



Rep. La Shawn K. Ford

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09800HB2330ham001

LRB098 10536 KTG 42703 a

1 AMENDMENT TO HOUSE BILL 2330

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

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

6 (305 ILCS 5/10-12.5 new)

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

9 (a) Unless otherwise agreed by the parties in a written
10 agreement set forth in a court or administrative order for
11 support or unless otherwise approved by a court, an obligation
12 to pay child support is suspended by operation of law during
13 any period of time in which the person owing a duty of support
14 is committed to the custody of the Department of Corrections or
15 the Department of Juvenile Justice.

16 (b) Any period of incarceration of a parent obligated to

1 pay child support shall not be considered a period of voluntary
2 unemployment. In the case of an incarcerated parent obligated
3 to pay child support greater than \$0 whose period of
4 incarceration is greater than one year and whose period of
5 incarceration begins on or after July 1, 2013, the Department
6 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 The temporary suspension of the child support obligation
14 and of the accrual of interest on any support obligation of the
15 parent existing prior to the period of incarceration shall end
16 and both support and accrual of interest on any pre-existing
17 unpaid obligation shall resume upon the first charging period
18 to occur after the obligated parent's release from
19 incarceration. Unless the terms of the support obligation have
20 been otherwise modified, the support terms shall resume at the
21 same level as prior to the temporary suspension.

22 (c) Provided the Department is advised or given notice of
23 the obligated parent's incarceration for a period to exceed one
24 year beginning after July 1, 2013, the Department, for cases
25 enrolled in the Child Support Enforcement Program established
26 by Title IV-D of the Social Security Act, or the noncustodial

1 parent or his or her representative in all other cases, shall
2 provide both parties with:

3 (1) notice of any suspension of review, adjustment, or
4 enforcement of a support obligation and of any prohibition
5 on interest accrual on such obligation that is imposed in
6 accordance with paragraphs (1) and (2) of subsection (b);
7 and

8 (2) an opportunity to request that the suspension or
9 prohibition be terminated or modified on the basis that the
10 noncustodial parent has sufficient income or resources to
11 continue payment of the support obligation during the
12 noncustodial parent's period of incarceration.

13 (d) The Department shall not be liable for failing to act
14 upon the provisions established under paragraphs (1) and (2) of
15 subsection (a) if the Department has not been advised of the
16 obligated parent's incarceration or if the Department has in
17 place proper procedures for considering an obligated parent's
18 incarceration when setting and modifying child support
19 obligations and follows those procedures routinely.

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

22 (750 ILCS 5/510) (from Ch. 40, par. 510)

23 Sec. 510. Modification and termination of provisions for
24 maintenance, support, educational expenses, and property

1 disposition.

2 (a) Except as otherwise provided in paragraph (f) of
3 Section 502 and in subsection (b), clause (3) of Section 505.2,
4 the provisions of any judgment respecting maintenance or
5 support may be modified only as to installments accruing
6 subsequent to due notice by the moving party of the filing of
7 the motion for modification. An order for child support may be
8 modified as follows:

9 (1) upon a showing of a substantial change in
10 circumstances, including incarceration prior to July 1,
11 2013 or for a period of incarceration of less than one
12 year; and

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

15 (A) upon a showing of an inconsistency of at least
16 20%, but no less than \$10 per month, between the amount
17 of the existing order and the amount of child support
18 that results from application of the guidelines
19 specified in Section 505 of this Act unless the
20 inconsistency is due to the fact that the amount of the
21 existing order resulted from a deviation from the
22 guideline amount and there has not been a change in the
23 circumstances that resulted in that deviation; or

24 (B) upon a showing of a need to provide for the
25 health care needs of the child under the order through
26 health insurance or other means. In no event shall the

1 eligibility for or receipt of medical assistance be
2 considered to meet the need to provide for the child's
3 health care needs.

