

Maintenance & Child Support

4th Judicial District Family Law Day

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CSS Unit

- Third party intervenor on child support cases
- Core functions of the CSS Unit
 - Establish paternity and child support
 - Enforcing support orders (administrative or judicial)
 - Modify child support
 - Bookkeeping/arrears
- No application fee
- Limits of CSS Unit collection
 - Spousal maintenance only when combined with child support
 - Does not collect interest (unless the Court reduced it into a judgment)

Family Support Registry and Income Assignment

- Central registry operated by the state to process, disburse, and track child support and spousal maintenance payments
 - Required for CSS services
 - No cost
 - Accepts checks, money orders, recurring withdrawals, online payment
- Income assignment
 - Must use if CSS Unit is involved

Enforcement of Payments

- Income assignment
- Driver's license and professional license suspension
- Intercept of state and federal tax refunds
- Attachment of unemployment compensation benefits
- Offset of lottery and gambling winnings
- Passport denial
- Credit reporting

Award Child Support

- Not automatic
- Need agreement or court order

Modification

- Not automatic
- Need agreement or court order
- Greater than 10% change from the existing child support order (substantial and continuing change of circumstances)
- Emancipation of child: No automatic child support termination until last/only child turns 19

What is Income?

- Almost everything a person receives, including hourly wage, salary from primary employment, commission/bonuses, dividends, royalties, rent, interest, trust income, *realized* capital gains, social security, unemployment benefits, pensions, gifts, maintenance, etc.
- Colorado uses gross monthly income, not net

What is Not Income?

- 2nd job (in addition to full time job) or voluntary overtime
- Child support received
- Means-tested public benefits
- Social security benefits received on behalf of child as result of death/disability of parent or stepparent (but obligor disability payments may offset support)

Military

- All pay and allowances (BAS, BAH, COLA, flight pay, etc), even if not taxable.
- Impute BAH if live in on-post housing
- Reserves/Guard generally not count unless condition of primary employment
- Military Retirement
- VA disability
- Post-9/11 GI Bill - the monthly stipend (based upon E5 BAH) is income, but not tuition or book stipend.

Self-Employed

- Gross receipts minus ordinary and necessary business expenses
- Add back personal expenses (car, mobile phone, home office)
- Add back accelerated depreciation

Underemployment - Impute Income

- Impute income if voluntarily underemployed or unemployed
- Standard is “shirking”
 - did the parent unreasonably forego higher paying employment?
 - Multiple factors the court will look at
- What income should be imputed?
 - Employment and earning history, job skills, education, ge, literacy, assets, barriers to employment such as a felony criminal record, the local job market, etc.
- Impute minimum wage \$13.65/hr (\$2,366 per month) if parent in CO and no work history or education

Underemployment - No Imputation?

- Court may find a parent is not voluntarily underemployed if (each of these has a list of factors for the court to consider):
 - Parent is enrolled in school full-time or in school part-time and working part-time
 - Employment is temporary
 - Employment is a good faith career choice
- Court can't impute if:
 - Parent is physically or mentally incapacitated
 - Primary care for joint child < 24 mos
 - Parent has been sentenced to 180 or more days

Child Support

- Support for minor children
- Payable to children under 19
- Earlier emancipation - marry, join active duty military
- Later emancipation - still in high school, disabled

Child Support Factors

C.R.S. 14-10-115 formula based upon:

- Gross Income, including maintenance
- # Children the parties share
- Overnights (93+ for Worksheet B)
- Adjustments
 - Non-joint children (bio-children only, under 19 years old)
 - Other child support paid pursuant to court orders
- Certain expenses
 - Day Care for the parents' shared children
 - Health Insurance costs for the shared children
 - Extraordinary medical expenses (out-of-pocket, recurring)
 - Extraordinary other expenses
 - Child's Income, if reduces household expenses. Rare

Child Support for Shared Custody

- Worksheet B is used when both parents have more than 92 overnights per year with the child or children.
- If there is more than one child, and the children have different parenting time schedules, to calculate the number of overnights for the child support worksheet, the overnights are averaged: add everything up and divide by # of children.
 - Example: Dad has 104 overnights with 2 youngest children and 52 overnights with the oldest child, the number of overnights is 86.66.
 - $52 * 1/3 = 17.33$
 - $\frac{104 * 2/3 = 69.33}{=86.66}$

Child Support for Split Custody

Split custody: If children live with different parents, use offsetting child support worksheets. Example: Two children live with mother, one child lives with father.

