



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5991

by Rep. Laura Fine

SYNOPSIS AS INTRODUCED:

750 ILCS 5/505
750 ILCS 5/513

from Ch. 40, par. 505
from Ch. 40, par. 513

Amends the Illinois Marriage and Dissolution of Marriage Act. In provisions concerning child support, includes, in the definition of "child": a child under age 19 who was not attending high school on his or her 18th birthday but has resumed his or her attendance in high school; and a child under age 22 who is attending high school and is receiving special education services under an individualized education program developed under the Children with Disabilities Article of the School Code. In provisions concerning support for non-minor children, provides that a rebuttable presumption exists that a child meets the eligibility conditions of those provisions if the child: is receiving special education services under an individualized education program developed under the Children with Disabilities Article of the School Code; or is receiving transition services from the Department of Human Services in accordance with the Disabled Persons Rehabilitation Act after the child received special education services under an individualized education program developed under the Children with Disabilities Article of the School Code.

LRB098 18817 HEP 53962 b

1 AN ACT concerning civil law.

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 Sections 505 and 513 as
6 follows:

7 (750 ILCS 5/505) (from Ch. 40, par. 505)

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

9 (a) In a proceeding for dissolution of marriage, legal
10 separation, declaration of invalidity of marriage, a
11 proceeding for child support following dissolution of the
12 marriage by a court that lacked personal jurisdiction over the
13 absent spouse, a proceeding for modification of a previous
14 order for child support under Section 510 of this Act, or any
15 proceeding authorized under Section 501 or 601 of this Act, the
16 court may order either or both parents owing a duty of support
17 to a child of the marriage to pay an amount reasonable and
18 necessary for the support of the child, without regard to
19 marital misconduct. The duty of support owed to a child
20 includes the obligation to provide for the reasonable and
21 necessary educational, physical, mental and emotional health
22 needs of the child. For purposes of this Section, the term
23 "child" includes: a ~~shall include any~~ child under age 18; a ~~and~~

1 ~~any~~ child under age 19 who is still attending high school; a
 2 child under age 19 who was not attending high school on his or
 3 her 18th birthday but has resumed his or her attendance in high
 4 school; and a child under age 22 who is attending high school
 5 and is receiving special education services under an
 6 individualized education program developed under Article 14 of
 7 the School Code.

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

18 (2) The above guidelines shall be applied in each case
 19 unless the court finds that a deviation from the guidelines
 20 is appropriate after considering the best interest of the
 21 child in light of the evidence, including, but not limited
 22 to, one or more of the following relevant factors:

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

24 (b) the financial resources and needs of the
 25 custodial parent;

26 (c) the standard of living the child would have

1 enjoyed had the marriage not been dissolved;

2 (d) the physical, mental, and emotional needs of
3 the child;

4 (d-5) the educational needs of the child; and

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

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

12 (2.5) The court, in its discretion, in addition to
13 setting child support pursuant to the guidelines and
14 factors, may order either or both parents owing a duty of
15 support to a child of the marriage to contribute to the
16 following expenses, if determined by the court to be
17 reasonable:

18 (a) health needs not covered by insurance;

19 (b) child care;

20 (c) education; and

21 (d) extracurricular activities.

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

1 withholding or estimated payments);

2 (c) Social Security (FICA payments);

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

5 (e) Union dues;

6 (f) Dependent and individual
7 health/hospitalization insurance premiums and premiums
8 for life insurance ordered by the court to reasonably
9 secure payment of ordered child support;

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

12 (h) Expenditures for repayment of debts that
13 represent reasonable and necessary expenses for the
14 production of income, medical expenditures necessary
15 to preserve life or health, reasonable expenditures
16 for the benefit of the child and the other parent,
17 exclusive of gifts. The court shall reduce net income
18 in determining the minimum amount of support to be
19 ordered only for the period that such payments are due
20 and shall enter an order containing provisions for its
21 self-executing modification upon termination of such
22 payment period;

23 (i) Foster care payments paid by the Department of
24 Children and Family Services for providing licensed
25 foster care to a foster child.

26 (4) In cases where the court order provides for

1 health/hospitalization insurance coverage pursuant to
2 Section 505.2 of this Act, the premiums for that insurance,
3 or that portion of the premiums for which the supporting
4 party is responsible in the case of insurance provided
5 through an employer's health insurance plan where the
6 employer pays a portion of the premiums, shall be
7 subtracted from net income in determining the minimum
8 amount of support to be ordered.

9 (4.5) In a proceeding for child support following
10 dissolution of the marriage by a court that lacked personal
11 jurisdiction over the absent spouse, and in which the court
12 is requiring payment of support for the period before the
13 date an order for current support is entered, there is a
14 rebuttable presumption that the supporting party's net
15 income for the prior period was the same as his or her net
16 income at the time the order for current support is
17 entered.

