



Rep. La Shawn K. Ford

Filed: 4/12/2013

09800HB2330ham002

LRB098 10536 KTG 44469 a

1 AMENDMENT TO HOUSE BILL 2330

2 AMENDMENT NO. _____. Amend House Bill 2330, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Illinois Public Aid Code is amended by
6 adding Section 10-12.5 as follows:

7 (305 ILCS 5/10-12.5 new)

8 Sec. 10-12.5. Suspension of child support during a period
9 of incarceration.

10 (a) Unless otherwise agreed by the parties in a written
11 agreement set forth in a court or administrative order for
12 support or unless the custodial parent objects to the
13 suspension of the child support obligation within 60 days of
14 receiving notice regarding the suspension, an obligation to pay
15 child support is suspended by operation of law during any
16 period of time in which the person owing a duty of support is

1 committed to the custody of the Department of Corrections or
2 the Department of Juvenile Justice. If the custodial parent
3 objects, the child support obligation shall not be suspended
4 and if the non-custodial parent wishes to obtain a
5 modification, he or she must petition for a modification of
6 support in accordance with Section 510 of the Illinois Marriage
7 and Dissolution of Marriage Act. The Department shall provide,
8 by rule, for notice to the custodial parent describing the
9 custodial parent's rights regarding a prospective modification
10 in accordance with Section 510 of the Illinois Marriage and
11 Dissolution of Marriage Act.

12 (b) Any period of incarceration of a parent obligated to
13 pay child support shall not be considered a period of voluntary
14 unemployment. In the case of an incarcerated parent obligated
15 to pay child support greater than \$0 whose period of
16 incarceration is greater than one year and whose period of
17 incarceration begins on or after July 1, 2013, the Department
18 shall:

19 (1) temporarily suspend any support obligation of the
20 parent and the enforcement of any support obligation of the
21 parent existing prior to the period of incarceration; and

22 (2) temporarily prohibit the accrual of any interest on
23 any support obligation of the parent existing prior to the
24 period of incarceration during such period.

25 The temporary suspension of the child support obligation
26 and of the accrual of interest on any support obligation of the

1 parent existing prior to the period of incarceration shall end
2 and both support and accrual of interest on any pre-existing
3 unpaid obligation shall resume upon the first charging period
4 to occur after the obligated parent's release from
5 incarceration. Unless the terms of the support obligation have
6 been otherwise modified, the support terms shall resume at the
7 same level as prior to the temporary suspension.

8 (c) Provided the Department is advised or given notice of
9 the obligated parent's incarceration for a period to exceed one
10 year beginning after July 1, 2013, the Department, for cases
11 enrolled in the Child Support Enforcement Program established
12 by Title IV-D of the Social Security Act, or the noncustodial
13 parent or his or her representative in all other cases, shall
14 provide both parties with:

15 (1) notice of any suspension of review, adjustment, or
16 enforcement of a support obligation and of any prohibition
17 on interest accrual on such obligation that is imposed in
18 accordance with paragraphs (1) and (2) of subsection (b);
19 and

20 (2) an opportunity to request that the suspension or
21 prohibition be terminated or modified on the basis that the
22 noncustodial parent has sufficient income or resources to
23 continue payment of the support obligation during the
24 noncustodial parent's period of incarceration.

25 (d) The Department shall not be liable for failing to act
26 upon the provisions established under paragraphs (1) and (2) of

1 subsection (a) if the Department has not been advised of the
2 obligated parent's incarceration or if the Department has in
3 place proper procedures for considering an obligated parent's
4 incarceration when setting and modifying child support
5 obligations and follows those procedures routinely.

6 Section 10. The Illinois Marriage and Dissolution of
7 Marriage Act is amended by changing Section 510 as follows:

8 (750 ILCS 5/510) (from Ch. 40, par. 510)

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

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

19 (1) upon a showing of a substantial change in
20 circumstances, including incarceration prior to July 1,
21 2013 or for a period of incarceration of less than one
22 year; and

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

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

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

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

22 (a-5) An order for maintenance may be modified or
23 terminated only upon a showing of a substantial change in
24 circumstances. In all such proceedings, as well as in
25 proceedings in which maintenance is being reviewed, the court
26 shall consider the applicable factors set forth in subsection

1 (a) of Section 504 and the following 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 (b) The provisions as to property disposition may not be
3 revoked or modified, unless the court finds the existence of
4 conditions that justify the reopening of a judgment under the
5 laws of this State.

6 (c) Unless otherwise agreed by the parties in a written
7 agreement set forth in the judgment or otherwise approved by
8 the court, the obligation to pay future maintenance is
9 terminated upon the death of either party, or the remarriage of
10 the party receiving maintenance, or if the party receiving
11 maintenance cohabits with another person on a resident,
12 continuing conjugal basis. Any obligation of a payor party for
13 premium payments respecting insurance on such party's life
14 imposed under subsection (f) of Section 504 is also terminated
15 on the occurrence of any of the foregoing events, unless
16 otherwise agreed by the parties. Any termination of an
17 obligation for maintenance as a result of the death of the
18 payor party, however, shall be inapplicable to any right of the
19 other party or such other party's designee to receive a death
20 benefit under such insurance on the payor party's life.

