

# HB5727



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5727

by Rep. James D. Brosnahan

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/505

from Ch. 40, par. 505

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that for purposes of calculating child support the definition of net income shall include a deduction for expenditures for reasonable educational expenses of a child of the parties who is enrolled in a pre-school, elementary, or secondary educational institution. Effective immediately.

LRB095 15835 AJ0 41844 b

A BILL FOR

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 Section 505 as follows:

6 (750 ILCS 5/505) (from Ch. 40, par. 505)

7 Sec. 505. Child support; contempt; penalties.

8 (a) In a proceeding for dissolution of marriage, legal  
9 separation, declaration of invalidity of marriage, a  
10 proceeding for child support following dissolution of the  
11 marriage by a court which lacked personal jurisdiction over the  
12 absent spouse, a proceeding for modification of a previous  
13 order for child support under Section 510 of this Act, or any  
14 proceeding authorized under Section 501 or 601 of this Act, the  
15 court may order either or both parents owing a duty of support  
16 to a child of the marriage to pay an amount reasonable and  
17 necessary for his support, without regard to marital  
18 misconduct. The duty of support owed to a child includes the  
19 obligation to provide for the reasonable and necessary  
20 physical, mental and emotional health needs of the child. For  
21 purposes of this Section, the term "child" shall include any  
22 child under age 18 and any child under age 19 who is still  
23 attending high school.

(1) The Court shall determine the minimum amount of support by using the following guidelines:

Number of Children	Percent of Supporting Party's Net Income
1	20%
2	28%
3	32%
4	40%
5	45%
6 or more	50%

(2) The above guidelines shall be applied in each case unless the court makes a finding that application of the guidelines would be inappropriate, after considering the best interests of the child in light of evidence including but not limited to one or more of the following relevant factors:

- (a) the financial resources and needs of the child;
- (b) the financial resources and needs of the custodial parent;
- (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child, and his educational needs; and
- (e) the financial resources and needs of the non-custodial parent.

If the court deviates from the guidelines, the court's

1 finding shall state the amount of support that would have  
2 been required under the guidelines, if determinable. The  
3 court shall include the reason or reasons for the variance  
4 from the guidelines.

5 (3) "Net income" is defined as the total of all income  
6 from all sources, minus the following deductions:

7 (a) Federal income tax (properly calculated  
8 withholding or estimated payments);

9 (b) State income tax (properly calculated  
10 withholding or estimated payments);

11 (c) Social Security (FICA payments);

12 (d) Mandatory retirement contributions required by  
13 law or as a condition of employment;

14 (e) Union dues;

15 (f) Dependent and individual  
16 health/hospitalization insurance premiums;

17 (g) Prior obligations of support or maintenance  
18 actually paid pursuant to a court order;

19 (h) Expenditures for repayment of debts that  
20 represent reasonable and necessary expenses for the  
21 production of income, medical expenditures necessary  
22 to preserve life or health, reasonable expenditures  
23 for the benefit of the child and the other parent,  
24 exclusive of gifts. The court shall reduce net income  
25 in determining the minimum amount of support to be  
26 ordered only for the period that such payments are due

1 and shall enter an order containing provisions for its  
2 self-executing modification upon termination of such  
3 payment period.

4 (i) Expenditures for the reasonable educational  
5 expenses of a child of the parties who is enrolled in a  
6 pre-school, elementary, or secondary educational  
7 institution.

8 (4) In cases where the court order provides for  
9 health/hospitalization insurance coverage pursuant to  
10 Section 505.2 of this Act, the premiums for that insurance,  
11 or that portion of the premiums for which the supporting  
12 party is responsible in the case of insurance provided  
13 through an employer's health insurance plan where the  
14 employer pays a portion of the premiums, shall be  
15 subtracted from net income in determining the minimum  
16 amount of support to be ordered.

17 (4.5) In a proceeding for child support following  
18 dissolution of the marriage by a court that lacked personal  
19 jurisdiction over the absent spouse, and in which the court  
20 is requiring payment of support for the period before the  
21 date an order for current support is entered, there is a  
22 rebuttable presumption that the supporting party's net  
23 income for the prior period was the same as his or her net  
24 income at the time the order for current support is  
25 entered.

