



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6220

Introduced 2/11/2010, by Rep. LaShawn K. Ford

SYNOPSIS AS INTRODUCED:

305 ILCS 5/10-16.5

750 ILCS 5/505

750 ILCS 16/23

750 ILCS 45/20.7

from Ch. 40, par. 505

Amends the Illinois Public Aid Code, the Illinois Marriage and Dissolution of Marriage Act, the Non-Support Punishment Act, and the Illinois Parentage Act of 1984. Provides that a court may grant a motion to forgive interest on past due child support if: the obligor demonstrates that during the time that the past due child support was accumulating, the obligor was unable to pay child support; the obligor agrees to make future support payments on time provided that if the obligor fails to make future support payments on time, the court may reinstate the interest charge; or the obligor makes a lump sum payment.

LRB096 20781 AJ0 36532 b

1 AN ACT concerning child support.

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

4 Section 5. The Illinois Public Aid Code is amended by
5 changing Section 10-16.5 as follows:

6 (305 ILCS 5/10-16.5)

7 Sec. 10-16.5. Interest on support obligations.

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

1 (b) Upon motion and notice, a court may forgive interest
2 that has accrued on all or part of a past due child support
3 obligation if the obligor:

4 (1) demonstrates that during the time that the past due
5 child support was accumulating, the obligor was unable to
6 pay child support;

7 (2) agrees to make future support payments on time
8 provided that if the obligor fails to make future support
9 payments on time, the court may reinstate all or part of
10 the interest that was forgiven; or

11 (3) makes a lump sum payment.

12 (Source: P.A. 94-90, eff. 1-1-06.)

13 Section 10. The Illinois Marriage and Dissolution of
14 Marriage Act is amended by changing Section 505 as follows:

15 (750 ILCS 5/505) (from Ch. 40, par. 505)

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

17 (a) In a proceeding for dissolution of marriage, legal
18 separation, declaration of invalidity of marriage, a
19 proceeding for child support following dissolution of the
20 marriage by a court which lacked personal jurisdiction over the
21 absent spouse, a proceeding for modification of a previous
22 order for child support under Section 510 of this Act, or any
23 proceeding authorized under Section 501 or 601 of this Act, the
24 court may order either or both parents owing a duty of support

1 to a child of the marriage to pay an amount reasonable and
 2 necessary for his support, without regard to marital
 3 misconduct. The duty of support owed to a child includes the
 4 obligation to provide for the reasonable and necessary
 5 physical, mental and emotional health needs of the child. For
 6 purposes of this Section, the term "child" shall include any
 7 child under age 18 and any child under age 19 who is still
 8 attending high school.

9 (1) The Court shall determine the minimum amount of
 10 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%

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

- 25 (a) the financial resources and needs of the child;
- 26 (b) the financial resources and needs of the

1 custodial parent;

2 (c) the standard of living the child would have
3 enjoyed had the marriage not been dissolved;

4 (d) the physical and emotional condition of the
5 child, and his educational needs; and

6 (e) the financial resources and needs of the
7 non-custodial parent.

8 If the court deviates from the guidelines, the court's
9 finding shall state the amount of support that would have
10 been required under the guidelines, if determinable. The
11 court shall include the reason or reasons for the variance
12 from the guidelines.

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

15 (a) Federal income tax (properly calculated
16 withholding or estimated payments);

17 (b) State income tax (properly calculated
18 withholding or estimated payments);

19 (c) Social Security (FICA payments);

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

22 (e) Union dues;

23 (f) Dependent and individual
24 health/hospitalization insurance premiums;

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

1 (h) Expenditures for repayment of debts that
2 represent reasonable and necessary expenses for the
3 production of income, medical expenditures necessary
4 to preserve life or health, reasonable expenditures
5 for the benefit of the child and the other parent,
6 exclusive of gifts. The court shall reduce net income
7 in determining the minimum amount of support to be
8 ordered only for the period that such payments are due
9 and shall enter an order containing provisions for its
10 self-executing modification upon termination of such
11 payment period.

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

21 (4.5) In a proceeding for child support following
22 dissolution of the marriage by a court that lacked personal
23 jurisdiction over the absent spouse, and in which the court
24 is requiring payment of support for the period before the
25 date an order for current support is entered, there is a
26 rebuttable presumption that the supporting party's net

1 income for the prior period was the same as his or her net
2 income at the time the order for current support is
3 entered.

