligee's representative.

(B) The objection shall be limited to the defense that there is a mistake of fact such as an error in the identity of the obligor or in the amount of the support.

(C) If the obligor files an objection, the court shall set and hold a hearing within forty-two days after the date the income assignment was issued. The court shall deny the objection without hearing if a defense in subsection (3)(a)(VII)(B) of this section is not alleged.

(D) At a hearing on an objection, the sole issue before the court is whether there was a mistake of fact as specified in sub-subparagraph (B) of this subparagraph (VII).

(E) At a hearing on an objection, reasonable attorney fees and costs may be awarded to the prevailing party.

(F) If an objection is based on the amount of arrears, the income assignment may be activated and enforced as to current support obligations, and the activation of the income assignment as to arrears shall be stayed pending the outcome of a hearing on such objection.

(4) **Notice to withhold income for support.**

(a) Except as provided in subsection (4)(b) of this section, a notice to withhold income for support must be served upon the employer, trustee, or other payor of funds by first-class mail or by electronic service if the employer, trustee, or other payor of funds mutually agrees with the state child support enforcement agency to receive such income assignments electronically. Receipt of notice by the employer, trustee, or other payor of funds confers jurisdiction of the court over the employer, trustee, or other payor of funds.

(b) A notice to withhold income for support is not required if the obligor's source of income is unemployment compensation benefits and the custodian of the child is receiving support enforcement services pursuant to section 26-13-106. In such cases, the state child support enforcement agency shall electronically intercept the unemployment compensation benefits through an automated interface with the department of labor and employment.

(c) A notice to withhold income for support must be provided on a federal office of management and budget-approved income withholding for support form and must contain the following information and, except in cases in which the obligee is receiving child support enforcement services pursuant to section 26-13-106, must include a certified copy of the support order:

(I) The name and social security number of the obligor;

(II) A statement that withholding must begin no later than the first pay period that begins at least fourteen calendar days after the date on the notice to withhold income for support;

(III) Instructions concerning withholding the deductions, including:

(A) The amount to be withheld for current support and current maintenance when included in the child support order, the amount to be withheld for past due support, the amount to be withheld for past due maintenance when included in the child support order, the amount to be withheld for child support debt, the amount to be withheld for medical support, the amount to be

withheld for current maintenance, the amount to be withheld for past due maintenance per month, and the amount to be withheld for processing fees, if any. In the event that the pay periods of the employer are more frequent, the employer shall withhold per pay period an appropriate percentage of the monthly amount due so that the total withheld during the month will total the monthly amount due.

(B) A statement that the employer, trustee, or other payer of funds may deduct a fee once a month to defray the cost of withholding and that the employer, trustee, or other payer of funds shall refer to the laws governing the work state of the employee for the allowable amount of such fee; and

(C) That, if section 13-54-104 (3) applies, the employer, trustee, or other payor of funds shall not withhold more than the limitations set by said section;

(IV) Instructions about disbursing the withheld amounts, including the requirements that each disbursement:

(A) Must be forwarded within seven working days after the date of each deduction and withholding would have been paid or credited to the employee;

(B) Must be forwarded to the address indicated on the notice;

(C) Must be identified by the remittance identifier, the name of each obligor, the date the deduction was made, the amount of the payment, and the family support registry account number for cases ordered to be paid through the family support registry; and

(D) May be combined with other disbursements in a single payment to the family support registry, if required to be sent to the registry, if the individual amount of each disbursement is identified as required by subsection (4)(c)(IV)(C) of this section;

(V) A statement specifying whether or not the obligor is required to provide health insurance for the children who are the subject of the order;

(VI) A statement that, if the employer, trustee, or other payor of funds fails to withhold income as the notice to withhold income for support directs, the employer, trustee, or other payor of funds is liable for both the accumulated amount that should have been withheld from the obligor's income and any other penalties set by state law;

(VII) A statement that the employer, trustee, or other payor of funds is subject to a fine determined pursuant to state law for discharging an obligor from employment, refusing to employ an obligor, or taking disciplinary action against an obligor because of a notice to withhold income for support;

(VIII) A statement that the employer shall notify the family support registry, in writing, if payments are required to be made through the registry promptly after the obligor terminates employment and that the employer shall provide the family support registry, in writing, with the

obligor's name; date of separation; case identifier, which is the family support registry account number; last-known home address; and the name and address of the obligor's new employer, if known;

(IX) A statement that withholding under the notice to withhold income for support has priority over any other legal process under state law against the same income, that federal tax levies in effect before receipt of this notice to withhold income for support have priority, and that the requesting agency should be contacted if there are federal tax levies in effect;

(X) A statement that as long as the obligor is employed by the employer, the income assignment must not be terminated or modified, except upon written notice by the obligee, the obligee's representative, the delegate child support enforcement unit, or the court;

(XI) A statement that the employer, trustee, or other payor of funds is required to report and withhold amounts from lump sum payments such as bonuses, commissions, or severance pay;

(XII) A statement that Colorado employers, trustees, or other payors of funds must comply with this section;

(XIII) A statement that, if the designated field on the notice to withhold income for support is checked, the employer, trustee, or other payor of funds is required to provide a copy of the notice to withhold income for support to the obligor; and

(XIV) A statement that a fraudulent submission of a notice to withhold income for support subjects the person submitting the notice to an employer, trustee, or other payor of funds to a fine of not less than one hundred dollars and court costs and attorney fees.

(4.5) When a Colorado employer receives an income assignment, or its equivalent, issued by another state, the employer shall apply the income assignment law of the obligor's principal state of employment. The obligor's principal state of employment shall be presumed to be Colorado unless there is a specific employment contract to the contrary.

(4.7) Income assignments must be paid through the family support registry pursuant to section 26-13-114.

(5) When activated, an income assignment shall be a continuing income assignment and shall remain in effect and shall be binding upon any employer, trustee, or other payer of funds upon whom it is served until further notice from the obligee, the obligee's representative, the delegate child support enforcement unit, or the court.

(6) **Priority.**

(a) A notice of income assignment for support shall have priority over any garnishment, attachment, or lien.

(b) If there is more than one income assignment for support for the same obligor, the total amount withheld, which is subject to the limits specified in section 13-54-104 (3), C.R.S., shall be distributed in accordance with the priorities set forth in this paragraph (b):

(I) (A) First priority shall be given to income assignments for orders for current monthly child support obligations and maintenance when included in the child support order.