26 (5) If the net income cannot be determined because of

1 default or any other reason, the court shall order support  
2 in an amount considered reasonable in the particular case.  
3 The final order in all cases shall state the support level  
4 in dollar amounts. However, if the court finds that the  
5 child support amount cannot be expressed exclusively as a  
6 dollar amount because all or a portion of the payor's net  
7 income is uncertain as to source, time of payment, or  
8 amount, the court may order a percentage amount of support  
9 in addition to a specific dollar amount and enter such  
10 other orders as may be necessary to determine and enforce,  
11 on a timely basis, the applicable support ordered.

12 (6) If (i) the non-custodial parent was properly served  
13 with a request for discovery of financial information  
14 relating to the non-custodial parent's ability to provide  
15 child support, (ii) the non-custodial parent failed to  
16 comply with the request, despite having been ordered to do  
17 so by the court, and (iii) the non-custodial parent is not  
18 present at the hearing to determine support despite having  
19 received proper notice, then any relevant financial  
20 information concerning the non-custodial parent's ability  
21 to provide child support that was obtained pursuant to  
22 subpoena and proper notice shall be admitted into evidence  
23 without the need to establish any further foundation for  
24 its admission.

25 (a-5) In an action to enforce an order for support based on  
26 the respondent's failure to make support payments as required

1 by the order, notice of proceedings to hold the respondent in  
2 contempt for that failure may be served on the respondent by  
3 personal service or by regular mail addressed to the  
4 respondent's last known address. The respondent's last known  
5 address may be determined from records of the clerk of the  
6 court, from the Federal Case Registry of Child Support Orders,  
7 or by any other reasonable means.

8 (b) Failure of either parent to comply with an order to pay  
9 support shall be punishable as in other cases of contempt. In  
10 addition to other penalties provided by law the Court may,  
11 after finding the parent guilty of contempt, order that the  
12 parent be:

13 (1) placed on probation with such conditions of  
14 probation as the Court deems advisable;

15 (2) sentenced to periodic imprisonment for a period not  
16 to exceed 6 months; provided, however, that the Court may  
17 permit the parent to be released for periods of time during  
18 the day or night to:

19 (A) work; or

20 (B) conduct a business or other self-employed  
21 occupation.

22 The Court may further order any part or all of the earnings  
23 of a parent during a sentence of periodic imprisonment paid to  
24 the Clerk of the Circuit Court or to the parent having custody  
25 or to the guardian having custody of the children of the  
26 sentenced parent for the support of said children until further

1 order of the Court.

2 If there is a unity of interest and ownership sufficient to  
3 render no financial separation between a non-custodial parent  
4 and another person or persons or business entity, the court may  
5 pierce the ownership veil of the person, persons, or business  
6 entity to discover assets of the non-custodial parent held in  
7 the name of that person, those persons, or that business  
8 entity. The following circumstances are sufficient to  
9 authorize a court to order discovery of the assets of a person,  
10 persons, or business entity and to compel the application of  
11 any discovered assets toward payment on the judgment for  
12 support:

13 (1) the non-custodial parent and the person, persons,  
14 or business entity maintain records together.

15 (2) the non-custodial parent and the person, persons,  
16 or business entity fail to maintain an arms length  
17 relationship between themselves with regard to any assets.

18 (3) the non-custodial parent transfers assets to the  
19 person, persons, or business entity with the intent to  
20 perpetrate a fraud on the custodial parent.

21 With respect to assets which are real property, no order  
22 entered under this paragraph shall affect the rights of bona  
23 fide purchasers, mortgagees, judgment creditors, or other lien  
24 holders who acquire their interests in the property prior to  
25 the time a notice of lis pendens pursuant to the Code of Civil  
26 Procedure or a copy of the order is placed of record in the



1 office of the recorder of deeds for the county in which the  
2 real property is located.