1. Calculate Father's obligation to Mother based upon 2 children with her
2. Calculate Mother's obligation to Father based upon 1 child with him
3. Offset the two worksheets for the net support owing.

Sample Child Support Worksheet A

Worksheet A (CRS 14-10-116, effective July 1, 2021)

In re: _____

Case Number: _____

Name(s) and Birthdate(s) of child(ren): _____

This worksheet is for 2 children living most of the time with Mother. Adjustment for parenting time not required.

	Mother	Father	Combined
1. Monthly Gross Income	\$3,467.00	\$3,072.00	
a) Plus maintenance received from spouse of this marriage	+	\$0.00	\$0.00
b) Less support to others for other children - court ordered	-		
c) Less support to others for other children - no court order	-		
d) Less §5(a)(1) calculated deduction for non-joint children	-	\$0.00	\$0.00
e) Less maintenance paid to spouse of different relationship	-	\$0.00	\$0.00
f) Less maintenance (as adjusted) to spouse of this marriage	-	\$0.00	\$0.00
2. Monthly Adjusted Gross Income	=	\$3,467.00	\$3,072.00
3. Each parent's Percentage Share of Income	=	53.02%	46.98%
4. Basic Support Obligation (amount from schedule)			\$1,468.88
5. Each parent's proportional share of basic support obligation = (% Share of Income (line 3) x Basic support obligation (line 4))	=	\$778.88	\$689.89
6. Adjustment Expenses paid (or to be paid) by each parent			
a) Work related child care (positive tax credit: /)		\$0.00	\$0.00
b) Education related child care	+		
c) Health insurance (children's share)	+		
d) Extraordinary medical expenses	+		
e) Other extraordinary expenses	+		
f) Items that reduce need	-		
Total Adjustment Expenses (Total of line 6(a) through line 6(f) above)	=	\$0.00	\$0.00
7. Each parent's proportional share of adjustment expenses (% Share of Income of each (line 3) x Total adjustment expenses (line 6))	=	\$0.00	\$0.00
8. Each Parent's Support Obligation (Share of basic obligation (line 5) plus share of adjustment expenses (line 7))	=	\$778.88	\$689.89
9. Less direct payment of adjustment expenses	-		\$0.00
10. Recommended support order (Father pays Mother) (line 8 minus line 9)	=		\$689.89

Prepared by: YoungWilliams

June 7, 2023

Sample Child Support Worksheet B

Worksheet B (CRS 14-10-116, effective July 1, 2021)

In re: _____

Case Number: _____

Name(s) and Birthdate(s) of child(ren): _____

This worksheet is for 2 children living most of the time with Mother. Overnight time with Father: 104 (26.483%).