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

10 (a-5) An order for maintenance may be modified or
11 terminated only upon a showing of a substantial change in
12 circumstances. In all such proceedings, as well as in
13 proceedings in which maintenance is being reviewed, the court
14 shall consider the applicable factors set forth in subsection
15 (a) of Section 504 and the following factors:

16 (1) any change in the employment status of either party
17 and whether the change has been made in good faith;

18 (2) the efforts, if any, made by the party receiving
19 maintenance to become self-supporting, and the
20 reasonableness of the efforts where they are appropriate;

21 (3) any impairment of the present and future earning
22 capacity of either party;

23 (4) the tax consequences of the maintenance payments
24 upon the respective economic circumstances of the parties;

25 (5) the duration of the maintenance payments
26 previously paid (and remaining to be paid) relative to the

1 length of the marriage;

2 (6) the property, including retirement benefits,
3 awarded to each party under the judgment of dissolution of
4 marriage, judgment of legal separation, or judgment of
5 declaration of invalidity of marriage and the present
6 status of the property;

7 (7) the increase or decrease in each party's income
8 since the prior judgment or order from which a review,
9 modification, or termination is being sought;

10 (8) the property acquired and currently owned by each
11 party after the entry of the judgment of dissolution of
12 marriage, judgment of legal separation, or judgment of
13 declaration of invalidity of marriage; and

14 (9) any other factor that the court expressly finds to
15 be just and equitable.

16 (b) The provisions as to property disposition may not be
17 revoked or modified, unless the court finds the existence of
18 conditions that justify the reopening of a judgment under the
19 laws of this State.

20 (c) Unless otherwise agreed by the parties in a written
21 agreement set forth in the judgment or otherwise approved by
22 the court, the obligation to pay future maintenance is
23 terminated upon the death of either party, or the remarriage of
24 the party receiving maintenance, or if the party receiving
25 maintenance cohabits with another person on a resident,
26 continuing conjugal basis. Any obligation of a payor party for

1 premium payments respecting insurance on such party's life
2 imposed under subsection (f) of Section 504 is also terminated
3 on the occurrence of any of the foregoing events, unless
4 otherwise agreed by the parties. Any termination of an
5 obligation for maintenance as a result of the death of the
6 payor party, however, shall be inapplicable to any right of the
7 other party or such other party's designee to receive a death
8 benefit under such insurance on the payor party's life.

9 (d) Unless otherwise provided in this Act, or as agreed in
10 writing or expressly provided in the judgment, provisions for
11 the support of a child are terminated by emancipation of the
12 child, or if the child has attained the age of 18 and is still
13 attending high school, provisions for the support of the child
14 are terminated upon the date that the child graduates from high
15 school or the date the child attains the age of 19, whichever
16 is earlier, but not by the death of a parent obligated to
17 support or educate the child. An existing obligation to pay for
18 support or educational expenses, or both, is not terminated by
19 the death of a parent. When a parent obligated to pay support
20 or educational expenses, or both, dies, the amount of support
21 or educational expenses, or both, may be enforced, modified,
22 revoked or commuted to a lump sum payment, as equity may
23 require, and that determination may be provided for at the time
24 of the dissolution of the marriage or thereafter.

25 (d-5) Unless otherwise agreed by the parties in a written
26 agreement set forth in the judgment or otherwise approved by

1 the court, an obligation to pay child support is suspended by
2 operation of law during any period of time in which the person
3 owing a duty of support is committed to the custody of the
4 Department of Corrections or the Department of Juvenile
5 Justice.

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

12 (1) temporarily suspend any support obligation of the
13 parent and the enforcement of any support obligation of the
14 parent existing prior to the period of incarceration; and

15 (2) temporarily prohibit the accrual of any interest on
16 any support obligation of the parent existing prior to the
17 period of incarceration during such period.

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

23 (1) notice of any suspension of review, adjustment, or
24 enforcement of a support obligation and notice of any
25 prohibition on the accrual of interest on the support
26 obligation that is imposed in accordance with paragraphs

1 (1) and (2) of subsection (d-6); and

2 (2) an opportunity to request that the suspension or
3 prohibition be terminated or modified on the basis that the
4 noncustodial parent has sufficient income or resources to
5 continue payment of the support obligation during the
6 noncustodial parent's period of incarceration.

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

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

23 (g) The Department of Healthcare and Family Services and
24 the Department of Corrections shall share relevant data and
25 collaborate on the facilitation of identification of
26 incarcerated parents eligible for either temporary suspension

1 of a child support obligation or modification of a child
2 support obligation and shall provide relevant information and
3 assistance to incarcerated parents eligible for modification
4 of support.

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

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