(B) If the amount withheld is sufficient to pay the current monthly support and maintenance for all orders, the employer or other payer of funds shall distribute the amount to all orders and proceed to the second priority to distribute any remaining withholding. If the amount withheld is not sufficient to pay the current monthly support and maintenance in all orders, the employer shall add the current monthly support and maintenance in all orders for a total and then divide the amount of current monthly support and maintenance in each order by the total to determine the percent of the total for each order. The percent for each order derived from such calculation shall be multiplied by the total amount withheld to determine what proportionate share of the amount withheld shall be paid for each order.

(II) (A) Second priority shall be given to income assignments for all orders for medical support when there is a specific amount ordered for medical support.

(B) If the amount withheld is sufficient to pay the medical support for all orders, the employer shall distribute the amount to all orders and proceed to the third priority to distribute any remaining withholding. If the amount withheld is not sufficient to pay the medical support in all orders, the employer shall add the medical support in all orders for a total and then divide the amount of medical support in each order by the total to determine the percent of the total for each order. The percent for each order derived from such calculation shall be multiplied by the total amount withheld to determine what proportionate share of the amount withheld shall be paid for each order.

(III) (A) Third priority shall be given to income assignments for child support debt and support arrears, including medical support arrears.

(B) If the amount withheld is sufficient to pay the child support debt and support arrears for all orders, the employer shall distribute the amount to all orders and proceed to the fourth priority to distribute any remaining withholding. If the amount withheld is not sufficient to pay the child support debt and support arrears in all orders, the employer shall add the child support debt and support arrears in all orders for a total and then divide the amount of child support debt and support arrears in each order by the total to determine the percent of the total for each order. The percent for each order derived from such calculation shall be multiplied by the total amount withheld to determine what proportionate share of the amount withheld shall be paid for each order.

(IV) (A) Fourth priority shall be given to income assignments for orders for maintenance only.

(B) If the amount withheld is sufficient to pay the maintenance only for all orders, the employer shall distribute the amount to all orders. If the amount withheld is not sufficient to pay the maintenance only in all orders, the employer shall add the maintenance only in all orders for a total and then divide the amount of maintenance only in each order by the total to determine the percent of the total for each order. The percent for each order derived from such calculation shall be multiplied by the total amount withheld to determine what proportionate share of the amount withheld shall be paid for each order.

(7) No employer, trustee, or other payer of funds who complies with a notice of income assignment issued pursuant to this section and as provided in subsection (8) of this section shall be liable to the obligor for wrongful withholding.

(8) An employer, trustee, or other payer of funds subject to this section who:

(a) Fails to abide by the terms enumerated in the notice of income assignment may be held in contempt of court;

(b) Wrongfully fails to withhold income or distribute payment in accordance with the provisions of this section is liable for the accumulated amount the employer, trustee, or other payer of funds should have withheld and not disbursed from the obligor's income, including, upon personal service pursuant to rule 4 of the Colorado rules of civil procedure, being subject to the jurisdiction of the court for purposes of entry of judgment pursuant to sections 13-52-101 to 13-52-111 and rule 54 of the Colorado rules of civil procedure, up to the amount wrongfully withheld and costs associated with establishing and enforcing the judgment and any other penalties set by state law;

(c) Discharges, refuses to hire, or takes disciplinary action against an employee because of the entry or service of an income assignment pursuant to this section may be held in contempt of court or be subject to a fine.

(9) If an employer discharges an employee in violation of the provisions of this section, the employee may, within ninety-one days, bring a civil action for the recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall be lost wages not to exceed six weeks, costs, and reasonable attorney fees.

(10) (a) The obligee, the obligee's representative, the delegate child support enforcement unit, or the court shall promptly notify the employer, trustee, or other payer of funds, in writing, when an income assignment is modified or terminated.

(b) An income assignment must be modified when:

(I) The support order is modified by the court; or

(II) The arrears payment is modified pursuant to subsection (3)(b)(IV) of this section.

(c) An income assignment shall be terminated when all current maintenance when included in the child support order, past due support, past due maintenance when included in the child support order, child support debt, medical support, current monthly child support, current maintenance, past due maintenance, and processing fees, if any, owed under the support order are paid in full.

(11) Disbursements received from the employer, trustee, or other payer of funds by a delegate child support enforcement unit shall be promptly distributed.

(12) The clerk of the court shall provide, upon request, any information required by the parties about any support order or any order affecting an order for support, including judgments and registered orders.

(13) The department of human services is hereby designated as the income withholding agency as required by the federal "Social Security Act", as amended.

(14) This section applies to any action brought under this article or article 5, 6, or 10 of this title or under article 4 or 6 of title 19, C.R.S., or under article 13.5 of title 26, C.R.S.

(15) Nothing in this section shall affect the availability of any other method for collecting child support, maintenance, child support when combined with maintenance, retroactive support, medical support, child support arrears, or child support debt.

(16) Income assignments under this section shall be issued by a delegate child support enforcement unit under the provisions of the "Colorado Administrative Procedure Act for the Establishment and Enforcement of Child Support", created in article 13.5 of title 26, C.R.S.

(16.3) The employer, trustee, or other payer of funds shall include with the first disbursement an indication of whether dependent health insurance coverage is available to the obligor and whether the obligor has elected to enroll the dependents who are the subject of the order in such coverage and that such information shall be included in a disbursement at least annually thereafter or at the next disbursement in the event of any change in the status of health insurance availability or coverage.

(16.5) The employer shall not be required to collect, possess, or control the obligor's tips, and any such tips shall not be owed by an employer to an obligor.

(16.7) The employer, trustee, or other payer of funds may extract a processing fee of up to five dollars per month. The total amount withheld, including the processing fee, is subject to the limits described in section 13-54-104 (3).

(17) For purposes of this section, unless the context otherwise requires, "income" means wages as defined in section 14-14-102 (9).

(18) (Deleted by amendment, L. 2000, p. 1704, § 2, effective July 1, 2000.)

(19) A person submitting a fraudulent notice to withhold income for support to an employer, trustee, or other payor of funds is subject to a fine of not less than one hundred dollars plus court costs and attorney fees.

