



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0236

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 subject to federal approval, 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 Department of Corrections and the Department of Juvenile Justice shall share relevant data and collaborate to 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.

LRB100 04181 HEP 14187 b

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 an obligor is
10 committed to the custody of the Department of Corrections or
11 the Department of Juvenile Justice, subject to federal
12 approval, an obligation to pay child support is suspended by
13 operation of law, but not until 60 days after the obligee
14 receives 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 obligee
17 requests that the suspension or prohibition of the support
18 obligation be terminated or modified and the court terminates
19 or modifies the suspension of the support obligation, or if the
20 parties have otherwise agreed in a written agreement set forth
21 in a court or administrative order for support, then the child
22 support obligation shall not be suspended and if the obligor
23 wishes to obtain a modification, he or she must petition for a

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

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

18 (b) Any period of incarceration of obligor shall not be
19 considered a period of voluntary unemployment. In the case of
20 an incarcerated parent obligated to pay child support greater
21 than \$0 whose period of incarceration is greater than one year
22 and whose period of incarceration begins on or after January 1,
23 2018, the Department shall:

24 (1) temporarily suspend any support obligation of the
25 obligor and the enforcement of any support obligation of
26 the obligor existing prior to the period of incarceration;

1 and

2 (2) temporarily prohibit the accrual of any interest on
3 any support obligation of the obligor existing prior to the
4 period of incarceration during the incarceration.

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

14 (c) If the Department is advised or given notice of the
15 obligor's incarceration for a period to exceed one year
16 beginning after January 1, 2018, the Department, for cases
17 enrolled in the Child Support Enforcement Program established
18 by Title IV-D of the Social Security Act, or the obligor parent
19 or his or her representative in all other cases, shall provide
20 both parties with:

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

26 (2) an opportunity to request that the suspension or

1 prohibition be terminated or modified on the basis that the
2 obligor has sufficient income or resources to continue
3 payment of the support obligation during the obligor's
4 period of incarceration.

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

12 (e) The Department of Healthcare and Family Services and
13 the Department of Corrections shall share relevant data and
14 collaborate on the facilitation of identification of
15 incarcerated obligors eligible for either temporary suspension
16 of a child support obligation or modification of a child
17 support obligation and shall provide relevant information and
18 assistance to incarcerated obligors eligible for modification
19 of support.

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 (Text of Section before amendment by P.A. 99-764)

24 Sec. 510. Modification and termination of provisions for

1 maintenance, support, educational expenses, and property
2 disposition.

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

10 (1) upon a showing of a substantial change in
11 circumstances; and

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

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

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

1 considered to meet the need to provide for the child's
2 health care needs.

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

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

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

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

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

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

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

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

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

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

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

15 (a-6) In a review under subsection (b-4.5) of Section 504
16 of this Act, the court may enter a fixed-term maintenance award
17 that bars future maintenance only if, at the time of the entry
18 of the award, the marriage had lasted 10 years or less at the
19 time the original action was commenced.

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

24 (c) Unless otherwise agreed by the parties in a written
25 agreement set forth in the judgment or otherwise approved by
26 the court, the obligation to pay future maintenance is

1 terminated upon the death of either party, or the remarriage of
2 the party receiving maintenance, or if the party receiving
3 maintenance cohabits with another person on a resident,
4 continuing conjugal basis. A payor's obligation to pay
5 maintenance or unallocated maintenance terminates by operation
6 of law on the date the recipient remarries or the date the
7 court finds cohabitation began. The payor is entitled to
8 reimbursement for all maintenance paid from that date forward.
9 Any termination of an obligation for maintenance as a result of
10 the death of the payor party, however, shall be inapplicable to
11 any right of the other party or such other party's designee to
12 receive a death benefit under such insurance on the payor
13 party's life. A party receiving maintenance must advise the
14 payor of his or her intention to marry at least 30 days before
15 the remarriage, unless the decision is made within this time
16 period. In that event, he or she must notify the other party
17 within 72 hours of getting married.

18 (c-5) In an adjudicated case, the court shall make specific
19 factual findings as to the reason for the modification as well
20 as the amount, nature, and duration of the modified maintenance
21 award.