	Mother	Father	Combined
1. Monthly Gross Income	\$6,504.00	\$4,982.00	
a) Plus maintenance received from spouse of this marriage	+	\$0.00	\$0.00
b) Less support to others for other children - court ordered	-		
c) Less support to others for other children - no court order	-		
d) Less \$6(a)(1) calculated deduction for non-joint children (0 / 1)	-	\$0.00	\$614.28
e) Less maintenance paid to spouse of different relationship	-	\$0.00	\$0.00
f) Less maintenance (as adjusted) to spouse of this marriage	-	\$0.00	\$0.00
2. Monthly Adjusted Gross Income	=	\$6,504.00	\$4,377.72
3. Each parent's Percentage Share of Income	=	68.77%	40.23%
4. Amount from Guideline Schedule			\$1,860.17
5. Basic Child Support Obligation (1.5 x line 4)	=		\$2,840.28
6. Each parent's proportional share of basic support obligation = (% Share of Income (line 3) x Basic support obligation (line 5))	=	\$1,767.39	\$1,182.87
7. Overnights with each parent	=	281	104
8. Percentage Time with Each Parent	=	71.507%	26.483%
9. Portion of own share owed to other (Each parent's support share (line 6) x Other parent's time percentage (line 8))	=	\$500.73	\$645.63
10. Adjustment Expenses paid (or to be paid) by each parent			
a) Work related child care (Before tax credit /)		\$0.00	\$0.00
b) Education related child care	+	\$329.00	
c) Health Insurance (children's share)	+		
d) Extraordinary medical expenses	+		
e) Other extraordinary expenses	+		
f) Items that reduce need	-		
Total Adjustment Expenses (Total of line 10(a) through line 10(f) above)	=	\$329.00	\$0.00
11. Fair share of adjustment expenses (% Share of Income of each (line 3) x Total adjustment expenses (line 10))	=	\$166.84	\$132.36
12. Adjustment expenses paid in excess of fair share Expense paid by each (line 10) minus fair share of such expenses (line 11)	=	\$132.36	\$0.00
13. Total owed by each to other Support owed to other (line 9) minus expense paid in excess of fair share (line 12)	-	\$368.37	\$645.63
14. Recommended support order (Father pays Mother)	=		\$477.48

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“Crazy” Outcome?

Guidelines may result in majority parent paying support.

Example:

Mother \$8000/mo, Father \$2366/mo. No maintenance

2 children, Mother has 245 nights, Father has 120

Result: Mother owes Father \$287/mo support!

Sample Child Support Worksheet B – crazy outcome

Worksheet B (CRS 14-10-115, effective July 1, 2021)

In re: _____

Case Number: _____

Name(s) and Birthdate(s) of child(ren): _____

This worksheet is for 2 children living most of the time with Mother. Overnight time with Father: 120 (32.877%).

	Mother	Father	Combined
1. Monthly Gross Income	\$5,000.00	\$2,386.00	
a) Plus maintenance received from spouse of this marriage	+	\$0.00	\$0.00
b) Less support to others for other children - court ordered	-		
c) Less support to others for other children - no court order	-		
d) Less 50(a)(1) calculated deduction for non-joint children	-	\$0.00	\$0.00
e) Less maintenance paid to spouse of different relationship	-	\$0.00	\$0.00
f) Less maintenance (as adjusted) to spouse of this marriage	-	\$0.00	\$0.00
2. Monthly Adjusted Gross Income	=	\$5,000.00	\$2,386.00
3. Each parent's Percentage Share of Income	=	77.18%	22.82%
4. Amount from Guideline Schedule			\$1,809.68
5. Basic Child Support Obligation (1.5 x line 4)	=		\$2,864.54
6. Each parent's proportional share of basic support obligation	=	\$2,209.75	\$654.69
(Each parent's share of income (line 3) x Basic support obligation (line 5))			
7. Overnights with each parent	=	245	120
8. Percentage Time with Each Parent	=	67.123%	32.877%
9. Portion of own share owed to other	=	\$724.53	\$437.37
(Each parent's support share (line 6) x Other parent's time percentage (line 8))			
10. Adjustment Expenses paid (or to be paid) by each parent			
a) Work related child care (Before tax credit /)		\$0.00	\$0.00
b) Education related child care	+		
c) Health Insurance (children's share)	+		
d) Extraordinary medical expenses	+		
e) Other extraordinary expenses	+		
f) Items that reduce need	-		
Total Adjustment Expenses	=	\$0.00	\$0.00
(Total of line 10(a) through line 10(f) above)			
11. Fair share of adjustment expenses	=	\$0.00	\$0.00
(% Share of Income of each (line 3) x Total adjustment expense (line 10))			
12. Adjustment expenses paid in excess of fair share	=	\$0.00	\$0.00
Expenses paid by each (line 10) minus fair share of each expense (line 11)			
13. Total owed by each to other	-	\$724.53	\$437.37
Support owed to other (line 9) minus expenses paid in excess of fair share (line 12)			
14. Recommended support order (Mother pays Father)	=	\$287.16	

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Guidelines Are a “Must”

- The Court is required to review the guidelines & the parties' financial affidavits before approving any agreements.
- Required to follow unless the Court finds cause to deviate from the guidelines. The court must make findings on the record.
- Cannot permanently waive child support, nor limit future modification

Child Support Misc

- Not taxable
- Exchange financial information annually
- Update the CSS Unit on changes in employment
- If you are paying child support directly, you *must* keep records of every payment made. Consider making payments to the Family Support Registry which maintains a permanent record.