Source: L. 96: Entire section added, p. 600, § 12, effective July 1. **L. 97:** (2)(f), IP(4), (4)(d)(I), (4)(i), and (8)(c) amended and (4.5) and (18) added, p. 1271, § 10, effective July 1. **L. 98:** (3)(b)(III) amended, p. 766, § 15, effective July 1. **L. 99:** (2)(f)(II) amended, p. 1085, § 3, effective July 1. **L. 2000:** (2)(a)(II)(E), IP(4), (4), (8)(b), (10)(c), and (18) amended and (4)(m), (4)(n), (16.3), (16.5), (16.7), and (19) added, pp. 1704, 1708, §§ 2, 3, effective July 1. **L. 2002:** IP(4) amended, p. 23, § 2, effective July 1. **L. 2007:** (2)(f)(I) amended, p. 108, § 4, effective March 16. **L. 2011:** IP(4) amended, (SB 11-123), ch. 46, p. 119, § 4, effective August 10. **L. 2012:** (3)(b)(II)(I), (3)(b)(II)(K), (3)(b)(VII)(A), (3)(b)(VII)(C), IP(4), and (9) amended, (SB 12-175), ch. 208, p. 835, § 38, effective July 1. **L. 2021:** (2), IP(3), (3)(a)(I), IP(3)(a)(II), (3)(a)(II)(B), (3)(b)(IV), (3)(b)(VII)(A), (3)(b)(VII)(C), (4), and (10)(b) amended, (3)(b)(I), (3)(b)(II), (3)(b)(III), and (3)(b)(V) repealed, and (4.7) added (HB 21-1220), ch. 212, p. 1121, § 4, effective July 1; (19) amended, (SB 21-271), ch. 462, p. 3159, § 161, effective March 1, 2022. **L. 2023:** (4)(c)(XIV), (8)(b), and (19) amended, (SB 23-173), ch. 330, p.1975, § 5, effective June 2. **L. 2025:** (4)(c)(II), (4)(c)(III)(B), (4)(c)(IV)(C), and (16.7) amended, (HB 25-1159), ch. 334, p. 1761, § 4, effective May 31.

Cross references: For the legislative declaration contained in the 1997 act amending subsection (2)(f), the introductory portion to subsection (4), and subsections (4)(d)(I), (4)(i), and (8)(c) and enacting subsections (4.5) and (18), see section 1 of chapter 236, Session Laws of Colorado 1997.

ANNOTATION

Law reviews. For article, "Legislative Update", see 12 Colo. Law. 1257 (1983). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985).

Annotator's note. Since § 14-14-111.5 is similar to § 14-14-107 as it existed prior to the 1996 repeal of said section, relevant cases construing that provision have been included in the annotations to this section.

Pursuant to the fourteenth amendment's due process clause, before a forward-looking income withholding order is issued, direct-pay child support obligors must be afforded advanced notice and an opportunity to be heard. Nakauchi v. Cowart, 2022 COA 77, 519 P.3d 397.

Statutory language is clear that an order for wage assignment is mandatory if the obligor cannot establish one of the two

specified defenses. Purpose of new subsection (2) was to effect a mandatory and expedited procedure for wage assignment when default in a child support payment occurred; provision for a limited hearing was included to afford the obligor due process. In re Barnes, 692 P.2d 329 (Colo. App. 1984).

Section clearly applies to maintenance, whether or not combined with child support. In re Connell, 831 P.2d 913 (Colo. App. 1992).

Defense against wage assignment that the full amount claimed is not due is contemplated by section and therefore success on such defense authorizes an award of attorney fees under section. In re Watters, 782 P.2d 1220 (Colo. App. 1989); In re Sabala, 802 P.2d 1163 (Colo. App. 1990).

Attorney fee award to obligor must be reconsidered by trial court where obligee also prevails in part. In re Sabala, 802 P.2d 1163 (Colo. App. 1990).

There was a hearing on an objection where the amount due was stipulated prior to the hearing because the issues at the hearing are limited to the identity of the obligor and the amount of the obligation, and an award of fees to the prevailing party is intended to discourage exaggerated claims or attempts to delay payment of valid claims. In re Vivens, 885 P.2d 301 (Colo. App. 1994).

Wage assignment is mandatory if the obligor cannot establish one of the specified defenses. In re Barnes, 692 P.2d 329 (Colo. App. 1984); In re Sabala, 802 P.2d 1163 (Colo. App. 1990); In re Connell, 831 P.2d 913 (Colo. App. 1992).

Obligor may be subjected to more than one wage assignment. In re Sabala, 802 P.2d 1163 (Colo. App. 1990).

Denver department of social services entitled to keep proceeds from wage assignment even though assignment by ex-wife would take precedence since ex-wife did not file wage assignment. Department's actions did not deprive ex-wife of right or ability to receive current support since she could file her own assignment. People in Interest of D.C., 797 P.2d 840 (Colo. App. 1990).

Accumulated deductions in a PERA member's contribution account are not subject to assignment for payment of future child support obligations. In re Riggs, 786 P.2d 504 (Colo. App. 1989).

14-14-112. Deductions for health insurance.

(1) In all orders which direct the obligor to provide health insurance for any child, the court or delegate child support enforcement unit shall include a provision directing the obligor's employer to enroll such child and the obligor, if enrollment of the obligor is a requirement of the plan, in the health insurance plan and to deduct from the wages due the obligor an amount sufficient to provide for premiums for health insurance when such insurance is offered by the employer, including any employer subject to the provisions of section 607 (1) of the federal

"Employee Retirement Income Security Act of 1974", as amended. For all orders entered prior to August 1, 1992, which direct the obligor to provide health insurance for any child, the obligee or the obligee's representative shall send a copy of the notice of the deduction for health insurance, by first-class mail, to the obligor concurrent with mailing of the notice to the obligor's employer pursuant to subsection (2) of this section. The court or the delegate child support enforcement unit shall direct the obligor to notify the court, or unit if the delegate child support enforcement unit is a party to the court action, in writing, of any change of address or employment within ten days after the change.

(1.5) Effective July 1, 2002, the delegate child support enforcement unit shall follow the procedure set forth in section 26-13-121.5, C.R.S., for the enforcement of orders for health insurance.

