

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0407.01 Brita Darling x2241

HOUSE BILL 21-1031

HOUSE SPONSORSHIP

Daugherty,

SENATE SPONSORSHIP

Lee and Gardner,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CONTINUING JURISDICTION TO MODIFY FAMILY LAW
102 ORDERS DURING THE PENDENCY OF AN APPEAL.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill declares the intention of the general assembly to reverse the holding and decision in the Colorado supreme court's (court) January 13, 2020, opinion in *In re: The Parental Responsibilities Concerning W.C.*

The bill gives the court continuing jurisdiction during the pendency of an appeal:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- Under article 10 of title 14, to modify a decree respecting child support or maintenance; to make or modify an order granting or denying parenting time rights; and to modify an order allocating decision-making responsibilities;
- Under the "Uniform Child-custody Jurisdiction and Enforcement Act", to exercise temporary emergency jurisdiction;
- Under the "Uniform Child Abduction Prevention Act", to modify an order concerning the allocation of parental rights and responsibilities; and
- Under the "Uniform Parentage Act", to modify an order for child support or for allocation of parental rights and responsibilities.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) (a) The general
3 assembly finds and declares that:

4 (I) On January 13, 2020, the Colorado supreme court issued its
5 opinion in *In re: The Parental Responsibilities Concerning W.C.*, 456 P.3d
6 1261 (Colo. 2020), in which it held that the district court does not retain
7 jurisdiction to modify parenting time or decision-making orders based on
8 a change in circumstances when those orders are being appealed;

9 (II) The supreme court reasoned that the statutes at issue did not
10 specifically grant trial courts continuing jurisdiction after the perfection
11 of appeal;

12 (III) Under that same reasoning, the supreme court may prohibit
13 the modification of child support and maintenance based on changed
14 circumstances while appeals are pending;

15 (IV) Further, the supreme court declined to carve out an exception
16 to its rule for cases involving emergency parenting time matters.

17 (b) Therefore, the general assembly declares that a district court
18 has continuing jurisdiction to modify family law orders based on changed

1 circumstances as described in House Bill 21-____, specifically reversing
2 the supreme court's holding and decision in *In re: The Parental*
3 *Responsibilities Concerning W.C.*

4 **SECTION 2.** In Colorado Revised Statutes, 14-10-122, **amend**
5 (1)(a) as follows:

6 **14-10-122. Modification and termination of provisions for**
7 **maintenance, support, and property disposition - automatic lien -**
8 **definitions.** (1) (a) Except as otherwise provided in sections 14-10-112
9 (6) and 14-10-115 (11)(c), the provisions of any decree respecting
10 maintenance may be modified only as to installments accruing subsequent
11 to the motion for modification and only upon a showing of changed
12 circumstances so substantial and continuing as to make the terms unfair,
13 and, except as otherwise provided in subsection (5) of this section, the
14 provisions of any decree respecting child support may be modified only
15 as to installments accruing subsequent to the filing of the motion for
16 modification and only upon a showing of changed circumstances that are
17 substantial and continuing or on the ground that the order does not contain
18 a provision regarding medical support, such as insurance coverage,
19 payment for medical insurance deductibles and copayments, or
20 unreimbursed medical expenses. THE TRIAL COURT RETAINS CONTINUING
21 JURISDICTION TO MODIFY A DECREE RESPECTING MAINTENANCE OR CHILD
22 SUPPORT PURSUANT TO THIS SECTION DURING THE PENDENCY OF AN
23 APPEAL. THE COURT SHALL NOT REVOKE OR MODIFY the provisions as to
24 property disposition ~~may not be revoked or modified~~ unless the court finds
25 the existence of conditions that justify the reopening of a judgment.

