



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3542

by Rep. Anne Stava-Murray

SYNOPSIS AS INTRODUCED:

750 ILCS 5/510
750 ILCS 5/610.5

from Ch. 40, par. 510

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that an order for child support may be modified in cases involving unequal parenting time if the court determines that the obligor is willing and able to increase his or her parenting time. Provides that if the court determines that the obligor is willing and able to increase his or her parenting time, then the court shall enter an order that reasonably increases his or her parenting time for one year with no support adjustment. Provides that if an obligor adheres to an increase in his or her parenting time for one year, then the court shall adjust the amount of support paid by the obligor to reflect the increase in parenting time. Makes corresponding changes.

LRB101 10538 LNS 55644 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Sections 510 and 610.5 as
6 follows:

7 (750 ILCS 5/510) (from Ch. 40, par. 510)

8 Sec. 510. Modification and termination of provisions for
9 maintenance, support, educational expenses, and property
10 disposition.

11 (a) Except as otherwise provided in paragraph (f) of
12 Section 502 and in subsection (b), clause (3) of Section 505.2,
13 the provisions of any judgment respecting maintenance or
14 support may be modified only as to installments accruing
15 subsequent to due notice by the moving party of the filing of
16 the motion for modification. Except as provided in subsection
17 (a-3), an ~~An~~ order for child support may be modified as
18 follows:

19 (1) upon a showing of a substantial change in
20 circumstances; and

21 (2) without the necessity of showing a substantial
22 change in circumstances, as follows:

23 (A) upon a showing of an inconsistency of at least

1 20%, but no less than \$10 per month, between the amount
2 of the existing order and the amount of child support
3 that results from application of the guidelines
4 specified in Section 505 of this Act unless the
5 inconsistency is due to the fact that the amount of the
6 existing order resulted from a deviation from the
7 guideline amount and there has not been a change in the
8 circumstances that resulted in that deviation; or

9 (B) upon a showing of a need to provide for the
10 health care needs of the child under the order through
11 health insurance or other means. In no event shall the
12 eligibility for or receipt of medical assistance be
13 considered to meet the need to provide for the child's
14 health care needs.

15 The provisions of subparagraph (a) (2) (A) shall apply only
16 in cases in which a party is receiving child support
17 enforcement services from the Department of Healthcare and
18 Family Services under Article X of the Illinois Public Aid
19 Code, and only when at least 36 months have elapsed since the
20 order for child support was entered or last modified.

21 The court may grant a petition for modification that seeks
22 to apply the changes made to subsection (a) of Section 505 by
23 Public Act 99-764 to an order entered before the effective date
24 of Public Act 99-764 only upon a finding of a substantial
25 change in circumstances that warrants application of the
26 changes. The enactment of Public Act 99-764 itself does not

1 constitute a substantial change in circumstances warranting a
2 modification.

3 (a-3) An order for child support may be modified in cases
4 involving unequal parenting time if the court determines that
5 the obligor is willing and able to increase his or her
6 parenting time. If the court determines that the obligor is
7 willing and able to increase his or her parenting time, then
8 the court shall enter an order that reasonably increases his or
9 her parenting time for one year with no support adjustment. If
10 an obligor adheres to an increase in his or her parenting time
11 for one year, then the court shall adjust the amount of support
12 paid by the obligor to reflect the increase in parenting time.

13 (a-5) An order for maintenance may be modified or
14 terminated only upon a showing of a substantial change in
15 circumstances. The court may grant a petition for modification
16 that seeks to apply the changes made to Section 504 by this
17 amendatory Act of the 100th General Assembly to an order
18 entered before the effective date of this amendatory Act of the
19 100th General Assembly only upon a finding of a substantial
20 change in circumstances that warrants application of the
21 changes. The enactment of this amendatory Act of the 100th
22 General Assembly itself does not constitute a substantial
23 change in circumstances warranting a modification. In all such
24 proceedings, as well as in proceedings in which maintenance is
25 being reviewed, the court shall consider the applicable factors
26 set forth in subsection (a) of Section 504 and the following

1 factors:

2 (1) any change in the employment status of either party
3 and whether the change has been made in good faith;

4 (2) the efforts, if any, made by the party receiving
5 maintenance to become self-supporting, and the
6 reasonableness of the efforts where they are appropriate;

7 (3) any impairment of the present and future earning
8 capacity of either party;

9 (4) the tax consequences of the maintenance payments
10 upon the respective economic circumstances of the parties;

11 (5) the duration of the maintenance payments
12 previously paid (and remaining to be paid) relative to the
13 length of the marriage;

14 (6) the property, including retirement benefits,
15 awarded to each party under the judgment of dissolution of
16 marriage, judgment of legal separation, or judgment of
17 declaration of invalidity of marriage and the present
18 status of the property;

19 (7) the increase or decrease in each party's income
20 since the prior judgment or order from which a review,
21 modification, or termination is being sought;

22 (8) the property acquired and currently owned by each
23 party after the entry of the judgment of dissolution of
24 marriage, judgment of legal separation, or judgment of
25 declaration of invalidity of marriage; and

26 (9) any other factor that the court expressly finds to

1 be just and equitable.

2 (a-6) (Blank).

3 (b) The provisions as to property disposition may not be
4 revoked or modified, unless the court finds the existence of
5 conditions that justify the reopening of a judgment under the
6 laws of this State.