(2) The obligee or the obligee's representative shall mail notice of the deduction for health insurance to the obligor's employer. The notice of the deduction for health insurance must contain:

(a) The name, address, and social security number of the obligor;

(b) The name, birthdate, and social security number of any of the children to be covered by the health insurance;

(c) A statement that the employer shall enroll an obligor's child in the health insurance plan in which the obligor is enrolled if the child can be covered under that plan or, if the obligor is not enrolled, in the least costly plan otherwise available to the child, regardless of the marital status of the child's parents when he or she was born or whether the child is claimed as a dependent on the obligor's federal or state income tax return, lives with the obligor, or lives within the insurer's service area, notwithstanding any other provision of law restricting enrollment to persons who reside in an insurer's service area;

(d) A statement that the deduction for health insurance is to take effect no later than the first pay period after fourteen days from the date on which the notice is mailed to the employer or from the date on which the obligor submits an oral or written request to the employer, whichever occurs sooner, and that the deduction for health insurance is treated as a significant life change under open enrollment requirements;

(e) A statement that compliance with the notice to deduct for health insurance shall not subject the employer to liability to the obligor for wrongful withholding;

(f) A statement that noncompliance with the notice to deduct for health insurance may subject the employer to the liability and sanctions specified in subsection (5) of this section;

(g) A statement that the employer shall promptly notify the court, obligee, or delegate child support enforcement unit in writing within fourteen days after the obligor terminates employment and shall provide, if known, the name of the obligor's new employer;

(h) A statement that, as long as the obligor is employed by the employer, the notice to deduct for health insurance shall not be terminated or modified, except as follows:

(I) Upon written notice by the court, obligee, or delegate child support enforcement unit;

(II) Upon written verification, provided by the obligor to the employer, the employer determines that the child has been enrolled in a comparable health insurance plan that takes effect no later than the effective date on which the child is no longer enrolled under the plan offered by the obligor's employer; or

(III) Upon the employer's elimination of family health coverage for all employees;

(i) A statement that the employer may not discharge or refuse to hire or take disciplinary action against an employee because of the entry or service of a notice to deduct for health insurance issued and executed pursuant to this section and that such a violation may result in a finding of contempt of court;

(j) A statement that if the obligor or employer enrolls the dependents who are the subject of the order in health insurance coverage available through the employer, the employer shall send a copy of such enrollment to the location identified on the notice;

(k) A statement that when a child is no longer enrolled under a family health plan for the reasons described in subparagraphs (I) to (III) of paragraph (h) of this subsection (2), the employer within fourteen days after the termination of coverage shall send to the location described on the health insurance premium notice a written notice of cancellation of enrollment or a copy of the verification provided by the obligor to the employer that the child is enrolled in a comparable health plan;

(l) A statement that the obligor may file an objection to the notice of the deduction for health insurance with the court if the premium amount does not meet the definition of reasonable cost as provided in section 14-10-115 (10)(g). A premium amount that results in a child support order of fifty dollars or less or that is twenty percent or more of the obligor's gross income shall not be considered reasonable.

(2.5) If an obligor enrolls a child in a health insurance plan other than one provided through the obligor's employment, the obligee, the obligee's representative, or the delegate child support enforcement unit shall send, by first-class mail, a written notice to such health insurance provider with whom the obligor enrolls the child stating that:

(a) The obligor is under a court order to provide health insurance coverage for a child;

(b) The insurance provider shall notify the obligee, the obligee's representative, or the delegate child support enforcement unit of any cancellation of the coverage.

(3) No employer who complies with a notice to deduct for health insurance benefits pursuant to this section shall be liable to the obligor for wrongful withholding.

(4) No employer shall discharge or refuse to hire or take disciplinary action against an employee because of the entry or service of a notice to deduct for health insurance issued and executed pursuant to this section. Any person who violates this subsection (4) may be deemed by the court to be subject to contempt of court.

(5) An employer who wrongfully fails to deduct for health insurance in accordance with the provisions of this section may be held liable for an amount up to the accumulated amount of such premiums the employer or payer should have withheld from the obligor's wages.

(6) When an employer is served with a notice to deduct for health insurance pursuant to this section, and the obligor is no longer employed by the employer, the employer shall promptly notify the court in writing of the obligor's last-known address, social security number, and the name of the obligor's new employer, if known.

(7) If an employer discharges an employee in violation of the provisions of this section, the employee may, within ninety days, bring a civil action for the recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall be lost wages not to exceed six weeks, costs, and reasonable attorney fees.

(8) A notice to deduct for health insurance issued and served pursuant to this section shall be continuing and shall remain in effect and be binding on any current or successor employer upon whom it is served until further notice by the court, obligee, obligee's representative, or delegate child support enforcement unit.

(9) The court, obligee, obligee's representative, or delegate child support enforcement unit shall promptly notify the employer, in writing, when a notice to deduct for health insurance is modified or terminated. A notice to deduct for health insurance shall be terminated when the court order requiring health insurance is terminated.

(10) Deductions for health insurance shall also be ordered by a delegate child support enforcement unit under the provisions of the "Colorado Administrative Procedure Act for the Establishment and Enforcement of Child Support", created in article 13.5 of title 26, C.R.S.

Source: L. 92: Entire section added, p. 169, § 4, effective August 1. **L. 93:** (2)(c) amended and (2)(j) added, p. 1563, § 13, effective September 1. **L. 94:** (1) amended, p. 1540, § 11, effective July 1; (1), (2)(c), (2)(d), and (2)(h) amended and (2)(k) added, p. 1596, § 5, effective July 1. **L. 96:** (2.5) added, p. 586, § 1, effective July 1. **L. 97:** IP(2) amended and (2)(l) added, p. 1273, § 11, effective July 1. **L. 98:** IP(2) amended, p. 757, § 7, effective July 1. **L. 2002:** (1), IP(2), (2)(l), and (6) amended and (1.5) added, p. 24, § 3, effective July 1. **L. 2007:** (2)(l) amended, p. 108, § 5, effective March 16. **L. 2012:** (2)(g) amended, (SB 12-175), ch. 208, p. 836, § 39, effective July 1. **L. 2018:** IP(2) and (2)(c) amended, (SB 18-095), ch. 96, p. 754, § 10, effective August 8.

Editor's note: Amendments to subsection (1) by Senate Bill 94-088 and Senate Bill 94-164 were harmonized.

Cross references: (1) For the legislative declaration contained in the 1997 act amending the introductory portion to subsection (2) and enacting subsection (2)(l), see section 1 of chapter 236, Session Laws of Colorado 1997. For the legislative declaration in SB 18-095, see section 1 of chapter 96, Session Laws of Colorado 2018.