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

16 (6) If (i) the non-custodial parent was properly served
17 with a request for discovery of financial information
18 relating to the non-custodial parent's ability to provide
19 child support, (ii) the non-custodial parent failed to
20 comply with the request, despite having been ordered to do
21 so by the court, and (iii) the non-custodial parent is not
22 present at the hearing to determine support despite having
23 received proper notice, then any relevant financial
24 information concerning the non-custodial parent's ability
25 to provide child support that was obtained pursuant to
26 subpoena and proper notice shall be admitted into evidence

1 without the need to establish any further foundation for
2 its admission.

3 (a-5) In an action to enforce an order for support based on
4 the respondent's failure to make support payments as required
5 by the order, notice of proceedings to hold the respondent in
6 contempt for that failure may be served on the respondent by
7 personal service or by regular mail addressed to the
8 respondent's last known address. The respondent's last known
9 address may be determined from records of the clerk of the
10 court, from the Federal Case Registry of Child Support Orders,
11 or by any other reasonable means.

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

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

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

23 (A) work; or

24 (B) conduct a business or other self-employed
25 occupation.

26 The Court may further order any part or all of the earnings

1 of a parent during a sentence of periodic imprisonment paid to
2 the Clerk of the Circuit Court or to the parent having custody
3 or to the guardian having custody of the children of the
4 sentenced parent for the support of said children until further
5 order of the Court.

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

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

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

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

25 With respect to assets which are real property, no order
26 entered under this paragraph shall affect the rights of bona

1 fide purchasers, mortgagees, judgment creditors, or other lien
2 holders who acquire their interests in the property prior to
3 the time a notice of lis pendens pursuant to the Code of Civil
4 Procedure or a copy of the order is placed of record in the
5 office of the recorder of deeds for the county in which the
6 real property is located.

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

1 In addition to the penalties or punishment that may be
2 imposed under this Section, any person whose conduct
3 constitutes a violation of Section 15 of the Non-Support
4 Punishment Act may be prosecuted under that Act, and a person
5 convicted under that Act may be sentenced in accordance with
6 that Act. The sentence may include but need not be limited to a
7 requirement that the person perform community service under
8 Section 50 of that Act or participate in a work alternative
9 program under Section 50 of that Act. A person may not be
10 required to participate in a work alternative program under
11 Section 50 of that Act if the person is currently participating
12 in a work program pursuant to Section 505.1 of this Act.

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

1 support does not affect the validity of the order or the
2 accrual of interest as provided in this Section.

3 (c) A one-time charge of 20% is imposable upon the amount
4 of past-due child support owed on July 1, 1988 which has
5 accrued under a support order entered by the court. The charge
6 shall be imposed in accordance with the provisions of Section
7 10-21 of the Illinois Public Aid Code and shall be enforced by
8 the court upon petition.

9 (c-5) Upon motion and notice, a court may forgive interest
10 that has accrued on all or part of a past due child support
11 obligation if the obligor:

12 (1) demonstrates that during the time that the past due
13 child support was accumulating, the obligor was unable to
14 pay child support;

15 (2) agrees to make future support payments on time
16 provided that if the obligor fails to make future support
17 payments on time, the court may reinstate all or part of
18 the interest that was forgiven; or

19 (3) makes a lump sum payment.

20 (d) Any new or existing support order entered by the court
21 under this Section shall be deemed to be a series of judgments
22 against the person obligated to pay support thereunder, each
23 such judgment to be in the amount of each payment or
24 installment of support and each such judgment to be deemed
25 entered as of the date the corresponding payment or installment
26 becomes due under the terms of the support order. Each such

1 judgment shall have the full force, effect and attributes of
2 any other judgment of this State, including the ability to be
3 enforced. A lien arises by operation of law against the real
4 and personal property of the noncustodial parent for each
5 installment of overdue support owed by the noncustodial parent.

6 (e) When child support is to be paid through the clerk of
7 the court in a county of 1,000,000 inhabitants or less, the
8 order shall direct the obligor to pay to the clerk, in addition
9 to the child support payments, all fees imposed by the county
10 board under paragraph (3) of subsection (u) of Section 27.1 of
11 the Clerks of Courts Act. Unless paid in cash or pursuant to an
12 order for withholding, the payment of the fee shall be by a
13 separate instrument from the support payment and shall be made
14 to the order of the Clerk.