22 (d) Unless otherwise provided in this Act, or as agreed in
23 writing or expressly provided in the judgment, provisions for
24 the support of a child are terminated by emancipation of the
25 child, or if the child has attained the age of 18 and is still
26 attending high school, provisions for the support of the child

1 are terminated upon the date that the child graduates from high
2 school or the date the child attains the age of 19, whichever
3 is earlier, but not by the death of a parent obligated to
4 support or educate the child. An existing obligation to pay for
5 support or educational expenses, or both, is not terminated by
6 the death of a parent. When a parent obligated to pay support
7 or educational expenses, or both, dies, the amount of support
8 or educational expenses, or both, may be enforced, modified,
9 revoked or commuted to a lump sum payment, as equity may
10 require, and that determination may be provided for at the time
11 of the dissolution of the marriage or thereafter.

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

22 (f) A petition to modify or terminate child support or
23 allocation of parental responsibilities shall not delay any
24 child support enforcement litigation or supplementary
25 proceeding on behalf of the obligee, including, but not limited
26 to, a petition for a rule to show cause, for non-wage

1 garnishment, or for a restraining order.

2 (Source: P.A. 99-90, eff. 1-1-16.)

3 (Text of Section after amendment by P.A. 99-764)

4 Sec. 510. Modification and termination of provisions for
5 maintenance, support, educational expenses, and property
6 disposition.

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

14 (1) upon a showing of a substantial change in
15 circumstances, including, subject to federal approval,
16 incarceration prior to January 1, 2018 or for a period of
17 incarceration of less than one year; and

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

20 (A) upon a showing of an inconsistency of at least
21 20%, but no less than \$10 per month, between the amount
22 of the existing order and the amount of child support
23 that results from application of the guidelines
24 specified in Section 505 of this Act unless the
25 inconsistency is due to the fact that the amount of the

1 existing order resulted from a deviation from the
2 guideline amount and there has not been a change in the
3 circumstances that resulted in that deviation; or

4 (B) upon a showing of a need to provide for the
5 health care needs of the child under the order through
6 health insurance or other means. In no event shall the
7 eligibility for or receipt of medical assistance be
8 considered to meet the need to provide for the child's
9 health care needs.

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

16 The court may grant a petition for modification that seeks
17 to apply the changes made to subsection (a) of Section 505 by
18 Public Act 99-764 ~~this amendatory Act of the 99th General~~
19 ~~Assembly~~ to an order entered before the effective date of
20 Public Act 99-764 ~~this amendatory Act of the 99th General~~
21 ~~Assembly~~ only upon a finding of a substantial change in
22 circumstances that warrants application of the changes. The
23 enactment of Public Act 99-764 ~~this amendatory Act of the 99th~~
24 ~~General Assembly~~ itself does not constitute a substantial
25 change in circumstances warranting a modification.

26 (a-5) An order for maintenance may be modified or

1 terminated only upon a showing of a substantial change in
2 circumstances. In all such proceedings, as well as in
3 proceedings in which maintenance is being reviewed, the court
4 shall consider the applicable factors set forth in subsection
5 (a) of Section 504 and the following factors:

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

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

11 (3) any impairment of the present and future earning
12 capacity of either party;

13 (4) the tax consequences of the maintenance payments
14 upon the respective economic circumstances of the parties;

15 (5) the duration of the maintenance payments
16 previously paid (and remaining to be paid) relative to the
17 length of the marriage;

18 (6) the property, including retirement benefits,
19 awarded to each party under the judgment of dissolution of
20 marriage, judgment of legal separation, or judgment of
21 declaration of invalidity of marriage and the present
22 status of the property;

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

26 (8) the property acquired and currently owned by each

1 party after the entry of the judgment of dissolution of
2 marriage, judgment of legal separation, or judgment of
3 declaration of invalidity of marriage; and

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

6 (a-6) In a review under subsection (b-4.5) of Section 504
7 of this Act, the court may enter a fixed-term maintenance award
8 that bars future maintenance only if, at the time of the entry
9 of the award, the marriage had lasted 10 years or less at the
10 time the original action was commenced.