(2) For the "Employee Retirement Income Security Act of 1974", see Pub.L. 93-406, codified at 29 U.S.C. sec. 1001 et seq.

14-14-113. Recordation of social security numbers in certain family matters.

(1) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), effective July 1, 1997, every application for, or application for the renewal of, a professional or occupational license or certificate, a commercial driver's license pursuant to section 42-2-403, C.R.S., or a marriage license pursuant to section 14-2-105 sought by an individual person shall require the applicant's social security number. Such social security number shall be recorded on the application regardless of the licensing agency's use of another number on the social security field on the license. Nothing in this paragraph (a) shall be construed to require that a person's social security number appear on the professional or occupational license, commercial driver's license, or marriage license.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), if an applicant for a professional or occupational license, commercial driver's license, or marriage license submits a sworn statement, together with the application, stating that the applicant does not have a social security number, such applicant shall not be required to provide a social security number on his or her application as required in subparagraph (I) of this paragraph (a).

(b) The judicial department shall maintain records of the parties' and children's social security numbers in family matters filed pursuant to articles 10 and 14 of this title 14, articles 4 and 6 of title 19, and article 13.5 of title 26. This subsection (1)(b) does not require a person's social security number to appear on the face of the court order. A case information sheet that contains a person's social security number must be filed under seal.

(c) All death certificates issued pursuant to section 25-2-110, C.R.S., shall identify the decedent's social security number, if available.

(2) (a) Access to records via the social security number provided in subsection (1) of this section and the security of those records shall be in accordance with section 26-13-107, C.R.S.

Access shall be limited to the department of human services only for the purposes of establishing, modifying, or enforcing child support.

(b) Access to records via the social security number provided in subsection (1) of this section may be made by departments within their area of regulatory authority.

(3) In addition to the provisions of subsection (2) of this section, the child support enforcement agency and the delegate child support enforcement units, when exercising authority pursuant to this section, shall be subject to the privacy provisions of section 26-13-102.7, C.R.S.

Source: L. 97: Entire section added, p. 1274, § 12, effective July 1. **L. 99:** (3) amended, p. 622, § 17, effective August 4. **L. 2000:** (1)(a) amended, p. 1715, § 12, effective July 1. **L. 2008:** (1)(b) amended, p. 1347, § 2, effective July 1. **L. 2025:** (1)(b) amended, (HB 25-1159), ch. 334, p. 1762, § 5, effective May 31.

Cross references: For the legislative declaration contained in the 1997 act enacting this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

CIVIL UNION

ARTICLE 15

Colorado Civil Union Act

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14-15-101. Short title.

This article is known as the "Colorado Civil Union Act".

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 147, § 1, effective May 1.

14-15-102. Legislative declaration.

The general assembly declares that the purpose of this article 15 is to provide eligible couples the opportunity to obtain the benefits, protections, and responsibilities afforded by Colorado law to spouses consistent with the principles of equality under law and religious freedom embodied in both the United States constitution and the constitution of this state. The general assembly declares that a second purpose of the act is to protect individuals who are or may become partners in a civil union against discrimination in employment, housing, and in places of public accommodation. The general assembly further finds that the general assembly, in the exercise of its plenary power, has the authority to define other arrangements, such as a civil union between two unmarried persons regardless of their gender, and to set forth in statute any state-level benefits, rights, and protections to which a couple is entitled by virtue of entering into a civil union. The general assembly finds that the "Colorado Civil Union Act" does not alter the public policy of this state. The general assembly also declares that a third purpose in enacting the "Colorado Civil Union Act" is to state that Colorado courts may offer same-sex couples the equal protection of the law and to give full faith and credit to recognize relationships legally created in other jurisdictions that are similar to civil unions created by this article 15.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 147, § 1, effective May 1. **L. 2025:** Entire section amended, (SB 25-014), ch. 51, p. 226, § 2, effective April 7.

Cross references: For the validity or recognition of marriages in this state, see section 31 of article II of the state constitution.

14-15-103. Definitions.

As used in this article 15, unless the context otherwise requires:

(1) "Civil union" means a relationship established by two eligible persons pursuant to this article that entitles them to receive the benefits and protections and be subject to the responsibilities of spouses.

(2) "Civil union certificate" means a document that certifies that the persons named in the certificate have established a civil union in this state in compliance with this article.

(3) "Department" means the department of public health and environment.

(4) "Marriage" means the legally recognized union of two individuals as partners in a personal relationship.

(5) "Partner in a civil union" or "party to a civil union" means a person who has established a civil union pursuant to this article.

(6) "Spouses" means two persons who are married pursuant to the provisions of the "Uniform Marriage Act", part 1 of article 2 of this title.

(7) "State registrar" means the state registrar of vital statistics in the department.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 148, § 1, effective May 1. **L. 2025:** IP and (4) amended, (SB 25-014), ch. 51, p. 226, § 3, effective April 7.

14-15-104. Requisites of a valid civil union.

(1) To establish a civil union in Colorado, the two parties to the civil union shall satisfy all of the following criteria:

(a) Both parties are adults, regardless of the gender of either party;

(b) Neither party is a party to another civil union;

(c) Neither party is married to another person.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 148, § 1, effective May 1.

14-15-105. Individual - civil union with relative - prohibited.

(1) An individual shall not enter into a civil union with an ancestor or a descendant or with a brother or a sister, whether the relationship is by the half or the whole blood.

(2) An individual shall not enter into a civil union with an uncle or aunt or with a niece or nephew, whether the relationship is by the half or the whole blood.

(3) A civil union between persons prohibited from entering into a civil union by subsection (1) or (2) of this section is void.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 148, § 1, effective May 1.

14-15-106. Restrictions as to minors and wards.

(1) A county clerk and recorder shall not issue a civil union license if either party to the intended civil union is:

(a) Under eighteen years of age; or

(b) Eighteen years of age or older and under guardianship, unless the party under guardianship has the written consent of his or her guardian.

(2) A violation of subsection (1) of this section makes the civil union void.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 149, § 1, effective May 1.

14-15-107. Rights, benefits, protections, duties, obligations, responsibilities, and other incidents of parties to a civil union.

(1) A party to a civil union has the rights, benefits, protections, duties, obligations, responsibilities, and other incidents under law as are granted to or imposed upon spouses, whether those rights, benefits, protections, duties, obligations, responsibilities, and other

incidents derive from statute, administrative or court rule, policy, common law, or any other source of law.