3 The court may also order in cases where the parent is 90  
4 days or more delinquent in payment of support or has been  
5 adjudicated in arrears in an amount equal to 90 days obligation  
6 or more, that the parent's Illinois driving privileges be  
7 suspended until the court determines that the parent is in  
8 compliance with the order of support. The court may also order  
9 that the parent be issued a family financial responsibility  
10 driving permit that would allow limited driving privileges for  
11 employment and medical purposes in accordance with Section  
12 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit  
13 court shall certify the order suspending the driving privileges  
14 of the parent or granting the issuance of a family financial  
15 responsibility driving permit to the Secretary of State on  
16 forms prescribed by the Secretary. Upon receipt of the  
17 authenticated documents, the Secretary of State shall suspend  
18 the parent's driving privileges until further order of the  
19 court and shall, if ordered by the court, subject to the  
20 provisions of Section 7-702.1 of the Illinois Vehicle Code,  
21 issue a family financial responsibility driving permit to the  
22 parent.

23 In addition to the penalties or punishment that may be  
24 imposed under this Section, any person whose conduct  
25 constitutes a violation of Section 15 of the Non-Support  
26 Punishment Act may be prosecuted under that Act, and a person

1 convicted under that Act may be sentenced in accordance with  
2 that Act. The sentence may include but need not be limited to a  
3 requirement that the person perform community service under  
4 Section 50 of that Act or participate in a work alternative  
5 program under Section 50 of that Act. A person may not be  
6 required to participate in a work alternative program under  
7 Section 50 of that Act if the person is currently participating  
8 in a work program pursuant to Section 505.1 of this Act.

9 A support obligation, or any portion of a support  
10 obligation, which becomes due and remains unpaid as of the end  
11 of each month, excluding the child support that was due for  
12 that month to the extent that it was not paid in that month,  
13 shall accrue simple interest as set forth in Section 12-109 of  
14 the Code of Civil Procedure. An order for support entered or  
15 modified on or after January 1, 2006 shall contain a statement  
16 that a support obligation required under the order, or any  
17 portion of a support obligation required under the order, that  
18 becomes due and remains unpaid as of the end of each month,  
19 excluding the child support that was due for that month to the  
20 extent that it was not paid in that month, shall accrue simple  
21 interest as set forth in Section 12-109 of the Code of Civil  
22 Procedure. Failure to include the statement in the order for  
23 support does not affect the validity of the order or the  
24 accrual of interest as provided in this Section.

25 (c) A one-time charge of 20% is imposable upon the amount  
26 of past-due child support owed on July 1, 1988 which has

1 accrued under a support order entered by the court. The charge  
2 shall be imposed in accordance with the provisions of Section  
3 10-21 of the Illinois Public Aid Code and shall be enforced by  
4 the court upon petition.

5 (d) Any new or existing support order entered by the court  
6 under this Section shall be deemed to be a series of judgments  
7 against the person obligated to pay support thereunder, each  
8 such judgment to be in the amount of each payment or  
9 installment of support and each such judgment to be deemed  
10 entered as of the date the corresponding payment or installment  
11 becomes due under the terms of the support order. Each such  
12 judgment shall have the full force, effect and attributes of  
13 any other judgment of this State, including the ability to be  
14 enforced. A lien arises by operation of law against the real  
15 and personal property of the noncustodial parent for each  
16 installment of overdue support owed by the noncustodial parent.

17 (e) When child support is to be paid through the clerk of  
18 the court in a county of 1,000,000 inhabitants or less, the  
19 order shall direct the obligor to pay to the clerk, in addition  
20 to the child support payments, all fees imposed by the county  
21 board under paragraph (3) of subsection (u) of Section 27.1 of  
22 the Clerks of Courts Act. Unless paid in cash or pursuant to an  
23 order for withholding, the payment of the fee shall be by a  
24 separate instrument from the support payment and shall be made  
25 to the order of the Clerk.