7 (c) Unless otherwise agreed by the parties in a written
8 agreement set forth in the judgment or otherwise approved by
9 the court, the obligation to pay future maintenance is
10 terminated upon the death of either party, or the remarriage of
11 the party receiving maintenance, or if the party receiving
12 maintenance cohabits with another person on a resident,
13 continuing conjugal basis. An obligor's obligation to pay
14 maintenance or unallocated maintenance terminates by operation
15 of law on the date the obligee remarries or the date the court
16 finds cohabitation began. The obligor is entitled to
17 reimbursement for all maintenance paid from that date forward.
18 Any termination of an obligation for maintenance as a result of
19 the death of the obligor, however, shall be inapplicable to any
20 right of the other party or such other party's designee to
21 receive a death benefit under such insurance on the obligor's
22 life. An obligee must advise the obligor of his or her
23 intention to marry at least 30 days before the remarriage,
24 unless the decision is made within this time period. In that
25 event, he or she must notify the obligor within 72 hours of
26 getting married.

1 (c-5) In an adjudicated case, the court shall make specific
2 factual findings as to the reason for the modification as well
3 as the amount, nature, and duration of the modified maintenance
4 award.

5 (d) Unless otherwise provided in this Act, or as agreed in
6 writing or expressly provided in the judgment, provisions for
7 the support of a child are terminated by emancipation of the
8 child, or if the child has attained the age of 18 and is still
9 attending high school, provisions for the support of the child
10 are terminated upon the date that the child graduates from high
11 school or the date the child attains the age of 19, whichever
12 is earlier, but not by the death of a parent obligated to
13 support or educate the child. An existing obligation to pay for
14 support or educational expenses, or both, is not terminated by
15 the death of a parent. When a parent obligated to pay support
16 or educational expenses, or both, dies, the amount of support
17 or educational expenses, or both, may be enforced, modified,
18 revoked or commuted to a lump sum payment, as equity may
19 require, and that determination may be provided for at the time
20 of the dissolution of the marriage or thereafter.

21 (e) The right to petition for support or educational
22 expenses, or both, under Sections 505, 513, and 513.5 is not
23 extinguished by the death of a parent. Upon a petition filed
24 before or after a parent's death, the court may award sums of
25 money out of the decedent's estate for the child's support or
26 educational expenses, or both, as equity may require. The time

1 within which a claim may be filed against the estate of a
2 decedent under Sections 505 and 513 and subsection (d) and this
3 subsection shall be governed by the provisions of the Probate
4 Act of 1975, as a barrable, noncontingent claim.

5 (f) A petition to modify or terminate child support or the
6 allocation of parental responsibilities, including parenting
7 time, shall not delay any child support enforcement litigation
8 or supplementary proceeding on behalf of the obligee,
9 including, but not limited to, a petition for a rule to show
10 cause, for non-wage garnishment, or for a restraining order.

11 (Source: P.A. 99-90, eff. 1-1-16; 99-764, eff. 7-1-17; 100-15,
12 eff. 7-1-17; 100-201, eff. 8-18-17; 100-923, eff. 1-1-19.)

13 (750 ILCS 5/610.5)

14 Sec. 610.5. Modification.

15 (a) Unless by stipulation of the parties or except as
16 provided in Section 603.10 of this Act, no motion to modify an
17 order allocating parental decision-making responsibilities,
18 not including parenting time, may be made earlier than 2 years
19 after its date, unless the court permits it to be made on the
20 basis of affidavits that there is reason to believe the child's
21 present environment may endanger seriously his or her mental,
22 moral, or physical health or significantly impair the child's
23 emotional development. Parenting time may be modified at any
24 time, without a showing of serious endangerment, upon a showing
25 of changed circumstances that necessitates modification to

1 serve the best interests of the child. Parenting time may be
2 modified at any time pursuant to subsection (a-3) of Section
3 510.

4 (b) (Blank).

5 (c) Except in a case concerning the modification of any
6 restriction of parental responsibilities under Section 603.10,
7 the court shall modify a parenting plan or allocation judgment
8 when necessary to serve the child's best interests if the court
9 finds, by a preponderance of the evidence, that on the basis of
10 facts that have arisen since the entry of the existing
11 parenting plan or allocation judgment or were not anticipated
12 therein, a substantial change has occurred in the circumstances
13 of the child or of either parent and that a modification is
14 necessary to serve the child's best interests.

15 (d) The court shall modify a parenting plan or allocation
16 judgment in accordance with a parental agreement, unless it
17 finds that the modification is not in the child's best
18 interests.

19 (e) The court may modify a parenting plan or allocation
20 judgment without a showing of changed circumstances if (i) the
21 modification is in the child's best interests; and (ii) any of
22 the following are proven as to the modification:

23 (1) the modification reflects the actual arrangement
24 under which the child has been receiving care, without
25 parental objection, for the 6 months preceding the filing
26 of the petition for modification, provided that the

1 arrangement is not the result of a parent's acquiescence
2 resulting from circumstances that negated the parent's
3 ability to give meaningful consent;

4 (2) the modification constitutes a minor modification
5 in the parenting plan or allocation judgment;

6 (3) the modification is necessary to modify an agreed
7 parenting plan or allocation judgment that the court would
8 not have ordered or approved under Section 602.5 or 602.7
9 had the court been aware of the circumstances at the time
10 of the order or approval; or

11 (4) the parties agree to the modification.

12 (f) Attorney's fees and costs shall be assessed against a
13 party seeking modification if the court finds that the
14 modification action is vexatious or constitutes harassment. If
15 the court finds that a parent has repeatedly filed frivolous
16 motions for modification, the court may bar the parent from
17 filing a motion for modification for a period of time.

18 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17.)