(2) A party to a civil union is included in any definition or use of the terms "dependent", "family", "heir", "immediate family", "next of kin", "spouse", and any other term that denotes the familial or spousal relationship, as those terms are used throughout the Colorado Revised Statutes.

(3) Parties to a civil union are responsible for the financial support of one another in the manner prescribed under law for spouses.

(4) The law of domestic relations, including but not limited to declaration of invalidity, legal separation, dissolution, child custody, allocation of parental responsibilities, parenting time, child support, property division, maintenance, and award of attorney fees, applies to civil unions.

(5) Rights, benefits, protections, duties, obligations, responsibilities, and other incidents under law as are granted to or imposed upon spouses, that apply in like manner to parties to a civil union under this section, include but are not limited to:

(a) Laws relating to title, survivorship, or other incidents of or presumptions with respect to the acquisition, ownership, or transfer, inter vivos or at death, of real or personal property;

(b) Causes of action related to or dependent upon spousal status, including an action based on wrongful death, emotional distress, loss of consortium, dramshop laws, or other torts or actions under contracts reciting, related to, or dependent upon spousal status;

(c) Prohibitions against discrimination based upon spousal status, including but not limited to the provisions of parts 3 to 7 of article 34 of title 24, C.R.S.;

(d) Title 15, C.R.S., including but not limited to matters concerning decedents' estates, wills, trusts, intestate succession, nonprobate transfers, wards, protected persons, and priority for appointment as a conservator, guardian, or personal representative;

(e) Workers' compensation benefits;

(f) The right of a partner in a civil union to be treated as a family member or as a spouse under the "Colorado Employment Security Act" for purposes of unemployment benefits;

(g) Adoption law and procedure;

(h) Group benefit plans for state employees pursuant to part 6 of article 50 of title 24, C.R.S.;

(i) The right to designate a party to a civil union as a beneficiary under the state public employees' retirement system;

(j) Survivor benefits under local government firefighter and police pensions;

(k) Domestic violence programs pursuant to article 7.5 of title 26, emergency protection orders pursuant to section 13-14-103, and the right to receive the protections and programs specified in part 8 of article 6 of title 18;

(l) Rights to apply for compensation as a relative of a victim under the "Colorado Crime Victim Compensation Act", pursuant to part 1 of article 4.1 of title 24, C.R.S., rights to receive restitution under part 2 of article 4.1 of title 24, C.R.S., and the right to be informed of critical stages of the criminal justice process and to be accorded the rights and protections of victims of and witnesses to crimes under parts 2 and 3 of article 4.1 of title 24, C.R.S.;

(m) Laws, policies, or procedures relating to emergency and nonemergency medical care and treatment and hospital visitation and notification, including the rights of nursing home patients described in section 25-1-120, C.R.S.;

(n) Laws or rules regarding the right to visit a partner who is in a correctional facility, as defined in section 17-1-102 (1.7), a local jail, as defined in section 17-1-102 (7), or a private contract prison, as defined in section 17-1-102 (7.3), or who is receiving treatment in a public hospital or a licensed private hospital, clinic, behavioral health safety net provider, or institution that provides treatment for a person with a behavioral or mental health disorder;

(o) Laws relating to:

(I) Declarations concerning the administration, withholding, or withdrawing of medical treatment, which declarations are made pursuant to the provisions of the "Colorado Medical Treatment Decision Act", article 18 of title 15, C.R.S.;

(II) Proxy decision-makers for medical treatment and surrogate decision-makers for health-care benefit decisions, as described in article 18.5 of title 15, C.R.S.;

(III) Directives relating to cardiopulmonary resuscitation, as described in article 18.6 of title 15, C.R.S.; and

(IV) Directives concerning medical orders for scope of treatment forms, as described in article 18.7 of title 15, C.R.S.;

(p) Rights concerning direction of the disposition of the last remains of a deceased party to a civil union pursuant to article 19 of title 15, C.R.S.;

(q) Laws relating to making, revoking, and objecting to anatomical gifts by others pursuant to the "Revised Uniform Anatomical Gift Act", part 2 of article 19 of title 15;

(r) Family leave benefits;

(s) Public assistance benefits pursuant to state law;

(t) Laws relating to immunity from compelled testimony and evidentiary privileges pursuant to section 13-90-107, C.R.S.;

(u) The right to apply for emergency or involuntary certification of a party to a civil union;

(v) The homestead rights of a spouse pursuant to part 2 of article 41 of title 38, C.R.S.;

(w) The ability to protect exempt property from attachment, execution, or garnishment;

(x) (I) Insurance policies for life insurance, including the ability to cover a party to a civil union as a dependent.

(II) This paragraph (x) is effective for plans issued, delivered, or renewed on or after January 1, 2014.

(y) (I) Insurance coverage provided by a health coverage plan, including the ability to cover a party to a civil union as a dependent.

(II) This paragraph (y) is effective for plans issued, delivered, or renewed on or after January 1, 2014.

(z) (I) Other insurance policies that provide coverage relating to joint ownership of property.

(II) This paragraph (z) is effective for plans issued, delivered, or renewed on or after January 1, 2014.

(6) The responsibilities and rights of parties to a civil union with respect to the biological child of one of the parties, which child is conceived during the term of the civil union, are determined as if the parties were spouses subject to the provisions of section 19-4-105, C.R.S. A party to a civil union has the right to adopt through the same process outlined for a stepparent adoption in accordance with section 19-5-203, C.R.S., if the child of the other party to the civil union is otherwise available for adoption pursuant to section 19-5-203 (1)(d), C.R.S.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 149, § 1, effective May 1. **L. 2017:** (5)(n) amended, (SB 17-242), ch. 263, p. 1295, § 114, effective May 25; (5)(q) amended, (SB 17-223), ch. 158, p. 558, § 5, effective August 9. **L. 2020:** (5)(u) amended, (SB 20-136), ch.70, p. 282, § 5, effective September 14. **L. 2022:** (5)(k) amended, (SB 22-183), ch. 194, p. 1304, § 11, effective May 19; (5)(n) amended, (HB 22-1278), ch. 222, p. 1588, § 219, effective July 1, 2024.

Cross references: (1) For the "Colorado Employment Security Act", see articles 70 to 82 of title 8.

