



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 02/04/04, by Marlow H. Colvin

**SYNOPSIS AS INTRODUCED:**

750 ILCS 5/505

from Ch. 40, par. 505

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that a court may extend the payment of child support beyond the date a child attains the age of 18 or 19 if the obligor's liability for payment of support was suspended or reduced before that date due to the obligor's incarceration. Provides that the duration of the period of extension shall be equal to the duration of the obligor's incarceration.

LRB093 18144 DRJ 43837 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 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.

24 (1) The Court shall determine the minimum amount of  
25 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%                           |



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

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

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

29 (5) If the net income cannot be determined because of  
30 default or any other reason, the court shall order support  
31 in an amount considered reasonable in the particular case.  
32 The final order in all cases shall state the support level  
33 in dollar amounts. However, if the court finds that the  
34 child support amount cannot be expressed exclusively as a  
35 dollar amount because all or a portion of the payor's net  
36 income is uncertain as to source, time of payment, or

1 amount, the court may order a percentage amount of support  
2 in addition to a specific dollar amount and enter such  
3 other orders as may be necessary to determine and enforce,  
4 on a timely basis, the applicable support ordered.

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

18 (a-5) In an action to enforce an order for support based on  
19 the respondent's failure to make support payments as required  
20 by the order, notice of proceedings to hold the respondent in  
21 contempt for that failure may be served on the respondent by  
22 personal service or by regular mail addressed to the  
23 respondent's last known address. The respondent's last known  
24 address may be determined from records of the clerk of the  
25 court, from the Federal Case Registry of Child Support Orders,  
26 or by any other reasonable means.

27 (a-10) A court may extend the payment of child support  
28 beyond the date a child attains the age of 18 or 19 if the  
29 obligor's liability for payment of support was suspended or  
30 reduced before that date due to the obligor's incarceration.  
31 The period of extension shall begin on the date the child  
32 attains the age of 18 (or 19 if still attending high school) or  
33 the date the obligor is released from incarceration, whichever  
34 is later. The duration of the period of extension shall be  
35 equal to the duration of the obligor's incarceration. Upon  
36 ordering an extension of the period for payment of support

1 under this subsection, the court shall determine the amount of  
2 support to be paid by the obligor as follows:

3 (1) If the obligor's liability for payment of support  
4 was suspended due to the obligor's incarceration, the court  
5 shall order the obligor to pay support in an amount equal  
6 to the amount that was due under an order for support  
7 immediately before the effective date of the order  
8 suspending payment of support.

9 (2) If the obligor's liability for payment of support  
10 was reduced due to the obligor's incarceration, the court  
11 shall order the obligor to pay support in an amount equal  
12 to the amount by which the support was reduced.

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

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

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

24 (A) work; or

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

27 The Court may further order any part or all of the earnings  
28 of a parent during a sentence of periodic imprisonment paid to  
29 the Clerk of the Circuit Court or to the parent having custody  
30 or to the guardian having custody of the children of the  
31 sentenced parent for the support of said children until further  
32 order of the Court.

33 If there is a unity of interest and ownership sufficient to  
34 render no financial separation between a non-custodial parent  
35 and another person or persons or business entity, the court may  
36 pierce the ownership veil of the person, persons, or business

1 entity to discover assets of the non-custodial parent held in  
2 the name of that person, those persons, or that business  
3 entity. The following circumstances are sufficient to  
4 authorize a court to order discovery of the assets of a person,  
5 persons, or business entity and to compel the application of  
6 any discovered assets toward payment on the judgment for  
7 support:

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

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

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

16 With respect to assets which are real property, no order  
17 entered under this paragraph shall affect the rights of bona  
18 fide purchasers, mortgagees, judgment creditors, or other lien  
19 holders who acquire their interests in the property prior to  
20 the time a notice of lis pendens pursuant to the Code of Civil  
21 Procedure or a copy of the order is placed of record in the  
22 office of the recorder of deeds for the county in which the  
23 real property is located.

24 The court may also order in cases where the parent is 90  
25 days or more delinquent in payment of support or has been  
26 adjudicated in arrears in an amount equal to 90 days obligation  
27 or more, that the parent's Illinois driving privileges be  
28 suspended until the court determines that the parent is in  
29 compliance with the order of support. The court may also order  
30 that the parent be issued a family financial responsibility  
31 driving permit that would allow limited driving privileges for  
32 employment and medical purposes in accordance with Section  
33 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit  
34 court shall certify the order suspending the driving privileges  
35 of the parent or granting the issuance of a family financial  
36 responsibility driving permit to the Secretary of State on

1 forms prescribed by the Secretary. Upon receipt of the  
2 authenticated documents, the Secretary of State shall suspend  
3 the parent's driving privileges until further order of the  
4 court and shall, if ordered by the court, subject to the  
5 provisions of Section 7-702.1 of the Illinois Vehicle Code,  
6 issue a family financial responsibility driving permit to the  
7 parent.

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

20 A support obligation, or any portion of a support  
21 obligation, which becomes due and remains unpaid for 30 days or  
22 more shall accrue simple interest at the rate of 9% per annum.  
23 An order for support entered or modified on or after January 1,  
24 2002 shall contain a statement that a support obligation  
25 required under the order, or any portion of a support  
26 obligation required under the order, that becomes due and  
27 remains unpaid for 30 days or more shall accrue simple interest  
28 at the rate of 9% per annum. Failure to include the statement  
29 in the order for support does not affect the validity of the  
30 order or the accrual of interest as provided in this Section.

31 (c) A one-time charge of 20% is imposable upon the amount  
32 of past-due child support owed on July 1, 1988 which has  
33 accrued under a support order entered by the court. The charge  
34 shall be imposed in accordance with the provisions of Section  
35 10-21 of the Illinois Public Aid Code and shall be enforced by  
36 the court upon petition.



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

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

22 (f) All orders for support, when entered or modified, shall  
23 include a provision requiring the obligor to notify the court  
24 and, in cases in which a party is receiving child and spouse  
25 services under Article X of the Illinois Public Aid Code, the  
26 Illinois Department of Public Aid, within 7 days, (i) of the  
27 name and address of any new employer of the obligor, (ii)  
28 whether the obligor has access to health insurance coverage  
29 through the employer or other group coverage and, if so, the  
30 policy name and number and the names of persons covered under  
31 the policy, and (iii) of any new residential or mailing address  
32 or telephone number of the non-custodial parent. In any  
33 subsequent action to enforce a support order, upon a sufficient  
34 showing that a diligent effort has been made to ascertain the  
35 location of the non-custodial parent, service of process or  
36 provision of notice necessary in the case may be made at the

1 last known address of the non-custodial parent in any manner  
2 expressly provided by the Code of Civil Procedure or this Act,  
3 which service shall be sufficient for purposes of due process.

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

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

36 (i) The court does not lose the powers of contempt,

1 driver's license suspension, or other child support  
2 enforcement mechanisms, including, but not limited to,  
3 criminal prosecution as set forth in this Act, upon the  
4 emancipation of the minor child or children.

5 (Source: P.A. 92-16, eff. 6-28-01; 92-203, eff. 8-1-01; 92-374,  
6 eff. 8-15-01; 92-651, eff. 7-11-02; 92-876, eff. 6-1-03;  
7 93-148, eff. 7-10-03.)