



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB1491

Introduced 2/6/2015, by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

305 ILCS 5/10-12.5 new
750 ILCS 5/510

from Ch. 40, par. 510

Amends the Illinois Public Aid Code, the Unified Code of Corrections, and the Illinois Marriage and Dissolution of Marriage Act. Provides that a person's obligation to pay child support pursuant to a court or administrative order is suspended by operation of law during any period that the person is committed to the custody of the Department of Corrections or the Department of Juvenile Justice. Provides that the programs of the Department of Healthcare and Family Services concerning child support orders shall include cases in which a responsible relative who is committed to the custody of the Department of Corrections or the Department of Juvenile Justice requests modification of the support order. Provides that the Department of Corrections and the Department of Juvenile Justice shall establish programs to assist committed persons who are obligors under child support orders in cases in which child support enforcement services are provided by the Department of Healthcare and Family Services. Provides for inclusion of information about any child support obligation owed by the defendant and recommendations concerning the payment of that obligation in a presentence report; requires a presentence investigation and report in the case of a misdemeanor defendant who owes a child support obligation.

LRB099 05929 HEP 25977 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning public aid.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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) During any period of time in which the person owing a
10 duty of support is committed to the custody of the Department
11 of Corrections or the Department of Juvenile Justice, an
12 obligation to pay child support is suspended by operation of
13 law, but not until 60 days after the custodial parent receives
14 notice and an opportunity to request a termination or
15 modification of the suspension of the support obligation in
16 accordance with subsection (c) of this Section. If the
17 custodial parent requests that the suspension or prohibition of
18 the support obligation be terminated or modified and the court
19 terminates or modifies the suspension of the support
20 obligation, or if the parties have otherwise agreed in a
21 written agreement set forth in a court or administrative order
22 for support, then the child support obligation shall not be
23 suspended and if the non-custodial parent wishes to obtain a

1 modification, he or she must petition for a modification of
2 support in accordance with Section 510 of the Illinois Marriage
3 and Dissolution of Marriage Act. The Department may provide, by
4 rule, for notice to the custodial parent describing the
5 custodial parent's rights regarding a prospective modification
6 in accordance with Section 510 of the Illinois Marriage and
7 Dissolution of Marriage Act.

8 If a non-custodial parent receives a settlement, claim,
9 inheritance, lottery prize award, or other lump sum or periodic
10 income of \$500 or more a month or \$5,000 or more as a one-time
11 lump sum, during a period in which his or her child support
12 obligation is suspended pursuant to this Code, the
13 non-custodial parent shall notify the custodial parent, and in
14 IV-D cases also notify the Department, within 7 days of
15 receiving or becoming aware that he or she is entitled to
16 receive this income. If the custodial parent wishes to obtain a
17 modification based on this income, he or she must petition for
18 a modification of support in accordance with Section 510 of the
19 Illinois Marriage and Dissolution of Marriage Act.

20 (b) Any period of incarceration of a parent obligated to
21 pay child support shall not be considered a period of voluntary
22 unemployment. In the case of an incarcerated parent obligated
23 to pay child support greater than \$0 whose period of
24 incarceration is greater than one year and whose period of
25 incarceration begins on or after July 1, 2014, the Department
26 shall:

1 (1) temporarily suspend any support obligation of the
2 parent and the enforcement of any support obligation of the
3 parent existing prior to the period of incarceration; and

4 (2) temporarily prohibit the accrual of any interest on
5 any support obligation of the parent existing prior to the
6 period of incarceration during such period.

7 The temporary suspension of the child support obligation
8 and of the accrual of interest on any support obligation of the
9 parent existing prior to the period of incarceration shall end
10 and both support and accrual of interest on any pre-existing
11 unpaid obligation shall resume upon the first charging period
12 to occur after the obligated parent's release from
13 incarceration. Unless the terms of the support obligation have
14 been otherwise modified, the support terms shall resume at the
15 same level as prior to the temporary suspension.

16 (c) Provided the Department is advised or given notice of
17 the obligated parent's incarceration for a period to exceed one
18 year beginning after July 1, 2014, the Department, for cases
19 enrolled in the Child Support Enforcement Program established
20 by Title IV-D of the Social Security Act, or the noncustodial
21 parent or his or her representative in all other cases, shall
22 provide both parties with:

23 (1) notice of any suspension or review, adjustment, or
24 enforcement of a support obligation and of any prohibition
25 on interest accrual on such obligation that is imposed in
26 accordance with paragraphs (1) and (2) of subsection (b);

1 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 (d) The Department shall not be liable for failing to act
8 upon the provisions established under paragraphs (1) and (2) of
9 subsection (b) if the Department has not been advised of the
10 obligated parent's incarceration or if the Department has in
11 place proper procedures for considering an obligated parent's
12 incarceration when setting and modifying child support
13 obligations and follows those procedures routinely.