18 (5) If the net income cannot be determined because of
19 default or any other reason, the court shall order support
20 in an amount considered reasonable in the particular case.
21 The final order in all cases shall state the support level
22 in dollar amounts. However, if the court finds that the
23 child support amount cannot be expressed exclusively as a
24 dollar amount because all or a portion of the payor's net
25 income is uncertain as to source, time of payment, or
26 amount, the court may order a percentage amount of support

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

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

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

26 (b) Failure of either parent to comply with an order to pay

1 support shall be punishable as in other cases of contempt. In
2 addition to other penalties provided by law the Court may,
3 after finding the parent guilty of contempt, order that the
4 parent be:

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

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

11 (A) work; or

12 (B) conduct a business or other self-employed
13 occupation.

14 The Court may further order any part or all of the earnings
15 of a parent during a sentence of periodic imprisonment paid to
16 the Clerk of the Circuit Court or to the parent having custody
17 or to the guardian having custody of the children of the
18 sentenced parent for the support of said children until further
19 order of the Court.

20 If a parent who is found guilty of contempt for failure to
21 comply with an order to pay support is a person who conducts a
22 business or who is self-employed, the court in addition to
23 other penalties provided by law may order that the parent do
24 one or more of the following: (i) provide to the court monthly
25 financial statements showing income and expenses from the
26 business or the self-employment; (ii) seek employment and

1 report periodically to the court with a diary, listing, or
2 other memorandum of his or her employment search efforts; or
3 (iii) report to the Department of Employment Security for job
4 search services to find employment that will be subject to
5 withholding for child support.

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 arm's 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 (d) Any new or existing support order entered by the court
10 under this Section shall be deemed to be a series of judgments
11 against the person obligated to pay support thereunder, each
12 such judgment to be in the amount of each payment or
13 installment of support and each such judgment to be deemed
14 entered as of the date the corresponding payment or installment
15 becomes due under the terms of the support order. Each such
16 judgment shall have the full force, effect and attributes of
17 any other judgment of this State, including the ability to be
18 enforced. Notwithstanding any other State or local law to the
19 contrary, a lien arises by operation of law against the real
20 and personal property of the noncustodial parent for each
21 installment of overdue support owed by the noncustodial parent.

22 (e) When child support is to be paid through the clerk of
23 the court in a county of 1,000,000 inhabitants or less, the
24 order shall direct the obligor to pay to the clerk, in addition
25 to the child support payments, all fees imposed by the county
26 board under paragraph (3) of subsection (u) of Section 27.1 of

1 the Clerks of Courts Act. Unless paid in cash or pursuant to an
2 order for withholding, the payment of the fee shall be by a
3 separate instrument from the support payment and shall be made
4 to the order of the Clerk.

5 (f) All orders for support, when entered or modified, shall
6 include a provision requiring the obligor to notify the court
7 and, in cases in which a party is receiving child and spouse
8 services under Article X of the Illinois Public Aid Code, the
9 Department of Healthcare and Family Services, within 7 days,
10 (i) of the name and address of any new employer of the obligor,
11 (ii) whether the obligor has access to health insurance
12 coverage through the employer or other group coverage and, if
13 so, the policy name and number and the names of persons covered
14 under the policy, and (iii) of any new residential or mailing
15 address or telephone number of the non-custodial parent. In any
16 subsequent action to enforce a support order, upon a sufficient
17 showing that a diligent effort has been made to ascertain the
18 location of the non-custodial parent, service of process or
19 provision of notice necessary in the case may be made at the
20 last known address of the non-custodial parent in any manner
21 expressly provided by the Code of Civil Procedure or this Act,
22 which service shall be sufficient for purposes of due process.

23 (g) An order for support shall include a date on which the
24 current support obligation terminates. The termination date
25 shall be no earlier than the date on which the child covered by
26 the order will attain the age of 18. However, if the child will

1 not graduate from high school until after attaining the age of
2 18, then the termination date shall be no earlier than the
3 earlier of the date on which the child's high school graduation
4 will occur or the date on which the child will attain the age
5 of 19. The order for support shall state that the termination
6 date does not apply to any arrearage that may remain unpaid on
7 that date. Nothing in this subsection shall be construed to
8 prevent the court from modifying the order or terminating the
9 order in the event the child is otherwise emancipated.

10 (g-5) If there is an unpaid arrearage or delinquency (as
11 those terms are defined in the Income Withholding for Support
12 Act) equal to at least one month's support obligation on the
13 termination date stated in the order for support or, if there
14 is no termination date stated in the order, on the date the
15 child attains the age of majority or is otherwise emancipated,
16 the periodic amount required to be paid for current support of
17 that child immediately prior to that date shall automatically
18 continue to be an obligation, not as current support but as
19 periodic payment toward satisfaction of the unpaid arrearage or
20 delinquency. That periodic payment shall be in addition to any
21 periodic payment previously required for satisfaction of the
22 arrearage or delinquency. The total periodic amount to be paid
23 toward satisfaction of the arrearage or delinquency may be
24 enforced and collected by any method provided by law for
25 enforcement and collection of child support, including but not
26 limited to income withholding under the Income Withholding for

1 Support Act. Each order for support entered or modified on or
2 after the effective date of this amendatory Act of the 93rd
3 General Assembly must contain a statement notifying the parties
4 of the requirements of this subsection. Failure to include the
5 statement in the order for support does not affect the validity
6 of the order or the operation of the provisions of this
7 subsection with regard to the order. This subsection shall not
8 be construed to prevent or affect the establishment or
9 modification of an order for support of a minor child or the
10 establishment or modification of an order for support of a
11 non-minor child or educational expenses under Section 513 of
12 this Act.

