

SB3079



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB3079

Introduced 1/20/2006, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

750 ILCS 5/505

from Ch. 40, par. 505

Amends the Illinois Marriage and Dissolution of Marriage Act. Makes a technical change in a Section concerning child support.

LRB094 19151 LCT 54683 b

A BILL FOR

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 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 ~~the~~ court may order either or both parents owing a duty of
16 support to a child of the marriage to pay an amount reasonable
17 and 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 support obligation, or any portion of a support
35 obligation, which becomes due and remains unpaid as of the end
36 of each month, excluding the child support that was due for

1 that month to the extent that it was not paid in that month,
2 shall accrue simple interest as set forth in Section 12-109 of
3 the Code of Civil Procedure. An order for support entered or
4 modified on or after January 1, 2006 shall contain a statement
5 that a support obligation required under the order, or any
6 portion of a support obligation required under the order, that
7 becomes due and remains unpaid as of the end of each month,
8 excluding the child support that was due for that month to the
9 extent that it was not paid in that month, shall accrue simple
10 interest as set forth in Section 12-109 of the Code of Civil
11 Procedure. Failure to include the statement in the order for
12 support does not affect the validity of the order or the
13 accrual of interest as provided in this Section.

14 (c) A one-time charge of 20% is imposable upon the amount
15 of past-due child support owed on July 1, 1988 which has
16 accrued under a support order entered by the court. The charge
17 shall be imposed in accordance with the provisions of Section
18 10-21 of the Illinois Public Aid Code and shall be enforced by
19 the court upon petition.

20 (d) Any new or existing support order entered by the court
21 under this Section shall be deemed to be a series of judgments
22 against the person obligated to pay support thereunder, each
23 such judgment to be in the amount of each payment or
24 installment of support and each such judgment to be deemed
25 entered as of the date the corresponding payment or installment
26 becomes due under the terms of the support order. Each such
27 judgment shall have the full force, effect and attributes of
28 any other judgment of this State, including the ability to be
29 enforced. A lien arises by operation of law against the real
30 and personal property of the noncustodial parent for each
31 installment of overdue support owed by the noncustodial parent.

32 (e) When child support is to be paid through the clerk of
33 the court in a county of 1,000,000 inhabitants or less, the
34 order shall direct the obligor to pay to the clerk, in addition
35 to the child support payments, all fees imposed by the county
36 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 ~~Illinois~~ Department of Healthcare and Family Services ~~Public~~
10 ~~Aid~~, within 7 days, (i) of the name and address of any new
11 employer of the obligor, (ii) whether the obligor has access to
12 health insurance coverage through the employer or other group
13 coverage and, if so, the policy name and number and the names
14 of persons covered under the policy, and (iii) of any new
15 residential or mailing address or telephone number of the
16 non-custodial parent. In any subsequent action to enforce a
17 support order, upon a sufficient showing that a diligent effort
18 has been made to ascertain the location of the non-custodial
19 parent, service of process or provision of notice necessary in
20 the case may be made at the last known address of the
21 non-custodial parent in any manner expressly provided by the
22 Code of Civil Procedure or this Act, which service shall be
23 sufficient for purposes of due process.

24 (g) An order for support shall include a date on which the
25 current support obligation terminates. The termination date
26 shall be no earlier than the date on which the child covered by
27 the order will attain the age of 18. However, if the child will
28 not graduate from high school until after attaining the age of
29 18, then the termination date shall be no earlier than the
30 earlier of the date on which the child's high school graduation
31 will occur or the date on which the child will attain the age
32 of 19. The order for support shall state that the termination
33 date does not apply to any arrearage that may remain unpaid on
34 that date. Nothing in this subsection shall be construed to
35 prevent the court from modifying the order or terminating the
36 order in the event the child is otherwise emancipated.

1 (g-5) If there is an unpaid arrearage or delinquency (as
2 those terms are defined in the Income Withholding for Support
3 Act) equal to at least one month's support obligation on the
4 termination date stated in the order for support or, if there
5 is no termination date stated in the order, on the date the
6 child attains the age of majority or is otherwise emancipated,
7 the periodic amount required to be paid for current support of
8 that child immediately prior to that date shall automatically
9 continue to be an obligation, not as current support but as
10 periodic payment toward satisfaction of the unpaid arrearage or
11 delinquency. That periodic payment shall be in addition to any
12 periodic payment previously required for satisfaction of the
13 arrearage or delinquency. The total periodic amount to be paid
14 toward satisfaction of the arrearage or delinquency may be
15 enforced and collected by any method provided by law for
16 enforcement and collection of child support, including but not
17 limited to income withholding under the Income Withholding for
18 Support Act. Each order for support entered or modified on or
19 after the effective date of this amendatory Act of the 93rd
20 General Assembly must contain a statement notifying the parties
21 of the requirements of this subsection. Failure to include the
22 statement in the order for support does not affect the validity
23 of the order or the operation of the provisions of this
24 subsection with regard to the order. This subsection shall not
25 be construed to prevent or affect the establishment or
26 modification of an order for support of a minor child or the
27 establishment or modification of an order for support of a
28 non-minor child or educational expenses under Section 513 of
29 this Act.

30 (h) An order entered under this Section shall include a
31 provision requiring the obligor to report to the obligee and to
32 the clerk of court within 10 days each time the obligor obtains
33 new employment, and each time the obligor's employment is
34 terminated for any reason. The report shall be in writing and
35 shall, in the case of new employment, include the name and
36 address of the new employer. Failure to report new employment

1 or the termination of current employment, if coupled with
2 nonpayment of support for a period in excess of 60 days, is
3 indirect criminal contempt. For any obligor arrested for
4 failure to report new employment bond shall be set in the
5 amount of the child support that should have been paid during
6 the period of unreported employment. An order entered under
7 this Section shall also include a provision requiring the
8 obligor and obligee parents to advise each other of a change in
9 residence within 5 days of the change except when the court
10 finds that the physical, mental, or emotional health of a party
11 or that of a child, or both, would be seriously endangered by
12 disclosure of the party's address.

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

18 (Source: P.A. 93-148, eff. 7-10-03; 93-1061, eff. 1-1-05;
19 94-90, eff. 1-1-06; revised 12-15-05.)