15 (f) All orders for support, when entered or modified, shall
16 include a provision requiring the obligor to notify the court
17 and, in cases in which a party is receiving child and spouse
18 services under Article X of the Illinois Public Aid Code, the
19 Department of Healthcare and Family Services, within 7 days,
20 (i) of the name and address of any new employer of the obligor,
21 (ii) whether the obligor has access to health insurance
22 coverage through the employer or other group coverage and, if
23 so, the policy name and number and the names of persons covered
24 under the policy, and (iii) of any new residential or mailing
25 address or telephone number of the non-custodial parent. In any
26 subsequent action to enforce a support order, upon a sufficient

1 showing that a diligent effort has been made to ascertain the
2 location of the non-custodial parent, service of process or
3 provision of notice necessary in the case may be made at the
4 last known address of the non-custodial parent in any manner
5 expressly provided by the Code of Civil Procedure or this Act,
6 which service shall be sufficient for purposes of due process.

7 (g) An order for support shall include a date on which the
8 current support obligation terminates. The termination date
9 shall be no earlier than the date on which the child covered by
10 the order will attain the age of 18. However, if the child will
11 not graduate from high school until after attaining the age of
12 18, then the termination date shall be no earlier than the
13 earlier of the date on which the child's high school graduation
14 will occur or the date on which the child will attain the age
15 of 19. The order for support shall state that the termination
16 date does not apply to any arrearage that may remain unpaid on
17 that date. Nothing in this subsection shall be construed to
18 prevent the court from modifying the order or terminating the
19 order in the event the child is otherwise emancipated.

20 (g-5) If there is an unpaid arrearage or delinquency (as
21 those terms are defined in the Income Withholding for Support
22 Act) equal to at least one month's support obligation on the
23 termination date stated in the order for support or, if there
24 is no termination date stated in the order, on the date the
25 child attains the age of majority or is otherwise emancipated,
26 the periodic amount required to be paid for current support of

1 that child immediately prior to that date shall automatically
2 continue to be an obligation, not as current support but as
3 periodic payment toward satisfaction of the unpaid arrearage or
4 delinquency. That periodic payment shall be in addition to any
5 periodic payment previously required for satisfaction of the
6 arrearage or delinquency. The total periodic amount to be paid
7 toward satisfaction of the arrearage or delinquency may be
8 enforced and collected by any method provided by law for
9 enforcement and collection of child support, including but not
10 limited to income withholding under the Income Withholding for
11 Support Act. Each order for support entered or modified on or
12 after the effective date of this amendatory Act of the 93rd
13 General Assembly must contain a statement notifying the parties
14 of the requirements of this subsection. Failure to include the
15 statement in the order for support does not affect the validity
16 of the order or the operation of the provisions of this
17 subsection with regard to the order. This subsection shall not
18 be construed to prevent or affect the establishment or
19 modification of an order for support of a minor child or the
20 establishment or modification of an order for support of a
21 non-minor child or educational expenses under Section 513 of
22 this Act.

23 (h) An order entered under this Section shall include a
24 provision requiring the obligor to report to the obligee and to
25 the clerk of court within 10 days each time the obligor obtains
26 new employment, and each time the obligor's employment is

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

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

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

22 Section 15. The Non-Support Punishment Act is amended by
23 changing Section 23 as follows:

24 (750 ILCS 16/23)

1 Sec. 23. Interest on support obligations.

2 (a) A support obligation, or any portion of a support
3 obligation, which becomes due and remains unpaid as of the end
4 of each month, excluding the child support that was due for
5 that month to the extent that it was not paid in that month,
6 shall accrue interest as set forth in Section 12-109 of the
7 Code of Civil Procedure.

8 (b) Upon motion and notice, a court may forgive interest
9 that has accrued on all or part of a past due child support
10 obligation if the obligor:

11 (1) demonstrates that during the time that the past due
12 child support was accumulating, the obligor was unable to
13 pay child support;

14 (2) agrees to make future support payments on time
15 provided that if the obligor fails to make future support
16 payments on time, the court may reinstate all or part of
17 the interest that was forgiven; or

18 (3) makes a lump sum payment.

19 (Source: P.A. 94-90, eff. 1-1-06.)

20 Section 20. The Illinois Parentage Act of 1984 is amended
21 by changing Section 20.7 as follows:

22 (750 ILCS 45/20.7)

23 Sec. 20.7. Interest on support obligations.

24 (a) A support obligation, or any portion of a support

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

16 (b) Upon motion and notice, a court may forgive interest
17 that has accrued on all or part of a past due child support
18 obligation if the obligor:

19 (1) demonstrates that during the time that the past due
20 child support was accumulating, the obligor was unable to
21 pay child support;

22 (2) agrees to make future support payments on time
23 provided that if the obligor fails to make future support
24 payments on time, the court may reinstate all or part of
25 the interest that was forgiven; or

26 (3) makes a lump sum payment.

1 (Source: P.A. 94-90, eff. 1-1-06.)