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

16 (750 ILCS 5/510) (from Ch. 40, par. 510)

17 Sec. 510. Modification and termination of provisions for
18 maintenance, support, educational expenses, and property
19 disposition.

20 (a) Except as otherwise provided in paragraph (f) of
21 Section 502 and in subsection (b), clause (3) of Section 505.2,
22 the provisions of any judgment respecting maintenance or
23 support may be modified only as to installments accruing
24 subsequent to due notice by the moving party of the filing of

1 the motion for modification. An order for child support may be
2 modified as follows:

3 (1) upon a showing of a substantial change in
4 circumstances, including incarceration prior to July 1,
5 2014 or for a period of incarceration of less than one
6 year; and

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

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

18 (B) upon a showing of a need to provide for the
19 health care needs of the child under the order through
20 health insurance or other means. In no event shall the
21 eligibility for or receipt of medical assistance be
22 considered to meet the need to provide for the child's
23 health care needs.

24 The provisions of subparagraph (a) (2) (A) shall apply only
25 in cases in which a party is receiving child support
26 enforcement services from the Department of Healthcare and

1 Family Services under Article X of the Illinois Public Aid
2 Code, and only when at least 36 months have elapsed since the
3 order for child support was entered or last modified.

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

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

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

15 (3) any impairment of the present and future earning
16 capacity of either party;

17 (4) the tax consequences of the maintenance payments
18 upon the respective economic circumstances of the parties;

19 (5) the duration of the maintenance payments
20 previously paid (and remaining to be paid) relative to the
21 length of the marriage;

22 (6) the property, including retirement benefits,
23 awarded to each party under the judgment of dissolution of
24 marriage, judgment of legal separation, or judgment of
25 declaration of invalidity of marriage and the present
26 status of the property;

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

4 (8) the property acquired and currently owned by each
5 party after the entry of the judgment of dissolution of
6 marriage, judgment of legal separation, or judgment of
7 declaration of invalidity of marriage; and

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

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

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

1 other party or such other party's designee to receive a death
2 benefit under such insurance on the payor party's life.

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

19 (d-5) During any period of time in which the person owing a
20 duty of support is committed to the custody of the Department
21 of Corrections or the Department of Juvenile Justice, an
22 obligation to pay child support is suspended by operation of
23 law, but not until 60 days after the custodial parent receives
24 notice and an opportunity to request a termination or
25 modification of the suspension of the support obligation in
26 accordance with subsection (d-7) of this Section. If the

1 custodial parent requests that the suspension or prohibition of
2 the support obligation be terminated or modified and the court
3 terminates or modifies the suspension of the support
4 obligation, or if the parties have otherwise agreed in a
5 written agreement set forth in the judgment or otherwise
6 approved by the court, then the child support obligation shall
7 not be suspended and if the non-custodial parent wishes to
8 obtain a modification, he or she must petition for a
9 modification of support in accordance with this Section. The
10 Department of Healthcare and Family Services may provide, by
11 rule, for notice to the custodial parent describing the
12 custodial parent's rights regarding a prospective modification
13 in accordance with this Section.

14 If a non-custodial parent receives a settlement, claim,
15 inheritance, lottery prize award, or other lump sum or periodic
16 income of \$500 or more a month or \$5,000 or more as a one-time
17 lump sum, during a period in which his or her child support
18 obligation is suspended pursuant to Section 10-12.5 of the
19 Illinois Public Aid Code, the non-custodial parent shall notify
20 the custodial parent, and in IV-D cases also notify the
21 Department of Healthcare and Family Services, within 7 days of
22 receiving or becoming aware that he or she is entitled to
23 receive this income. If the custodial parent wishes to obtain a
24 modification based on this income, he or she must petition for
25 a modification of support in accordance with this Section.

26 (d-6) The State shall not consider any period of

1 incarceration of such parent as a period of voluntary
2 unemployment that disqualifies the parent from obtaining a
3 modification of the support obligation consistent with the
4 parent's ability to pay child support. In the case of an
5 incarcerated parent the State shall:

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

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

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

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

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

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

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

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

25 (h) The crime for which the incarcerated parent was
26 convicted, or the prosecution of the incarcerated parent for

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

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