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

15 (c) Unless otherwise agreed by the parties in a written
16 agreement set forth in the judgment or otherwise approved by
17 the court, the obligation to pay future maintenance is
18 terminated upon the death of either party, or the remarriage of
19 the party receiving maintenance, or if the party receiving
20 maintenance cohabits with another person on a resident,
21 continuing conjugal basis. A payor's obligation to pay
22 maintenance or unallocated maintenance terminates by operation
23 of law on the date the recipient remarries or the date the
24 court finds cohabitation began. The payor is entitled to
25 reimbursement for all maintenance paid from that date forward.
26 Any termination of an obligation for maintenance as a result of

1 the death of the payor party, however, shall be inapplicable to
2 any right of the other party or such other party's designee to
3 receive a death benefit under such insurance on the payor
4 party's life. A party receiving maintenance must advise the
5 payor of his or her intention to marry at least 30 days before
6 the remarriage, unless the decision is made within this time
7 period. In that event, he or she must notify the other party
8 within 72 hours of getting married.

9 (c-5) In an adjudicated case, the court shall make specific
10 factual findings as to the reason for the modification as well
11 as the amount, nature, and duration of the modified maintenance
12 award.

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

1 require, and that determination may be provided for at the time
2 of the dissolution of the marriage or thereafter.

3 (d-5) During any period of time in which the obligor is
4 committed to the custody of the Department of Corrections or
5 the Department of Juvenile Justice, subject to federal
6 approval, an obligation to pay child support is suspended by
7 operation of law, but not until 60 days after the obligee
8 receives notice and an opportunity to request a termination or
9 modification of the suspension of the support obligation in
10 accordance with subsection (d-7) of this Section. If the
11 obligee requests that the suspension or prohibition of the
12 support obligation be terminated or modified and the court
13 terminates or modifies the suspension of the support
14 obligation, or if the parties have otherwise agreed in a
15 written agreement set forth in the judgment or otherwise
16 approved by the court, then the child support obligation shall
17 not be suspended and if the obligor wishes to obtain a
18 modification, he or she must petition for a modification of
19 support in accordance with this Section. The Department of
20 Healthcare and Family Services may provide, by rule, for notice
21 to the obligee describing the obligee's rights regarding a
22 prospective modification in accordance with this Section.

23 If an obligor receives a settlement, claim, inheritance,
24 lottery prize award, or other lump sum or periodic income of
25 \$500 or more a month or \$5,000 or more as a one-time lump sum,
26 during a period in which his or her child support obligation is

1 suspended pursuant to Section 10-12.5 of the Illinois Public
2 Aid Code, the obligor shall notify the obligee, and in IV-D
3 cases also notify the Department of Healthcare and Family
4 Services, within 7 days of receiving or becoming aware that he
5 or she is entitled to receive this income. If the obligee
6 wishes to obtain a modification based on this income, he or she
7 must petition for a modification of support in accordance with
8 this Section.

9 (d-6) The State shall not consider any period of
10 incarceration of an obligor as a period of voluntary
11 unemployment that disqualifies the parent from obtaining a
12 modification of the support obligation consistent with the
13 obligor's ability to pay child support. In the case of an
14 incarcerated obligor, the State shall, subject to federal
15 approval:

16 (1) temporarily suspend any support obligation of the
17 obligor and the enforcement of any support obligation of
18 the obligor existing prior to the period of incarceration;
19 and

20 (2) temporarily prohibit the accrual of any interest on
21 any support obligation of the obligor existing prior to the
22 period of incarceration during the incarceration.

23 (d-7) The Department of Healthcare and Family Services, for
24 cases enrolled in the Child Support Enforcement Program
25 established by Title IV-D of the Social Security Act, or the
26 obligor or his or her representative in all other cases, shall

1 provide the obligee with:

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

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

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

22 (f) A petition to modify or terminate child support or
23 allocation of parental responsibilities shall not delay any
24 child support enforcement litigation or supplementary
25 proceeding on behalf of the obligee, including, but not limited
26 to, a petition for a rule to show cause, for non-wage

1 garnishment, or for a restraining order.

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

15 (Source: P.A. 99-90, eff. 1-1-16; 99-764, eff. 7-1-17; revised
16 9-8-16.)

17 Section 95. No acceleration or delay. Where this Act makes
18 changes in a statute that is represented in this Act by text
19 that is not yet or no longer in effect (for example, a Section
20 represented by multiple versions), the use of that text does
21 not accelerate or delay the taking effect of (i) the changes
22 made by this Act or (ii) provisions derived from any other
23 Public Act.