13 (h) An order entered under this Section shall include a
14 provision requiring the obligor to report to the obligee and to
15 the clerk of court within 10 days each time the obligor obtains
16 new employment, and each time the obligor's employment is
17 terminated for any reason. The report shall be in writing and
18 shall, in the case of new employment, include the name and
19 address of the new employer. Failure to report new employment
20 or the termination of current employment, if coupled with
21 nonpayment of support for a period in excess of 60 days, is
22 indirect criminal contempt. For any obligor arrested for
23 failure to report new employment bond shall be set in the
24 amount of the child support that should have been paid during
25 the period of unreported employment. An order entered under
26 this Section shall also include a provision requiring the

1 obligor and obligee parents to advise each other of a change in
2 residence within 5 days of the change except when the court
3 finds that the physical, mental, or emotional health of a party
4 or that of a child, or both, would be seriously endangered by
5 disclosure of the party's address.

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

11 (Source: P.A. 97-186, eff. 7-22-11; 97-608, eff. 1-1-12;
12 97-813, eff. 7-13-12; 97-878, eff. 8-2-12; 97-941, eff. 1-1-13;
13 97-1029, eff. 1-1-13; 98-463, eff. 8-16-13.)

14 (750 ILCS 5/513) (from Ch. 40, par. 513)

15 Sec. 513. Support for Non-minor Children and Educational
16 Expenses.

17 (a) The court may award sums of money out of the property
18 and income of either or both parties or the estate of a
19 deceased parent, as equity may require, for the support of the
20 child or children of the parties who have attained majority in
21 the following instances:

22 (1) When the child is mentally or physically disabled
23 and not otherwise emancipated, an application for support
24 may be made before or after the child has attained
25 majority. A rebuttable presumption exists that a child

1 meets the conditions of this paragraph (1) if:

2 (A) the child is receiving special education
3 services under an individualized education program
4 developed under Article 14 of the School Code; or

5 (B) the child is receiving transition services
6 from the Department of Human Services in accordance
7 with the Disabled Persons Rehabilitation Act after the
8 child received special education services under an
9 individualized education program developed under
10 Article 14 of the School Code.

11 (2) The court may also make provision for the
12 educational expenses of the child or children of the
13 parties, whether of minor or majority age, and an
14 application for educational expenses may be made before or
15 after the child has attained majority, or after the death
16 of either parent. The authority under this Section to make
17 provision for educational expenses extends not only to
18 periods of college education or professional or other
19 training after graduation from high school, but also to any
20 period during which the child of the parties is still
21 attending high school, even though he or she attained the
22 age of 19. The educational expenses may include, but shall
23 not be limited to, room, board, dues, tuition,
24 transportation, books, fees, registration and application
25 costs, medical expenses including medical insurance,
26 dental expenses, and living expenses during the school year

1 and periods of recess, which sums may be ordered payable to
2 the child, to either parent, or to the educational
3 institution, directly or through a special account or trust
4 created for that purpose, as the court sees fit.

5 If educational expenses are ordered payable, each
6 parent and the child shall sign any consents necessary for
7 the educational institution to provide the supporting
8 parent with access to the child's academic transcripts,
9 records, and grade reports. The consents shall not apply to
10 any non-academic records. Failure to execute the required
11 consent may be a basis for a modification or termination of
12 any order entered under this Section. Unless the court
13 specifically finds that the child's safety would be
14 jeopardized, each parent is entitled to know the name of
15 the educational institution the child attends. This
16 amendatory Act of the 95th General Assembly applies to all
17 orders entered under this paragraph (2) on or after the
18 effective date of this amendatory Act of the 95th General
19 Assembly.

20 The authority under this Section to make provision for
21 educational expenses, except where the child is mentally or
22 physically disabled and not otherwise emancipated,
23 terminates when the child receives a baccalaureate degree.

24 (b) In making awards under paragraph (1) or (2) of
25 subsection (a), or pursuant to a petition or motion to
26 decrease, modify, or terminate any such award, the court shall

1 consider all relevant factors that appear reasonable and
2 necessary, including:

3 (1) The financial resources of both parents.

4 (2) The standard of living the child would have enjoyed
5 had the marriage not been dissolved.

6 (3) The financial resources of the child.

7 (4) The child's academic performance.

8 (Source: P.A. 95-954, eff. 8-29-08.)