

§ 14-10-114. Spousal maintenance - guidelines - legislative declaration - definitions.

Colorado Statutes

Title 14. DOMESTIC MATTERS

DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES

Article 10. Uniform Dissolution of Marriage Act

Current through Chapter 2 of the 2018 Legislative Session

§ 14-10-114. Spousal maintenance - 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.

- (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; and
 - (D) Reasonable financial need as established during the marriage.
- (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) **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 the greater of two hundred forty thousand dollars or the uppermost limits of the schedule of basic child support obligations set forth in section 14-10-115, the court shall make additional oral or written findings concerning the duration of the marriage in whole months and the guideline amount and term of maintenance, calculated as follows:
- (I) The amount of maintenance under the guidelines is equal to forty percent of the higher income party's monthly adjusted gross income less fifty percent of the lower income party's monthly adjusted gross income; except that, when added to the gross income of the recipient, shall not result in the recipient receiving in excess of forty percent of the parties' combined

monthly adjusted gross income.

- (II) (A) The 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 sub-subparagraph (B) of this subparagraph (II). 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.

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- (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;

- (VII) The amount of temporary maintenance and the number of months that
- I) 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; and
- (XII) Any other factor that the court deems relevant.
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- (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.

(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.

(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, 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 he or she 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 paragraph (c) of this subsection (8), less preexisting court-ordered child support obligations actually paid by a party, preexisting court-ordered alimony or maintenance obligations actually paid by a party, 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 paragraph (a), "income" means the actual gross income of a party, if employed to full capacity, or potential income, if unemployed or underemployed.
- (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; 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 shall be calculated based on a determination of potential income; except that a determination of potential income shall not be made for a party who is physically or mentally incapacitated or is caring for a child under the age of thirty months for whom the parties owe a joint legal responsibility or for an incarcerated parent sentenced to one year 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.

- (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.

Cite as C.R.S. § 14-10-114

History. Amended by 2016 Ch. 157, §10, eff. 1/1/2017.

Amended by 2015 Ch. 259, §36, eff. 8/5/2015.

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, (HB13-1058), ch. 176, p. 639, §1, effective January 1, 2014. L. 2014: (9) amended, (HB14-1379), ch. 307, p. 1300, §1, effective May 31. L. 2015: (7)(a) amended, (SB15-264), ch. 259, p. 951, §36, effective August 5.

Editor's Note:

(1) 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).)

(2) This section was amended in 2013, effective January 1, 2014. For the version of this section that was effective until January 1, 2014, see Legal Topics under the Colorado Office of Legislative Legal Services' website.