26 (f) All orders for support, when entered or modified, shall

1 include a provision requiring the obligor to notify the court  
2 and, in cases in which a party is receiving child and spouse  
3 services under Article X of the Illinois Public Aid Code, the  
4 Department of Healthcare and Family Services, within 7 days,  
5 (i) of the name and address of any new employer of the obligor,  
6 (ii) whether the obligor has access to health insurance  
7 coverage through the employer or other group coverage and, if  
8 so, the policy name and number and the names of persons covered  
9 under the policy, and (iii) of any new residential or mailing  
10 address or telephone number of the non-custodial parent. In any  
11 subsequent action to enforce a support order, upon a sufficient  
12 showing that a diligent effort has been made to ascertain the  
13 location of the non-custodial parent, service of process or  
14 provision of notice necessary in the case may be made at the  
15 last known address of the non-custodial parent in any manner  
16 expressly provided by the Code of Civil Procedure or this Act,  
17 which service shall be sufficient for purposes of due process.

18 (g) An order for support shall include a date on which the  
19 current support obligation terminates. The termination date  
20 shall be no earlier than the date on which the child covered by  
21 the order will attain the age of 18. However, if the child will  
22 not graduate from high school until after attaining the age of  
23 18, then the termination date shall be no earlier than the  
24 earlier of the date on which the child's high school graduation  
25 will occur or the date on which the child will attain the age  
26 of 19. The order for support shall state that the termination

1 date does not apply to any arrearage that may remain unpaid on  
2 that date. Nothing in this subsection shall be construed to  
3 prevent the court from modifying the order or terminating the  
4 order in the event the child is otherwise emancipated.

5 (g-5) If there is an unpaid arrearage or delinquency (as  
6 those terms are defined in the Income Withholding for Support  
7 Act) equal to at least one month's support obligation on the  
8 termination date stated in the order for support or, if there  
9 is no termination date stated in the order, on the date the  
10 child attains the age of majority or is otherwise emancipated,  
11 the periodic amount required to be paid for current support of  
12 that child immediately prior to that date shall automatically  
13 continue to be an obligation, not as current support but as  
14 periodic payment toward satisfaction of the unpaid arrearage or  
15 delinquency. That periodic payment shall be in addition to any  
16 periodic payment previously required for satisfaction of the  
17 arrearage or delinquency. The total periodic amount to be paid  
18 toward satisfaction of the arrearage or delinquency may be  
19 enforced and collected by any method provided by law for  
20 enforcement and collection of child support, including but not  
21 limited to income withholding under the Income Withholding for  
22 Support Act. Each order for support entered or modified on or  
23 after the effective date of this amendatory Act of the 93rd  
24 General Assembly must contain a statement notifying the parties  
25 of the requirements of this subsection. Failure to include the  
26 statement in the order for support does not affect the validity

1 of the order or the operation of the provisions of this  
2 subsection with regard to the order. This subsection shall not  
3 be construed to prevent or affect the establishment or  
4 modification of an order for support of a minor child or the  
5 establishment or modification of an order for support of a  
6 non-minor child or educational expenses under Section 513 of  
7 this Act.

8 (h) An order entered under this Section shall include a  
9 provision requiring the obligor to report to the obligee and to  
10 the clerk of court within 10 days each time the obligor obtains  
11 new employment, and each time the obligor's employment is  
12 terminated for any reason. The report shall be in writing and  
13 shall, in the case of new employment, include the name and  
14 address of the new employer. Failure to report new employment  
15 or the termination of current employment, if coupled with  
16 nonpayment of support for a period in excess of 60 days, is  
17 indirect criminal contempt. For any obligor arrested for  
18 failure to report new employment bond shall be set in the  
19 amount of the child support that should have been paid during  
20 the period of unreported employment. An order entered under  
21 this Section shall also include a provision requiring the  
22 obligor and obligee parents to advise each other of a change in  
23 residence within 5 days of the change except when the court  
24 finds that the physical, mental, or emotional health of a party  
25 or that of a child, or both, would be seriously endangered by  
26 disclosure of the party's address.

1           (i) The court does not lose the powers of contempt,  
2 driver's license suspension, or other child support  
3 enforcement mechanisms, including, but not limited to,  
4 criminal prosecution as set forth in this Act, upon the  
5 emancipation of the minor child or children.

6           (Source: P.A. 94-90, eff. 1-1-06; 95-331, eff. 8-21-07.)

7           Section 99. Effective date. This Act takes effect upon  
8 becoming law.