(2) For the legislative declaration in SB17-242, see section 1 of chapter 263, Session Laws of Colorado 2017. For the legislative declaration in SB 20-136, see section 1 of chapter 70, Session Laws of Colorado 2020.

14-15-108. Modification of civil union terms through an agreement.

(1) Parties to a civil union may create agreements modifying the terms, conditions, or effects of a civil union in the manner specified in part 3 of article 2 of this title.

(2) Notwithstanding the provisions of subsection (1) of this section, the provisions of this article and the provisions of part 3 of article 2 of this title do not invalidate or affect an otherwise valid domestic partnership agreement or civil contract between two individuals who are not married to each other in which the individuals set forth an agreement about the rights and responsibilities regarding matters similar to those that may be addressed by a contract under part 3 of article 2 of this title if the agreement or contract was made prior to May 1, 2013, or, if made on or after May 1, 2013, the agreement or contract is not made in contemplation of entering into a civil union under this article.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 152, § 1, effective May 1.

14-15-109. Civil union license and certificate.

(1) The executive director of the department shall prescribe the form for an application for a civil union license, consisting of, at a minimum, the following information:

(a) Name, sex, address, social security number, and date and place of birth of each party to the proposed civil union. For such purpose, proof of date of birth may be obtained from a birth certificate, a driver's license, or other comparable evidence.

(b) If either party has previously been married or has previously been a party to a civil union, the name of the spouse or the name of the other party and the date, place, and court in which the marriage or civil union was dissolved or declared invalid or the date and place of death of the deceased spouse or the deceased party to a civil union;

(c) Name and address of the parents or guardian of each party; and

(d) Whether the parties are related to each other and, if so, their relationship.

(2) The executive director of the department shall prescribe the forms for the civil union license and the civil union certificate. The department shall provide the forms to the county clerk and recorders in the state.

(3) A civil union license and a civil union certificate do not constitute evidence of the parties' intent to create a common law marriage.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 152, § 1, effective May 1. **L. 2016:** (3) added, (SB 16-150), ch. 263, p. 1080, § 4, effective June 8.

Cross references: For the legislative declaration in SB 16-150, see section 1 of chapter 263, Session Laws of Colorado 2016.

14-15-110. Issuance of a civil union license - certification - fee.

(1) When both parties to a proposed civil union complete a civil union application and at least one party appears, or both parties appeared if permitted pursuant to section 14-2-106.5, before the county clerk and recorder and pays to the county clerk and recorder the civil union license fee and other fees described in subsection (2) of this section, and the county clerk and recorder determines that the parties meet the criteria specified in sections 14-15-104, 14-15-105, and 14-15-106, the county clerk and recorder shall issue a civil union license and a civil union certificate form. Both parties to the proposed civil union shall sign the application attesting to the accuracy of the facts stated.

(2) The civil union license fee is seven dollars plus an additional amount established pursuant to section 25-2-121, C.R.S. The county clerk and recorder shall forward the additional amount to the state treasurer who shall credit it to the vital statistics records cash fund pursuant to section 25-2-121, C.R.S. In addition, the county clerk and recorder shall collect a fee of twenty dollars to be transmitted by the county clerk and recorder to the state treasurer who shall credit the same to the Colorado domestic abuse program fund created in section 39-22-802 (1), C.R.S.

(3) (a) If, at any point following the issuance of a valid civil union license issued pursuant to this section, a party to the civil union presents the issuing county clerk and recorder with appropriate documentation of that party's name change and requests the issuance of a new civil union license, the county clerk shall issue a new civil union license that reflects the party's name change.

(b) A new civil union license issued pursuant to subsection (3)(a) of this section supersedes the original civil union license as the official public record and must not be marked as amended or indicate in any manner that the name on the civil union license has been changed.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 153, § 1, effective May 1. **L. 2023:** (1) amended, (HB 23-1278), ch. 291, p. 1758, § 3, effective August 7. **L. 2025:** (3) added, (HB 25-1312), ch. 205, p. 928, § 4, effective May 16.

Cross references: For the short title ("Kelly Loving Act") in HB 25-1312, see section 1 of chapter 205, Session Laws of Colorado 2025.

14-15-110.5. Civil union license and certificate without appearing in person.

(1) A county clerk and recorder may permit the parties to a proposed civil union to satisfy the requirement to appear before the county clerk and recorder by an interactive audiovisual communication technology or online functionality, for the following limited purposes:

(a) To verify application information;

(b) To present satisfactory proof, as required, that each party to the civil union meets the criteria to enter into a civil union;

(c) To present satisfactory proof that the civil union is not prohibited; or

(d) To pay required fees.

(2) A county clerk and recorder shall not permit the procedure described in subsection (1) of this section if either of the parties are under eighteen years of age, or if the parties are using interactive audiovisual technology and are unable to appear together. Nothing in this section changes any requirement that must be satisfied in the state of Colorado.

(3) A county clerk and recorder who permits the parties to a proposed civil union to satisfy certain requirements without appearing in person and staff members who carry out duties on behalf of the county clerk and recorder pursuant to this section shall complete the training and curricula developed by the human trafficking council created in section 18-3-505 for persons who work in or who frequent places where human trafficking victims are likely to appear. The training and curricula must be completed prior to permitting parties to a proposed civil union to satisfy certain requirements without appearing in person pursuant to this section; except that if a county clerk and recorder permits the parties to a proposed civil union to satisfy certain requirements without appearing in person on and before June 18, 2021, the training and curricula must be completed no later than thirty days after June 18, 2021. A county clerk and recorder who permits the parties to a proposed civil union to satisfy certain requirements without appearing in person shall maintain records demonstrating compliance with this subsection (3) and shall display a notice of compliance with this subsection (3) in a place that is accessible to the public in the county clerk and recorder's office and on its website. A county clerk and recorder and staff members who carry out duties of the county clerk and recorder shall complete the training and curricula requirements pursuant to this subsection (3) at least once every year for as long as the county clerk and recorder permits the parties to a proposed civil union to satisfy certain requirements without appearing in person pursuant to this section.

(4) Repealed.

Source: L. 2021: Entire section added, (HB 21-1287), ch. 264, p. 1538, § 2, effective June 18. **L. 2023:** IP(1) and (3) amended and (4) repealed, (HB 23-1278), ch. 291, p. 1758, § 4, effective August 7.

14-15-111. When civil union licenses issued - validity.