26 **SECTION 3.** In Colorado Revised Statutes, 14-10-129, **amend**
27 (1)(a)(I) as follows:

1 **14-10-129. Modification of parenting time.** (1) (a) (I) Except as
2 otherwise provided in subparagraph (I) of paragraph (b) of this subsection
3 ~~(I)~~ SUBSECTION (1)(b)(I) OF THIS SECTION, the court may make or modify
4 an order granting or denying parenting time rights whenever such order
5 or modification would serve the best interests of the child. THE TRIAL
6 COURT RETAINS CONTINUING JURISDICTION TO MAKE OR MODIFY AN ORDER
7 GRANTING OR DENYING PARENTING TIME RIGHTS PURSUANT TO THIS
8 SECTION DURING THE PENDENCY OF AN APPEAL.

9 **SECTION 4.** In Colorado Revised Statutes, 14-10-131, **amend** (2)
10 introductory portion as follows:

11 **14-10-131. Modification of custody or decision-making**
12 **responsibility.** (2) The court shall not modify a custody decree or a
13 decree allocating decision-making responsibility unless it finds, upon the
14 basis of facts that have arisen since the prior decree or that were unknown
15 to the court at the time of the prior decree, that a change has occurred in
16 the circumstances of the child or the child's custodian or party to whom
17 decision-making responsibility was allocated and that the modification is
18 necessary to serve the best interests of the child. THE TRIAL COURT
19 RETAINS JURISDICTION TO MODIFY AN ORDER ALLOCATING
20 DECISION-MAKING RESPONSIBILITY PURSUANT TO THIS SECTION DURING
21 THE PENDENCY OF AN APPEAL. In applying these standards, the court shall
22 retain the allocation of decision-making responsibility established by the
23 prior decree unless:

24 **SECTION 5.** In Colorado Revised Statutes, 14-13-204, **amend** (1)
25 as follows:

26 **14-13-204. Temporary emergency jurisdiction.** (1) A court of
27 this state has temporary emergency jurisdiction if the child is present in

1 this state and the child has been abandoned or it is necessary in an
2 emergency to protect the child because the child, or a sibling or parent of
3 the child, is subjected to or threatened with mistreatment or abuse. A
4 COURT OF THIS STATE MAY EXERCISE TEMPORARY EMERGENCY
5 JURISDICTION DURING THE PENDENCY OF AN APPEAL OF A CHILD-CUSTODY
6 DETERMINATION.

7 **SECTION 6.** In Colorado Revised Statutes, 14-13.5-105, **amend**
8 (1) as follows:

9 **14-13.5-105. Jurisdiction.** (1) A petition under this ~~article~~
10 ARTICLE 13.5 may be filed only in a court that has jurisdiction to make a
11 child-custody determination with respect to the child at issue under the
12 "Uniform Child-custody Jurisdiction and Enforcement Act", article 13 of
13 this ~~title~~ TITLE 14. A COURT WITH JURISDICTION TO MODIFY AN ORDER
14 CONCERNING THE ALLOCATION OF PARENTAL RIGHTS AND
15 RESPONSIBILITIES PURSUANT TO THIS ARTICLE 13.5 MAY EXERCISE
16 JURISDICTION DURING THE PENDENCY OF AN APPEAL BROUGHT WITH
17 RESPECT TO AN ORDER ALLOCATING PARENTAL RIGHTS AND
18 RESPONSIBILITIES.

19 **SECTION 7.** In Colorado Revised Statutes, 19-4-119, **add** (3) as
20 follows:

21 **19-4-119. Modification of judgment or order.** (3) THE TRIAL
22 COURT RETAINS JURISDICTION TO MODIFY AN ORDER CONCERNING CHILD
23 SUPPORT OR CONCERNING THE ALLOCATION OF PARENTAL RIGHTS AND
24 RESPONSIBILITIES BASED ON A CHANGE IN CIRCUMSTANCES DURING THE
25 PENDENCY OF AN APPEAL.

26 **SECTION 8. Applicability.** This act applies to any request to
27 modify an order appealed on, after, or before the effective date of this act.

1 **SECTION 9. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, or safety.