Maintenance; Spousal Support; Alimony

CRS 14-10-114

To the Payor Spouse, often referred to as *ransom for freedom*

To the Recipient Spouse, more like back pay, with interest, for years of unrewarded duties as nanny, chef, taxi driver, maid, and overall life coach support

Your income & Your success is a product of joint marital efforts, usually

*Maintenance is based upon equity and fairness

- Fairness is Subjective

- Discretion determines equity

- The Court is a human person

Why do we have maintenance?

- Intended to be a temporary stopgap to assist spouse in reaching a point of financial independence
- Support for spouse, separate from child support
- Available to either spouse; no gender discrimination
- No-fault: “Without regard to marital misconduct”
- Unlike CS (calculation based on inputs), Maintenance is based on fairness
- Interplay & Order of Decision: (1)Property; (2)Maintenance; (3)Child Support

Maintenance Threshold for Award

Threshold Factors: Need & Ability to Pay

- Spouse's reasonable need, as well as a proven inability to support her/himself through appropriate employment, and other fairness factors (assessed by facts particular to marriage) See *In re Marriage of Thornhill*, 232 P.3d 782, (Colo. 2010).
- Incomes- current & historical
- Marital property awarded to each spouse, but cannot be required to deplete property (retirement, savings)
- Financial resources/economic circumstances (trust/inheritance)
- Reasonable needs during marriage. *Needs are not limited to "the minimum resources to sustain life," but instead premised upon a party's lifestyle and expectation. *Olar*, 747 P.2d at 681.
- Ability to Pay- pursuant to disposable income

ADVISORY Maintenance Formula

“Guideline Support” = Starting Point

*Applies when combined incomes below \$240,000/yr

Decree Prior to January 1, 2019

- Tax-deductible to the payor, and taxable to the payee

1. Add up both gross monthly incomes from all sources
2. Multiply combined total by 40%. This is lower income earner's “share” of that total
3. Subtract lower earner's income from that 40%

*Example:

Spouse A makes \$6000/mo; Spouse B makes \$2000/mo

$6000 + 2000 = 8000$

$8000 \times .40 = 3200$ (If Spouse B's income is greater than this #, then no SS)

$3200 - 2000 = \$1200$ *This is the guideline figure

Decree Issued January 1, 2019 & Beyond

- Not taxable to payee, nor tax deductible to payor
- < \$10K/mo combined: reduce by 20% if tax-free
- > \$10K/mo combined: reduce by 25% if tax-free
- “Grosses up” by 25% non-taxable maintenance for purpose of calculating support
- Post-2019 modification of pre-2019 maintenance decree - in theory, have option of taxable/non-taxable

See Here:

https://www.familylawsoftware.com/download_client_edition_co/index.html

Maintenance ADVISORY Duration

“Guideline Term” - Also Starting Point

< 3 yrs marriage: No maintenance usually, but court may do so when “the distribution of marital property is insufficient to achieve an equitable result.” CRS § 14-10-114(3)(h)

3-12½ yrs marriage: Sliding scale starting at 31% x length of marriage, adding months until reach 50%. Chart in CRS 14-10-114(3)(b)(II)

12½-20 yrs marriage: 50% length of marriage

20+ yrs marriage: 10 yrs to indefinite

Limitations on Advisory Maintenance

- **Advisory only**, not legally binding.
- **Court Cannot Blindly Apply**. Judges are required to consider advisory guidelines, but only as one of the maintenance factors.
- **No Applicability Above \$240K/yr**. May end up in the ballpark, but cannot use statutory guidelines as basis for ruling.

Next.... Factors of Fairness...