21 (d) Unless otherwise provided in this Act, or as agreed in
22 writing or expressly provided in the judgment, provisions for
23 the support of a child are terminated by emancipation of the
24 child, or if the child has attained the age of 18 and is still
25 attending high school, provisions for the support of the child
26 are terminated upon the date that the child graduates from high

1 school or the date the child attains the age of 19, whichever
2 is earlier, but not by the death of a parent obligated to
3 support or educate the child. An existing obligation to pay for
4 support or educational expenses, or both, is not terminated by
5 the death of a parent. When a parent obligated to pay support
6 or educational expenses, or both, dies, the amount of support
7 or educational expenses, or both, may be enforced, modified,
8 revoked or commuted to a lump sum payment, as equity may
9 require, and that determination may be provided for at the time
10 of the dissolution of the marriage or thereafter.

11 (d-5) Unless otherwise agreed by the parties in a written
12 agreement set forth in the judgment or otherwise approved by
13 the court or unless the custodial parent objects to the
14 suspension of the child support obligation within 60 days of
15 receiving notice regarding the suspension, an obligation to pay
16 child support is suspended by operation of law during any
17 period of time in which the person owing a duty of support is
18 committed to the custody of the Department of Corrections or
19 the Department of Juvenile Justice. If the custodial parent
20 objects, the child support obligation shall not be suspended
21 and if the non-custodial parent wishes to obtain a
22 modification, he or she must petition for a modification of
23 support in accordance with this Section. The Department shall
24 provide, by rule, for notice to the custodial parent describing
25 the custodial parent's rights regarding a prospective
26 modification in accordance with this Section.

1 (d-6) The State shall not consider any period of
2 incarceration of such parent as a period of voluntary
3 unemployment that disqualifies the parent from obtaining a
4 modification of the support obligation consistent with the
5 parent's ability to pay child support. In the case of an
6 incarcerated parent the State shall:

7 (1) temporarily suspend any support obligation of the
8 parent and the enforcement of any support obligation of the
9 parent existing prior to the period of incarceration; and

10 (2) temporarily prohibit the accrual of any interest on
11 any support obligation of the parent existing prior to the
12 period of incarceration during such period.

13 (d-7) The Department of Healthcare and Family Services, for
14 cases enrolled in the Child Support Enforcement Program
15 established by Title IV-D of the Social Security Act, or the
16 noncustodial parent or his or her representative in all other
17 cases, shall provide a custodial parent with:

18 (1) notice of any suspension of review, adjustment, or
19 enforcement of a support obligation and notice of any
20 prohibition on the accrual of interest on the support
21 obligation that is imposed in accordance with paragraphs
22 (1) and (2) of subsection (d-6); and

23 (2) an opportunity to request that the suspension or
24 prohibition be terminated or modified on the basis that the
25 noncustodial parent has sufficient income or resources to
26 continue payment of the support obligation during the

1 noncustodial parent's period of incarceration.

2 (e) The right to petition for support or educational
3 expenses, or both, under Sections 505 and 513 is not
4 extinguished by the death of a parent. Upon a petition filed
5 before or after a parent's death, the court may award sums of
6 money out of the decedent's estate for the child's support or
7 educational expenses, or both, as equity may require. The time
8 within which a claim may be filed against the estate of a
9 decedent under Sections 505 and 513 and subsection (d) and this
10 subsection shall be governed by the provisions of the Probate
11 Act of 1975, as a barrable, noncontingent claim.

12 (f) A petition to modify or terminate child support,
13 custody, or visitation shall not delay any child support
14 enforcement litigation or supplementary proceeding on behalf
15 of the obligee, including, but not limited to, a petition for a
16 rule to show cause, for non-wage garnishment, or for a
17 restraining order.

18 (g) The Department of Healthcare and Family Services and
19 the Department of Corrections shall share relevant data and
20 collaborate on the facilitation of identification of
21 incarcerated parents eligible for either temporary suspension
22 of a child support obligation or modification of a child
23 support obligation and shall provide relevant information and
24 assistance to incarcerated parents eligible for modification
25 of support.

26 (h) The crime for which the incarcerated parents was

1 convicted, or the prosecution of the incarcerated parent for
2 that crime by a legal representative of the Department of
3 Healthcare and Family Services for cases enrolled in the Child
4 Support Enforcement Program established by Title IV-D of the
5 Social Security Act, shall not disqualify the incarcerated
6 parent from consideration of modification of a child support
7 obligation, nor shall the action of the Department's legal
8 representative to bring forth the modification request for
9 consideration be considered a conflict of interest for the
10 prosecuting office, except in cases where the crime was
11 committed to avoid a child support obligation or was committed
12 against a child of the obligated parent or the other parent.

13 (Source: P.A. 97-608, eff. 1-1-12.)".