The county clerk and recorder shall issue a civil union license only during the hours that the office of the county clerk and recorder is open as prescribed by law and at no other time and shall show the exact date and hour of the license's issue. New civil union licenses issued pursuant to section 14-2-110 (3)(a) must show the date and hour of issuance of the new license, but the effective date of the civil union is the date listed on the original civil union license. New civil union licenses issued pursuant to section 14-2-110 (3)(a) are valid. A civil union license is not valid for use outside the state of Colorado. Within the state, a civil union license is not valid for more than thirty-five days after the date of issue. If a civil union license is not used within thirty-five days, it is void, and one of the parties shall return the civil union license to the county clerk and recorder that issued the license for cancellation.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 153, § 1, effective May 1. **L. 2025:** Entire section amended, (HB 25-1312), ch. 205, p. 928, § 5, effective May 16.

Cross references: For the short title ("Kelly Loving Act") in HB 25-1312, see section 1 of chapter 205, Session Laws of Colorado 2025.

14-15-112. Persons authorized to certify civil unions - registration - fee.

(1) A civil union may be certified by a judge of a court, by a district court magistrate, by a county court magistrate, by a retired judge of a court, by the parties to the civil union, or in accordance with any mode of recognition of a civil union by any religious denomination or Indian nation or tribe.

(2) Within sixty-three days after the date on which the civil union is certified, either the person certifying the civil union or, if no individual acting alone certifies the civil union, a party to the civil union shall complete the civil union certificate and return the certificate to the county clerk and recorder's office that issued the license. A person who fails to return the civil union certificate to the county clerk and recorder as required by this section shall pay to the county clerk and recorder a late fee in an amount not less than twenty dollars. The county clerk and

recorder may assess an additional five-dollar late fee for each additional day of failure to comply with the return requirements of this subsection (2), up to a maximum of fifty dollars. For purposes of determining whether to assess a late fee pursuant to this subsection (2), the date of return is deemed to be the date of postmark.

(3) Upon receiving the civil union certificate, the county clerk and recorder shall register the civil union.

(4) A priest, minister, rabbi, or other official of a religious institution or denomination or an Indian nation or tribe is not required to certify a civil union in violation of his or her right to the free exercise of religion guaranteed by the first amendment to the United States constitution and by section 4 of article II of the state constitution.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 153, § 1, effective May 1.

14-15-113. Civil union license required for certification.

Persons authorized by section 14-15-112 to certify civil unions shall require a civil union license from the parties before certifying the civil union.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 154, § 1, effective May 1.

14-15-114. Evidence of civil union.

A copy of the civil union certificate received from the county clerk and recorder or a record of the civil union received from the state registrar is presumptive evidence of the civil union in all courts.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 154, § 1, effective May 1.

14-15-115. Dissolution, legal separation, and declaration of invalidity of civil unions - jurisdiction - venue.

(1) Any person who enters into a civil union in Colorado consents to the jurisdiction of the courts of Colorado for the purpose of any action relating to a civil union even if one or both parties cease to reside in this state.

(2) The district court has jurisdiction over all proceedings relating to the dissolution of a civil union, legal separation of a civil union, or the declaration of invalidity of a civil union, regardless of the jurisdiction where the civil union was entered into. The court shall follow the procedures specified in article 10 of this title, including the same domicile requirements for a dissolution, legal separation, or declaration of invalidity for such proceedings.

(3) A proceeding relating to the dissolution of a civil union, legal separation of a civil union, or the declaration of invalidity of a civil union may be held in the county where the petitioner or respondent resides or where the parties' civil union certificate was issued; except that process may be directed to any county in the state. A respondent's objection to venue is waived if not made within such time as the respondent's response is due.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 154, § 1, effective May 1.

ANNOTATION

Law reviews. For article, "Maintenance Revisited The New Act", see 42 Colo. Law. 69 (Nov. 2013).

14-15-116. Reciprocity - principle of comity.

(1) Repealed.

(2) Under principles of comity, a civil union, domestic partnership, or substantially similar legal relationship between two persons that is legally created in another jurisdiction shall be deemed to be a civil union for purposes of Colorado law as set forth in this article.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 155, § 1, effective May 1. **L. 2016:** (1) repealed, (SB 16-150), ch. 263, p. 1080, § 5, effective June 8.

Cross references: For the legislative declaration in SB 16-150, see section 1 of chapter 263, Session Laws of Colorado 2016.

14-15-117. Application of article to joint tax returns - legislative declaration.

(1) The general assembly finds that some partners in a civil union may legally have their federal taxable income determined on either separate federal tax returns or on a joint federal tax return. Since Colorado income tax filings are tied to the federal income tax form by requiring taxpayers to pay a percentage of their federal taxable income as their state income taxes:

(a) Partners in a civil union who have their federal taxable income determined on separate federal tax returns must have such income separately determined for purposes of the Colorado income tax; and

(b) Partners in a civil union who have their federal taxable income determined on a joint federal tax return must have their state taxable income determined based on their joint federal taxable income.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 155, § 1, effective May 1. **L. 2014:** Entire section R&RE, (SB 14-019), ch. 10, p. 96, § 1, effective February 27.

14-15-118. Construction.

This article 15 does not create a marriage between the parties to a civil union.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 155, § 1, effective May 1. **L. 2025:** Entire section amended, (SB 25-014), ch. 51, p. 226, § 4, effective April 7.

14-15-118.5. Construction - effect when parties to a civil union marry - dissolution process.

(1) When parties who have entered into a civil union pursuant to this article subsequently marry, the effect is a merger of the two relationship statuses. Once merged, the civil union terminates as of the date of the solemnization of the marriage or determination of a common law marriage and no separate dissolution of the civil union is required.

(2) If one or both parties to a marriage that has been merged with a civil union subsequently desire to dissolve the marriage, legally separate, or have the marriage declared invalid, one or both of the parties must file a petition in accordance with the procedures specified in article 10 of this title.

(3) If a civil union and marriage were merged, any calculation of the duration of the marriage includes the time period during which the parties were in a civil union.

Source: L. 2016: Entire section added, (SB 16-150), ch. 263, p. 1080, § 6, effective June 8.

Cross references: For the legislative declaration in SB 16-150, see section 1 of chapter 263, Session Laws of Colorado 2016.

14-15-119. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: L. 2013: Entire article added, (SB 13-011), ch. 49, p. 155, § 1, effective May 1.