



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/09/04, by Charles E. Jefferson

SYNOPSIS AS INTRODUCED:

750 ILCS 5/505
750 ILCS 45/20.7

from Ch. 40, par. 505

Amends the Illinois Parentage Act of 1984 and the Marriage and Dissolution of Marriage Act. Provides that a child support installment that becomes due based upon the payment frequency as ordered by the court shall become a separate and distinct judgment. Provides that when the judgment remains unpaid for 30 days from the date due, simple interest shall begin to accrue daily on a per diem basis at the rate of 9% per annum for each day beyond the 30 day grace period. Sets out a formula for calculating the per diem interest. Provides that each child support payment made within a single installment period is to be credited first to the current support installment due with any excess or subsequent payment during the same period being credited to past due support.

LRB093 20918 LCB 46893 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 6 or more 50%

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

8 (a) the financial resources and needs of the child;

9 (b) the financial resources and needs of the
10 custodial parent;

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

13 (d) the physical and emotional condition of the
14 child, and his educational needs; and

15 (e) the financial resources and needs of the
16 non-custodial parent.

17 If the court deviates from the guidelines, the court's
18 finding shall state the amount of support that would have
19 been required under the guidelines, if determinable. The
20 court shall include the reason or reasons for the variance
21 from the guidelines.

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

24 (a) Federal income tax (properly calculated
25 withholding or estimated payments);

26 (b) State income tax (properly calculated
27 withholding or estimated payments);

28 (c) Social Security (FICA payments);

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

31 (e) Union dues;

32 (f) Dependent and individual
33 health/hospitalization insurance premiums;

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

36 (h) Expenditures for repayment of debts that

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

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

34 (2) sentenced to periodic imprisonment for a period not
35 to exceed 6 months; provided, however, that the Court may
36 permit the parent to be released for periods of time during

1 the day or night to:

2 (A) work; or

3 (B) conduct a business or other self-employed
4 occupation.

5 The Court may further order any part or all of the earnings
6 of a parent during a sentence of periodic imprisonment paid to
7 the Clerk of the Circuit Court or to the parent having custody
8 or to the guardian having custody of the children of the
9 sentenced parent for the support of said children until further
10 order of the Court.

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

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

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

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

30 With respect to assets which are real property, no order
31 entered under this paragraph shall affect the rights of bona
32 fide purchasers, mortgagees, judgment creditors, or other lien
33 holders who acquire their interests in the property prior to
34 the time a notice of lis pendens pursuant to the Code of Civil
35 Procedure or a copy of the order is placed of record in the
36 office of the recorder of deeds for the county in which the

1 real property is located.

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

22 In addition to the penalties or punishment that may be
23 imposed under this Section, any person whose conduct
24 constitutes a violation of Section 15 of the Non-Support
25 Punishment Act may be prosecuted under that Act, and a person
26 convicted under that Act may be sentenced in accordance with
27 that Act. The sentence may include but need not be limited to a
28 requirement that the person perform community service under
29 Section 50 of that Act or participate in a work alternative
30 program under Section 50 of that Act. A person may not be
31 required to participate in a work alternative program under
32 Section 50 of that Act if the person is currently participating
33 in a work program pursuant to Section 505.1 of this Act.

34 A child support installment that becomes due based upon the
35 payment frequency as ordered shall be considered a separate and
36 distinct judgment pursuant to subsection (d) of Section 505 of

1 this Act and subsection (c) of Section 14 of the Illinois
2 Parentage Act of 1984. If the judgment remains unpaid for 30
3 days after the date due, simple interest shall begin to accrue
4 daily on a per diem basis at the rate of 9% per annum for each
5 day beyond the 30 day grace period.

6 The per diem interest shall be determined by multiplying
7 the annual rate by the amount of the judgment unsatisfied and
8 dividing that amount by 365. The per diem interest is to be
9 modified when the judgment itself has been reduced. The per
10 diem interest continues to accrue until the judgment itself is
11 satisfied.

12 Each child support payment made within a single installment
13 period is to be credited first to the current support
14 installment due with any excess or subsequent payment during
15 the same installment period being credited to past due support.
16 The distribution of any payments are not controlled by this
17 Act.

18 Each payment that is to be credited to the amount of past
19 due child support is to be applied first to the accrued per
20 diem interest of the oldest remaining unsatisfied installment
21 judgment with any remaining portion of the payment to be
22 applied to the oldest unsatisfied judgment itself.

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

35 (c) A one-time charge of 20% is imposable upon the amount
36 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
27 include a provision requiring the obligor to notify the court
28 and, in cases in which a party is receiving child and spouse
29 services under Article X of the Illinois Public Aid Code, the
30 Illinois Department of Public Aid, within 7 days, (i) of the
31 name and address of any new employer of the obligor, (ii)
32 whether the obligor has access to health insurance coverage
33 through the employer or other group coverage and, if so, the
34 policy name and number and the names of persons covered under
35 the policy, and (iii) of any new residential or mailing address
36 or telephone number of the non-custodial parent. In any

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

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

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

1 finds that the physical, mental, or emotional health of a party
2 or that of a child, or both, would be seriously endangered by
3 disclosure of the party's address.

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

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

12 Section 10. The Illinois Parentage Act of 1984 is amended
13 by changing Section 20.7 as follows:

14 (750 ILCS 45/20.7)

15 Sec. 20.7. Interest on support obligations. ~~A support~~
16 ~~obligation, or any portion of a support obligation, which~~
17 ~~becomes due and remains unpaid for 30 days or more shall accrue~~
18 ~~simple interest at the rate of 9% per annum.~~ A child support
19 installment that becomes due based upon the payment frequency
20 as ordered shall be considered a separate and distinct judgment
21 pursuant to subsection (d) of Section 505 of the Illinois
22 Marriage and Dissolution of Marriage Act and subsection (c) of
23 Section 14 of this Act. If the judgment remains unpaid for 30
24 days from the date due, simple interest shall begin to accrue
25 daily on a per diem basis at the rate of 9% per annum for each
26 day beyond the 30 day grace period.

27 The per diem interest shall be determined by multiplying
28 the annual rate by the amount of the judgment unsatisfied and
29 dividing that amount by 365. The per diem interest is to be
30 modified when the judgment itself has been reduced. The per
31 diem interest continues to accrue until the judgment itself is
32 satisfied.

33 Each child support payment made within a single installment
34 period is to be credited first to the current support

1 installment due with any excess or subsequent payment during
2 the same installment period being credited to past due support.
3 The distribution of any payments are not controlled by this
4 Act.

5 Each payment that is to be credited to the amount of past
6 due child support is to be applied first to the accrued per
7 diem interest of the oldest remaining unsatisfied installment
8 judgment with any remaining portion of the payment to be
9 applied to the oldest unsatisfied judgment itself. An order for
10 child support entered or modified on or after January 1, 2002
11 shall contain a statement that a child support obligation
12 required under the order, or any portion of a child support
13 obligation required under the order, that becomes due and
14 remains unpaid for 30 days or more shall accrue simple interest
15 at the rate of 9% per annum. Failure to include the statement
16 in the order for support does not affect the validity of the
17 order or the accrual of interest as provided in this Section.

18 (Source: P.A. 91-397, eff. 1-1-00; 92-374, eff. 8-15-01.)