Maintenance Factors

Upon meeting threshold, then review of Factors of Fairness to determine support amount & duration, in light of “guidelines”:

CRS 14-10-114(3)(c)

- Each spouse’s financial resources, need, ability to pay
- Lifestyle during marriage
- Marital property
- Incomes & historical earnings
- “Employability, obtainable through reasonable diligence”
- Education & Training
- Duration of marriage
- Age & health of spouses
- Contributions during marriage, economic or non-economic
- “Time Served”- Temporary Support Provided & Duration

Income Considerations:

- Unlike CS, second jobs count for purposes of calculating maintenance
- Unlike CS, incomes from an asset already divided of the marriage don't count
 - Ex: pension payments, military retirement
- If income varies or is seasonal, can request average
- If bonus is out of the ordinary or singular, can request deviation
- “Full time” also depends on occupation (teachers, nurses, ski instructors)
- Self-employment- no-comingling
- Standard is “capability”- transferable skills, previous employment, training & education
- Discovery!

Imputations for Unemployed/Underemployed

- ‘A party may be deemed to be underemployed if the career choice was made in bad faith or motivated by the desire to decrease or eliminate maintenance.” *In re Marriage of Swing*, 194 P.3d 498 (Colo. App. 2008.)
- “Additionally, a party may be considered underemployed if the career change is unreasonable based on the party’s age, health, and industry standards.” *Id.*
- If min. wage, calculated by state of residence (CO: \$13.65/hr; TX: \$7.25/hr)
- If requesting exception for school: provide registration, schedule, degree plan
- If requesting exception for medical/health issue: provide expert medical testimony, SSD determination.
 - Burden of proof- unable to work, by any means, regardless of accommodations/part-time
 - VA disability is not determinative (more so compensation for injury)
- If requesting grace for retirement, “good faith retirement” = “full retirement age,” at which time the payor would be eligible for full US Social Security benefits, 66/67 yo, but rebuttable presumption (See SSA.gov)
 - Military retirement not definitive

EXPERTS:

1. **Vocational Assessment:**

- Evaluation to Assess Earning Capacity and Employability within current market, inconsideration of skill set, education, age, training, and work history

2. **Income Analysis:**

- May be performed to assist in determining actual incomes for self employed, small business, sole proprietorship, construction/tradesmen
- Trace hidden income
- Quickbooks passcode
- Forensic accounting

3. **Business Valuation:**

- Future profitability/income

Maintenance Misc

- Terminates upon death of either party
- Typically life insurance from payor secures interest
- Terminates upon payee's remarriage, absent agreement
- Cohabitation does NOT end maintenance (but can be considered economic circumstance)
- Modifiable based upon "substantial and continuing change in circumstances as to make the terms unfair," CRS 14-10-122
- Retroactivity- Date of Filing
- Can be contractual and *non-modifiable* by agreement
- Can be paid in lump sum by agreement
- Waiver vs. Nominal Award

Creative Solutions

- Decreasing Support
 - Yr 1 = \$1200/mo; Yr 2 = \$1000/mo, Yr 3 = \$800/mo, etc
- Lump Sum Payment
 - Often discounted to account for upfront payment. EX: If \$1000/mo for 5 years, = \$60k. Accept lump sum payment of \$50k.
- Offsets
 - Can enable a Spouse (and kids) to remain in home by paying mortgage in lieu of maintenance
 - Can enable a Spouse to keep a Home/Equity, decreasing refi amount, in lieu of maintenance
 - Can allow a Spouse to keep military retirement; maybe SBP offer
 - Can exchange additional retirement funds for less/no maintenance
 - Can reduce for healthcare savings if Legal Separation for less/no maintenance
 - Can allow Spouse GI Bill credits and accompanying monetary credit, in lieu of maintenance
 - Can exchange child tax credits (\$2k/yr/per child), in lieu of maintenance
- Triggers/Springing Mods
 - Based upon an event occurring or not occurring (Ex. Retirement, Promotion, Bonus)

Thank you for participating in the June 2023 El Paso
County Family Law Day Event Presentation!

We wish you and your family well!