

**Selected Changes to C.R.S. §14-10-115 & §14-10-122
Effective January 1, 2017**

**Family Law Section
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A. Deviation Based on Non-Overnight Parenting Time

SECTION 5. In Colorado Revised Statutes, 14-10-115, **amend (8)** (e) as follows:

14-10-115. Child support guidelines - purpose - definitions - determination of income - schedule of basic child support obligations - adjustments to basic child support - additional guidelines - child support commission. (8) Computation of basic child support - shared physical care - split physical care - stipulations - deviations - basis for periodic updates. (e) In any AN action to establish or modify child support, whether temporary or permanent, the guidelines and schedule of basic child support obligations as 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. Courts 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 is MAY BE a factor to be considered in the decision to deviate. The court may deviate from the guidelines and basic schedule of

B. Five-Year Limit to Modification Based on Change of Physical Care

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

(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.

C. Exchange of Financial Information

14-10-115. Child support guidelines - purpose - definitions - determination of income - schedule of basic child support obligations - adjustments to basic child support - additional guidelines - child support commission. (14) Annual exchange of information. (a) When a child support order is entered or modified, ~~UNLESS OTHERWISE ORDERED BY THE COURT,~~ the parties may agree or the court may require the parties to exchange financial information including verification of insurance and its costs, ~~pursuant to paragraph (c) of subsection (5) of this section~~ 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, by regular mail, for the purpose of updating and modifying the order without a court hearing. The parties shall use the approved standardized child support forms specified in subsection (4) of this section in exchanging financial information. ~~THE PARENTS SHALL INCLUDE the forms shall be included~~ with any agreed modification or an agreement that a modification is not appropriate at the time. If the agreed amount departs from the guidelines and schedule of basic child support obligations, the parties shall furnish statements of explanation ~~that shall be included~~ with the forms and ~~shall be filed~~ 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, ~~no~~ 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.

Issue: “Unless otherwise ordered by the Court, the parties shall exchange information... once a year or less often...” If less often, how less often? With the change of language, the frequency of exchange is unclear.

D. Additional Adjustment for Non-Joint Child

14-10-115. Child support guidelines - purpose - definitions - determination of income - schedule of basic child support obligations - adjustments to basic child support - additional guidelines - child support commission. (6) Adjustments to gross income. (a) The amount of child support actually paid by a parent with an order for support of other children shall be deducted from that parent's gross income. 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.

Issues:

1. Renumbered Section 6(a)(II) (child residing in the home) refers to Section 6(b), which sets the adjustment based only on the "responsible parent's income."
2. New Section 6(a)(III) (child residing outside the home of the responsible parent's home with no support ordered) caps the adjustment ("not to exceed the schedule of basic support") by reference to Section 7 of the statute (the basic child support schedule). However, Section 6(a)(III) does not specify that the adjustment is based only on the responsible parent's income.

3. To address this new adjustment, the Family Law Software program line 1(d) (shown below) now includes both the previous adjustment for children not of the parties living with the responsible parent (now Section (6)(a)(II)) and the new adjustment for “money payments” (without court order) for children not living in the home of the responsible parent (now Section (6)(a)(III)):

1. Monthly Gross Income	\$ 0.00	\$ 0.00	
a. Plus maintenance (spousal/partner support) received	+ 0.00	+ 0.00	
b. Minus maintenance paid	- 0.00	- 0.00	
c. Minus ordered child support payments for other children pursuant to 14-10-115(6)(a), C.R.S.	- 0.00	- 0.00	
d. Minus legal responsibility for children not of this marriage/ civil union/relationship pursuant to 14-10-115(6)(b)(I), C.R.S.	- 0.00	- 0.00	
e. Minus ordered post-secondary education contributions **	- 0.00	- 0.00	
2. Monthly Adjusted Gross Income (If either the paying	\$ 0.00	\$ 0.00	\$ 0.00

Family Law Software will also include a back-up data table demonstrating the amount allowed pursuant to 6(a)(III) (applying the “cap” based on basic child support (using only the responsible parent’s income).

Children of other relationships living outside the home for Sally. 14-10-115(6)(a)(III).

1. Gross Income counting only income of Sally	\$ 9,120
2. Table lookup of support for 1 child for this income	\$ 1,123.20
3. Child	
a. Amount actually spent for Child	\$ 400
b. Deduction: Lesser of line 2 and line 3a	\$ 400.00
4. Total of	\$ 400.00

4. Bill Redak’s Custom Legal Software will include an additional line for the new adjustment, as shown here as 1(c):

		Mother	Father	Combined
1. MONTHLY GROSS INCOME	\$.00	.00	
a) Plus maintenance received from spouse of this marriage	+	.00	.00	
b) Less support to others for other children - court ordered	-	.00	.00	
c) Less support to others for other children - no court order	-	.00	.00	
d) Less Sec. (6)(b)(I) deduction for non-joint children	-	.00	.00	
e) Less maintenance paid to spouse of different relationship	-	.00	.00	
f) Less maintenance paid to spouse of this marriage	-	.00	.00	
2. MONTHLY ADJUSTED GROSS INCOME	=	.00	.00	.00

5. Bill Redak’s program will not automatically calculate the new “money payment” (without court order) for children not living in the home. The concern is that the statute does not specifically indicate that this adjustment is to be calculated solely based on the responsible parent’s income (and also refers to Section 7 rather than Section 6(b)). This program will include the line for an adjustment, but will allow users to insert the adjustment they deem appropriate by statute (users can refer to the child support schedule to determine the “cap”).